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Tuesday
January 24, 1995

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Presidential Documents

Title 3—

The President

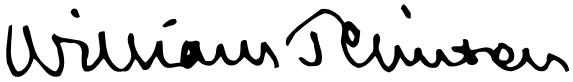
Executive Order 12945 of January 20, 1995

Amendment to Executive Order No. 12640

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to provide for the carrying out of the provisions of the Rehabilitation Act of 1973, Public Law 93–112, section 501(a)–(f), as amended (29 U.S.C. 791(a)–(f)), and in order to add two Vice Chair positions to the four already provided to the ''President's Committee on Employment of People with Disabilities,'' it is hereby ordered that:

(1) The first sentence of section 1(b) of Executive Order No. 12640 be amended by deleting the words ''four Vice Chairmen'' and inserting the words ''six Vice Chairs'' in lieu thereof; and

(2) The words ''Vice Chair'' or ''Vice Chairs'' be inserted in lieu of the words ''Vice Chairman'' and ''Vice Chairmen,'' respectively, wherever such words appear in Executive Order No. 12640.



THE WHITE HOUSE,
January 20, 1995.

[FR Doc. 95–1877
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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 93–147–2]

Importation of Strawberries, Currants, and Palms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with changes, portions of an interim rule concerning the importation of strawberry, currant, and palm plants. This final rule will allow the importation of both of the Howea species of sentry palms into the United States from Australia (including Lord Howe and Norfolk Islands) and from New Zealand, subject to certain conditions. This action will allow the importation of the Howea species of sentry palms without significant risk of introducing exotic palm diseases into the United States.

We are still considering comments on the provisions of the interim rule concerning the importation of strawberry and currant plants and as yet have not decided whether to affirm or revise these provisions. We will do so in a separate **Federal Register** document.

EFFECTIVE DATE: January 24, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Grosser or Mr. Frank E. Cooper, Senior Operations Officers, Port Operations, Plant Protection and Quarantine, APHIS, USDA, P.O. Drawer 810, Riverdale, MD, 20738. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February. Telephone: (301) 436–8295 (Hyattsville); (301) 734–8295 (Riverdale).

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Act (7 U.S.C. 151 et seq.) and the Federal Plant Pest Act (7 U.S.C. 150aa et seq.) authorize the Animal and Plant Health Inspection Service (APHIS) to prohibit or restrict the importation into the United States of any plants, roots, bulbs, seeds, or other plant products in order to prevent the introduction of plant pests into the United States.

Regulations promulgated under this authority, among others, include 7 CFR 319.37 through 319.37–14, ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products'' (the regulations). These regulations govern the importation of living plants, plant parts, and seeds for or capable of propagation, and related articles. Other sections of 7 CFR 319 deal with articles such as cut flowers, or fruits and vegetables intended for consumption.

The regulations restrict or prohibit the importation of most nursery stock, plants, roots, bulbs, seeds, and other plant products. These articles are classified as either ''prohibited articles'' or ''restricted articles.''

A prohibited article is an article that the Deputy Administrator for Plant Protection and Quarantine (PPQ), APHIS, has determined cannot feasibly be inspected, treated, or handled to prevent it from introducing plant pests new to or not widely prevalent or distributed within and throughout the United States. Prohibited articles may not be imported into the United States, unless imported by the United States Department of Agriculture (USDA) for experimental or scientific purposes under specified safeguards.

A restricted article is an article that the Deputy Administrator for PPQ has determined can be inspected, treated, or handled to essentially eliminate the risk of its spreading plant pests if imported into the United States. Restricted articles may be imported into the United States if they are imported in compliance with restrictions that may include permit and phytosanitary certificate requirements, inspection, treatment, or postentry quarantine.

In an interim rule effective and published in the **Federal Register** on August 30, 1994 (59 FR 44608–44610, Docket No. 93–147–1), we amended the regulations to prohibit the importation of strawberry plants from all foreign countries except Canada and Israel, prohibit the importation of currant plants from New Zealand, and prohibit the importation of both species of the genus *Howea* (sentry palms), except from Lord Howe Island, New South Wales, Australia.

Comments on the interim rule were required to be received on or before October 31, 1994. By that date, we received 44 comments on the interim rule. Twelve of the comments addressed the new restrictions on the importation of strawberry and currant plants. We are still considering these comments and as yet have not decided whether to affirm or revise the interim rule provisions regarding the importation of strawberry and currant plants. We will do so in a separate **Federal Register** document.

Thirty-five of the comments concern the new restrictions on the importation of sentry palms. These comments were submitted by members of Congress, palm growers, importers and exporters, trade associations, universities, State governments, and foreign governments. Thirteen of the comments support the interim rule provisions regarding the prohibition on the importation of both species of the genus *Howea* from everywhere except Lord Howe Island. The other 22 comments object to the prohibition. The objections and our responses are summarized below.

Prior to the publication of the interim rule, one species of sentry palm, *Howea forsteriana*, could be imported into the United States as a restricted article from anywhere in the world. The other species though, *Howea belmoreana*, was classified as a prohibited article, owing to its susceptibility to the cadang-cadang and lethal yellowing pathogens.

A representative of a palm company on Lord Howe Island requested that APHIS consider revising the regulations to allow the importation of *Howea belmoreana* from Lord Howe Island into the United States as a restricted article. Our review of the scientific literature did not reveal any indication of the presence of the lethal yellowing pathogen, the cadang-cadang pathogen, or any other damaging palm pests on Lord Howe Island. Furthermore, New South Wales prohibits the importation of all palms and palm products onto the Lord Howe Island from all sources. We thus revised the regulations accordingly to allow the importation of *Howea*

belmoreana from Lord Howe Island into the United States as a restricted article.

Also, during our review of this request, we found no evidence that the other species of sentry palm, *Howea forsteriana*, was immune to the cadang-cadang or lethal yellowing pathogens. Because pathogens attack most species within a genus, we decided to extend the import prohibition to both species of *Howea*. However, we decided to allow *Howea forsteriana* to be imported from Lord Howe Island as a restricted article, due to the disease status of the island and the phytosanitary restrictions in effect there.

All of the 22 comments objecting to the interim rule requested that we reconsider the prohibition with respect to *Howea* species grown in Australia, Norfolk Island (a self-governing territory of Australia), and New Zealand. The comments point out that Australia, Norfolk Island, and New Zealand are free of the cadang-cadang and lethal yellowing pathogens. Also, they maintained that the plant protection agencies of Australia, Norfolk Island, and New Zealand impose phytosanitary restrictions in regard to palm imports comparable to those imposed on Lord Howe Island by New South Wales.

We have confirmed this information and now believe that both species of *Howea* can be imported from Australia (including Norfolk Island) and New Zealand with a negligible degree of risk of introducing exotic palm pests into the United States. Therefore, this final rule will allow both species of *Howea* to be imported into the United States from Australia (including Lord Howe and Norfolk Islands) and New Zealand, as restricted articles. In the future, we will welcome for review information regarding the relevant disease status and phytosanitary programs of additional countries that wish to export *Howea* species into the United States.

Miscellaneous

We are correcting the misspelling of *Howea forsteriana* in the interim rule.

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**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Since August 30, 1994, growers in Australia (including Norfolk Island) have had to divert to other destinations shipments of *Howea forsteriana* palms originally destined for the United States; U.S. entities counting on these shipments have had to find other sources for *Howea forsteriana* palms. Making this rule effective upon publication will grant immediate relief to these entities. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon 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 purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 601 *et seq.*, we have performed a Final Regulatory Flexibility Analysis, set forth below, regarding the economic impact of this rule on small entities.

In an August 30, 1994, interim rule, we prohibited the importation of both species of *Howea* (sentry palm) from everywhere but Lord Howe Island, New South Wales, Australia. As a result of comments received on the rule and a subsequent reappraisal of phytosanitary risks, we have decided to finalize this rule with revisions prohibiting the importation of both species of *Howea* from everywhere except Australia (including Lord Howe and Norfolk Islands) and New Zealand.

Although USDA does not collect information on trade in *Howea*, domestic and foreign industry sources indicate the *Howea forsteriana* seeds and seedlings have growing import markets in the United States, particularly in Hawaii, California, and Florida. (Neither the interim rule nor this final rule affect trade in seeds of *Howea*.) Some sources estimate annual revenues generated by *Howea forsteriana* trade in the United States to be as high as $15 million.

Growers in mainland Australia and on Lord Howe and Norfolk Islands have been the major suppliers of *Howea forsteriana* seed and seedlings. Since the publication of the interim rule prohibiting the importation of *Howea* plants from everywhere but Lord Howe Island, growers in mainland Australia and on Norfolk Island have had to divert shipments of *Howea forsteriana* seedlings originally destined for the United States. Also, U.S. entities trading with these growers have had to find other sources for the seedlings.

This final rule will grant relief to these foreign growers and to U.S. entities trading with them by again allowing the importation of *Howea forsteriana* plants from all of Australia, including Norfolk Island. Furthermore, this rule will provide market opportunities for foreign growers and U.S. entities trading with them by allowing *Howea belmoreana* plants to be imported into the United States from Australia (including Norfolk Island) and New Zealand, subject to certain conditions.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, 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

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0049.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.37–5 Special foreign inspection and certification requirements.

2. In § 319.37–5, paragraph (n), the phrase ''Lord Howe Island, New South Wales, Australia,'' is removed and the phrase ''Australia or New Zealand'' is added in its place; and, the phrase ''(must be Lord Howe Island)'' is removed.

Done in Washington, DC, this 18th day of January 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–1741 Filed 1–23–95; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV94–932–2IFR]

Olives Grown in California; Expenses and Assessment Rate for 1995 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenses and establishes an assessment rate for the California Olive Committee (Committee) under Marketing Order No. 932 for the 1995 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning January 1, 1995, through December 31, 1995. Comments received by February 23, 1995 will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456, telephone: (202) 720–5127; or Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 932 [7 CFR Part 932], as amended, regulating the handling of olives grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, olives grown in California are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable olives handled during the 1995 fiscal year, beginning January 1, 1995, through December 31, 1995. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 5 handlers of olives regulated under the marketing order each season and approximately 1,350 olive producers in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR § 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. None of the handlers may be classified as small entities. The majority of the producers may be classified as small entities.

The marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable olives handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of California olives. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of olives. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The California Olive Committee met on December 8, 1994, and unanimously recommended a total expense amount of $2,881,650, for its 1995 budget. This is $866,640 less in expenses than the previous year.

The Committee also unanimously recommended an assessment rate of $30.04 per ton for the 1995 fiscal year, which is $2.83 more in the assessment rate from the 1994 fiscal year. The assessment rate, when applied to anticipated shipments of 69,300 tons from the 1994 olive crop, would yield $2,081,772 in assessment income. This, along with approximately $800,000 from the Committee's authorized reserves will be adequate to cover estimated expenses.

Major expense categories for the 1995 fiscal year include $1,479,000 for marketing expenses, $682,000 for food service industry promotion, $251,000 for public relations and administration, and $178,630 for salaries. Funds in the reserve at the end of the fiscal year, estimated at $200,000 will be within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits

derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year for the Committee begins January 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable olives handled during the fiscal year; (3) handlers are aware of this action which was recommended by the Committee at a public meeting; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

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

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

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

2. A new § 932.228 is added to read as follows:

§ 932.228 Expenses and assessment rate.

Expenses of $2,881,650 by the California Olive Committee are authorized and an assessment rate of $30.04 per ton of assessable olives is established for the fiscal year ending December 31, 1995. Unexpended funds may be carried over as a reserve.

Dated: January 18, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–1750 Filed 1–23–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 989

[Docket No. FV94–989–5FIR]

Raisins Produced From Grapes Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that will generate funds to pay those expenses. Authorization of this budget enables the Raisin Administrative Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1994, through July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Richard P. Van Diest, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, CA 93721, telephone 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California raisins are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable raisins handled during the 1994–95 crop year, which began August 1, 1994, and ends July 31, 1995. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 5,000 producers of California raisins under this marketing order, and approximately 20 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A majority of California raisin producers and a minority of handlers may be classified as small entities.

The budget of expenses for the 1994–95 crop year was prepared by the Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of California raisins. They are familiar with the Committee's needs and with the costs of goods and services in their

local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected acquisitions of California raisins. Because that rate will be applied to actual acquisitions, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee, with headquarters in Fresno, California, met August 15, 1994, and unanimously recommended a 1994–95 budget of $1,324,000, which is $744,940 more than the previous year. Budget items for 1994–95 which have increased compared to those budgeted for 1993–94 (in parentheses) are: Office salaries, $123,000 ($90,000), fieldman salaries, $44,000 ($42,600), Payroll taxes, $30,000 ($27,500), employer retirement contribution, $20,000 ($18,200), general insurance, $8,000 ($6,000), group medical insurance, $40,000 ($37,000), rent, $43,000 ($17,900), telephone, $15,000 ($4,000), postage, $20,000 ($12,000), office supplies, $30,000 ($20,000), repairs and maintenance, $10,000 ($5,000), audit fees, $20,000 ($3,600), office travel, $14,000 ($12,000), Committee meeting expenses, $7,500 ($5,000), miscellaneous expense, $15,000 ($10,000), objective measurement survey, $14,750 ($14,000), and reserve for contingencies, $142,400 ($55,810). The Committee also recommended employee benefit expenses of $2,500 and export program funding of $50,000 for travel and $350,000 for foreign program administration, for which no funding was recommended last year.

The Committee also provided for $1,652,750 for certain expenses likely to be incurred in connection with the 1994–95 raisin reserve pools for Natural (sun-dried) Seedless and Zante Currant raisins. In addition, a pool currently exists for Other Seedless raisins, and the Committee will make a decision on or before February 15, 1995, on whether or not this pool will be continued. Pool expenses are deducted from proceeds obtained from the sale of reserve raisins. These expenses are $766,150 more than the $886,600 for 1993–94 reserve pool expenses.

The larger administrative and reserve pool expenses result from the Committee's takeover of certain industry export marketing activities and the fact that the Natural (sun-dried) Seedless raisin crop is larger than last year. This large crop, and the pooling of Zante Currant raisins for the first time in many years, will result in a large quantity to be pooled and increased costs. These costs will be even larger if Other Seedless raisins are pooled. Reserve pool expenditures are reviewed annually by the Department.

A California State raisin marketing order was terminated in 1994. Its administrative agency, the California Raisin Advisory Board (CALRAB), formerly conducted marketing promotion and paid advertising activities here and abroad for the California raisin industry.

The Committee is taking over the funding and administration of the Market Promotion Program (MPP). The MPP, administered by the Department's Foreign Agricultural Service (FAS), encourages the development, maintenance, and expansion of export markets for agricultural commodities like raisins.

Recently, the FAS redirected MPP funds allocated to CALRAB for foreign promotion and advertising to the Committee which desires to use the funds to continue the industry's strong overseas promotion and advertising activities. To receive the full allocation ($4,479,549), the Committee must be able to show that it plans to spend, from industry sources, an amount equal to 50 percent of that allotment ($2,239,975). This spending can be for administration or promotion. The Committee recommended that the increased spending necessary to meet the required MPP matching figure be funded through increased handler assessments, reserve pool funds, and merchandising incentive program funds.

Under the marketing order's volume regulation provisions, marketing percentages (free and reserve) for a varietal type can be implemented to stabilize supplies. The free percentage prescribes the portion of the crop that can be shipped immediately to any market. The reserve percentage prescribes the portion of the crop to be held for later shipment. Reserve raisins are held in a reserve pool by handlers for the account of the Committee. Funds generated from the sales of reserve raisins, after deduction of reserve pool expenses, are distributed equally to equity holders in the pool (producers).

A Committee implemented merchandising incentive program promotes the consumption of California raisins in foreign markets. For various countries, cash rebates and advertising/promotion incentives are offered to qualifying importers. Funds used to pay the incentives are derived from reserve pool sales.

The Committee's MPP match of $2,239,775 will be made up of $1,249,775 in Committee domestic and overseas administration costs and $990,000 in industry market promotion funds. Domestic administration costs include $238,560 in employee salaries and benefits and $252,215 for MPP overhead costs. The overhead costs include expenditures for Committee staff to travel overseas ($100,000), Committee delegation trips ($50,000), rent ($28,500), insurance ($1,600), telephone ($7,500), postage ($6,000), office supplies, ($2,500), repairs and maintenance ($2,000), audit fees ($15,000), local travel ($3,000), equipment ($5,000), and miscellaneous expenses ($31,715).

The overseas costs of $714,000 include funding for the Committee's overseas marketing representatives and their staffs for nine countries (United Kingdom, Germany, Japan, Singapore, Philippines, Thailand, Malaysia, China, and Hong Kong). The costs include salaries and benefits, travel, office rent, office supplies, utilities, and postage. The representatives will handle the administration and day-to-day details of the marketing activities conducted in these countries.

The domestic and overseas administrative and overhead costs for the MPP will be paid with handler administrative assessments and reserve pool proceeds. Most of the major expense items for the MPP (employees salaries and benefits, domestic and overseas travel, and office rent) will be shared equally between administrative and reserve pool funds.

A total of $1,442,325 was available for the Committee's merchandising incentive program this year. Of that amount, a total of $990,000 will qualify for the MPP match. The Committee plans to use these funds for authorized promotion activities in Japan.

The Committee unanimously recommended an assessment rate of $4.00 per ton, which is $2.20 more than last year. This rate, when applied to anticipated acquisitions of 331,000 tons, will yield $1,324,000 in assessment income, which will be adequate to cover anticipated administrative expenses. Any unexpended assessment funds from the crop year are required to be credited or refunded to the handlers from whom collected.

An interim final rule was published in the **Federal Register** on October 31, 1994 (59 FR 54379). That interim final rule added § 989.345 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could

file comments through December 30, 1994. No comments were received.

While this action will impose some additional costs on handlers and producers, the costs on handlers are in the form of uniform assessments, and those on producers will be shared equally by all equity holders in the 1994–95 reserve pool for Natural (sun-dried) Seedless raisins. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 crop year began on August 1, 1994. The marketing order requires that the rate of assessment for the crop year apply to all assessable raisins handled during the crop year. In addition, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 59 FR 54379 on October 31, 1994, is adopted as a final rule without change.

Dated: January 18, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–1749 Filed 1–23–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 93–031–2]

Inspection of Animals for Export to Mexico or Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the inspection and handling of livestock for exportation by requiring that all animals intended for exportation other than by land (that is to say, by air or sea) to Mexico or Canada receive a final inspection by an Animal and Plant Health Inspection Service veterinarian at an export inspection facility at a designated port of embarkation. We have determined this action is necessary to help ensure that only healthy animals are exported from the United States.

EFFECTIVE DATE: February 23, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, in February. Telephone: (301) 436–7511 (Hyattsville); (301) 734–7511 (Riverdale).

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, ''Inspection and Handling of Livestock for Exportation'' (referred to below as the regulations), prescribe conditions for exporting animals from the United States. Section 91.3(a) requires, among other things, that all animals intended for exportation to Mexico or Canada, except cattle from Mexico imported into the United States in bond for temporary feeding and return to Mexico, be accompanied from the State of origin of the export movement to the border of the United States by an origin health certificate. Section 91.3(b) requires, among other things, that all animals in export shipments, except animals intended for export to Mexico or Canada, be inspected, tested, or treated as prescribed in the regulations before the movement of the export shipment to the export inspection facility. Section 91.14(a) requires that all animals, except animals being exported to Mexico or Canada, be exported through designated ports of embarkation with export inspection facilities that meet the standards for export inspection facilities specified in § 91.14(c). Section 91.15(a) requires that all animals offered for exportation to foreign countries, except Mexico or Canada, be inspected by an Animal and Plant Health Inspection Service (APHIS) veterinarian at either: (1) An export inspection facility at a port designated in § 91.14(a); or (2) in special cases, at a port or inspection facility designated by the Administrator under § 91.14(b).

On April 26, 1994, we published in the **Federal Register** (59 FR 21675–21676, Docket No. 93–031–1) a proposal to amend the regulations by requiring that all animals intended for exportation other than by land (that is to say, by air or sea) to Mexico or Canada receive a final inspection by an APHIS veterinarian at an export inspection facility at a designated port of embarkation to help ensure that only healthy animals are exported from the United States.

We solicited comments concerning our proposal for 60 days ending June 27, 1994. We received three comments by that date. They were from one producer and two horse industry organizations. We carefully considered these comments, which are discussed below by topic.

Basis for Change

One commenter stated that there is no evidence that unhealthy horses are being exported to Canada or Mexico, or that Canadian or Mexican officials are concerned about the problem. The commenter stated further that if these countries are concerned, they and not APHIS need to address the problem. We have made no change in response to this comment. It is the responsibility of the Secretary of Agriculture to ensure that only healthy horses and other livestock are exported from the United States (21 U.S.C. 105, 112, 113, 612 and 614).

One commenter stated that the present regulations, which require the animals to be accompanied from the State of origin to the port of embarkation by an origin health certificate, are sufficient. We have made no change based on this comment. We agree that the present regulations are sufficient for animals traveling by land to Canada or Mexico because of the follow-up inspection at the border. However, animals identified on the origin health certificate may have been inspected at any time within 30 days prior to the date of the export movement. We believe that a final inspection at the port of embarkation is necessary for animals shipped to Canada or Mexico by air or

sea to ensure that the animals are healthy.

One commenter expressed concern about the effect of this rulemaking on the Breeders' Cup, an organization which conducts an annual international championship event. The commenter said that this event will be held in Canada in 1996, and that the rule would create a hardship for individual horsemen and airline carriers by requiring them to coordinate inspections for horses leaving racing facilities across the United States, and by requiring the horses to leave from only USDA designated ports of embarkation. We have made no changes based on this comment. We have already explained our reason for requiring the horses to be inspected. As for requiring the inspection to take place at USDA designated ports of embarkation, there are approximately 30 designated ports of embarkation in the United States for the exportation of animals. Furthermore, our regulations provide that, in special cases, other ports may be designated by the Administrator, with the concurrence of the Director of Customs, when the exporter can show to the satisfaction of the Administrator that the animals to be exported would suffer undue hardship if required to move to one of the designated ports. These provisions have proved successful for the movement of animals, including horses, to other foreign countries, and we are confident that they will prove sufficient for the movement of animals by air or sea to Canada or Mexico.

One commenter stated that the proposed amendments would create an economic hardship on horse owners, because they would have to pay an hourly user fee, for a minimum of 5 hours, plus applicable reimbursable overtime expenses, while the horses are held at the port of embarkation for the final inspection. The commenter stated that these costs would be proportionally greater for horse owners than for owners of other animals, since horses are shipped in smaller volumes than are other animals. We have made no changes based on this comment. We do not believe that horse owners will be disproportionately affected by this rulemaking. In accordance with 9 CFR 130.21, a user fee of $50.00 per hour is charged for inspection and supervision services provided by APHIS personnel for export animals. The total user fee for these services is based on the amount of time it takes APHIS personnel to actually inspect the horses or other animals, not on the 5-hour holding period specified in § 91.15(a). Smaller shipments will normally take less time, and incur a lower user fee, than larger shipments. Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule.

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 require a final inspection at an export inspection facility at a designated port of embarkation for all animals intended for export to Canada and Mexico by air or sea. Animals intended for export to Mexico and Canada by air or sea will first be inspected by an APHIS representative or an accredited veterinarian in the State of origin. The APHIS representative or an accredited veterinarian will issue an origin health certificate, which an authorized APHIS veterinarian in the State of origin will endorse. At the port of embarkation, the animals will receive a final inspection by an APHIS veterinarian before they will be allowed to leave the United States.

The exporter will be charged a user fee ($50.00 an hour plus reimbursable overtime when applicable) for the final inspection as provided in 9 CFR part 130. This inspection could require 6 to 8 hours of work for one or two veterinarians. The total cost of inspection for an air shipment of gilts or heifers from Miami ranges from about $200 to $600 a shipment. The total cost of inspection for a sea shipment of heifers from Hawaii ranges from $1,000 to $2,000 a shipment.

These costs are very small compared to the value of the animals being shipped. For example, gilts (young, female pigs or immature sows) may be valued at $500 to $1,000 or more a head, depending upon breed. Heifers (young cows that have not borne calves) may be worth $2,000 a head. One air shipment may contain as many as 240 gilts or 80 heifers. One sea shipment from Hawaii may contain 1,000 to 2,000 heifers.

Relatively few exporters of horses will be affected by this rule. Our records indicate that during fiscal year 1994, exporters moved fewer than 10 shipments of horses (totalling less than 20 horses) to Mexico by air (there were no shipments of horses to Mexico by sea) and no shipments of horses by air or sea to Canada. By far, most shipments are by land, with the number of horses exported to Mexico ranging from 1,000 to 2,500 annually, and to Canada ranging from 50,000 to 60,000 annually.

Generally, the entities that will be affected by this rule are not small (defined as having 100 or fewer employees). They are large companies, often with worldwide operations that handle large volumes of traded animals. For example, about 14,000 swine were exported by air from Miami last year, all by a few large companies. There are now only two exporting companies operating out of Hawaii, one of which is a ''small'' entity.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, 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

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0020.

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 91 is amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, 618, 46 U.S.C. 466a, 466b, 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.3 [Amended]

2. Section 91.3 is amended as follows:

a. In paragraph (a), in the first and second sentences, the words ''by land'' are added immediately before the phrase ''to Mexico or Canada''.

b. In paragraph (b), in the first and second sentences, the words ''by land'' are added immediately before the phrase ''to Mexico or Canada''.

c. At the end of the section, in the parenthetical statement, ''0579–0069'' is removed and ''0579–0020'' is added in its place.

§ 91.5 [Amended]

3. In § 91.5, at the end of the section, in the parenthetical statement, ''0579-0069'' is removed and ''0579-0020'' is added in its place.

§ 91.6 [Amended]

4. In § 91.6, at the end of the section, in the parenthetical statement, ''0579–0069'' is removed and ''0579–0020'' is added in its place.

§ 91.14 [Amended]

5. In § 91.14, paragraph (a), introductory text, in the second sentence, the words ''by land'' are added immediately before the phrase ''to Mexico or Canada''.

§ 91.15 [Amended]

6. In § 91.15, in paragraph (a), the words ''by land to'' are added immediately before the phrase ''Mexico or Canada''.

Done in Washington, DC, this 18th day of January 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–1740 Filed 1–23–95; 8:45 am]

BILLING CODE 3410–34–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for Child-Resistant Packaging; Mouthwash Packages Containing 3 Grams or More of Ethanol

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: Under the Poison Prevention Packaging Act of 1970, the Commission is issuing a rule to require child-resistant packaging for mouthwashes with 3 grams or more of absolute ethanol per package. The Commission has determined that child-resistant packaging is necessary to protect children under 5 years of age from serious personal injury and serious illness resulting from ingesting mouthwash. The rule exempts mouthwash products with nonremovable pump dispensers that contain at least 7% on a weight-to-weight basis of mint or cinnamon flavoring oils, that dispense no more than 0.03 grams of absolute ethanol per pump actuation, and that contain less than 15 grams of ethanol in a single package available to the consumer.

DATES: The effective date of the rule is July 24, 1995, and the rule shall apply to products packaged on or after that date.

FOR FURTHER INFORMATION CONTACT: Michael Bogumill, Division of Regulatory Management, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400 ext. 1368.

SUPPLEMENTARY INFORMATION:

A. Background

1. Relevant Statutes and Regulations

The Poison Prevention Packaging Act of 1970 (the ''PPPA''), 15 U.S.C. 1471–1476, authorizes the Commission to establish standards for the ''special packaging'' of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance. Special packaging, also referred to as ''child-resistant packaging,'' is defined as packaging that is (1) designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for normal adults to use properly. (It does not mean, however, packaging which all such children cannot open, or obtain a toxic or harmful amount from, within a reasonable time.)

Under the PPPA, standards have been established for special packaging (16 CFR 1700.15), as has a test procedure for evaluating its effectiveness (16 CFR 1700.20). Regulations requiring special packaging for a number of household products are published at 16 CFR 1700.14. The statutory findings that the Commission must make in order to issue a standard requiring child-resistant (''CR'') packaging (''CRP'') for a product are discussed below in Section D of this notice.

The PPPA allows the Commission to require CRP for household substances, which include (among other specified categories) foods, drugs, or cosmetics, as these terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). 15 U.S.C. 1471(2)(B). Mouthwashes are either drugs, if they make medical claims, or cosmetics.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CRP only if (1) the manufacturer (or packer) also supplies the substance in CRP and (2) the non-CRP bears conspicuous labeling stating: ''This package for households without young children.'' 15 U.S.C. 1473(a). If the package is too small to accommodate this label statement, the package may bear a label stating: ''Package not child-resistant.'' 16 CFR 1700.5(b). The right of the manufacturer or packer to market a single size of the product in noncomplying packaging under these conditions is termed the ''single-size exemption.''

The Commission may restrict the right to market a single size in noncomplying packaging if the Commission finds that the substance is not also being supplied in popular size packages that comply with the standard. 15 U.S.C. 1473(c). In such cases, the Commission may, after giving the manufacturer or packer an opportunity to comply with the purposes of the PPPA and an opportunity for a hearing, order that the substance be packaged exclusively in CRP. To issue such an order, the Commission must find that the exclusive use of special packaging is necessary to accomplish the purposes of the PPPA.

2. The Mouthwash Petition

On March 2, 1993, the Commission was petitioned to require CRP for mouthwashes containing more than 5% ethanol. The petition was submitted by the American Academy of Pediatrics, the American Association of Poison Control Centers, the Center for Science in the Public Interest, and 28 states, Guam, and the Northern Mariana Islands. For the purposes of this proceeding and the final rule, the term ''mouthwash'' includes liquid products that are variously called mouthwashes, mouthrinses, oral antiseptics, gargles, fluoride rinses, anti-plaque rinses, and breath fresheners. It does not include throat sprays or aerosol breath fresheners.

The petitioners stated several reasons for their request: (1) Many mouthwashes

contain high percentages of ethanol, an extremely toxic substance, in a package large enough to cause children serious injury or death; (2) these mouthwashes are accessible to children because they are generally considered innocuous and do not have CRP; (3) they are attractive to children because of their appealing taste, color, and smell; and (4) data show that children have been seriously injured or died from accidental ingestion of ethanol-containing mouthwashes.

By a letter dated June 3, 1993, the Nonprescription Drug Manufacturers Association (''NDMA'') and the Cosmetic, Toiletry, and Fragrance Association (''CTFA'') advised Commission staff of the associations' plans to implement a voluntary program to place mouthwashes with more than 5% ethanol in CR containers. [1, Tab C.] [1] On November 17, 1993, the Commission granted the petition. Subsequently, in April 1994, the NDMA and CTFA notified the Commission that the products subject to their voluntary program had been changed from mouthwashes with more than 5% ethanol to mouthwashes with 3 grams or more in a single container.

3. The Proposed Regulation

The mouthwash petition requested that the Commission require CRP for mouthwash that contains more than 5% ethanol. However, after analyzing the information before it, the Commission decided to propose that mouthwash products with 3 grams (g) or more of absolute ethanol per package or retail-sale unit should be subject to the regulation. [10] This level is obtained by dividing the lethal dose of ethanol (3 g/kg of body weight) for a 10-kg child (30 g) by a safety factor of 10. This safety factor is needed because less than the ''lethal'' dose can produce serious toxic effects, or even death from hypoglycemia or other secondary effects.

Three grams of absolute ethanol are present in a small amount (approximately 2.6 ounces) of mouthwash with 5% ethanol. The Commission is concerned that regulating only products with more than 5% ethanol, as requested in the petition, might not sufficiently protect children because the quantity of ethanol available to be consumed is more relevant to the safety issue than is the concentration of ethanol in a mouthwash. Accordingly, the Commission proposed a regulatory threshold of 3 g total ethanol in the package rather than the concentration of 5% or more of ethanol in the product.

The proposed rule was published for public comment on May 11, 1994. 59 FR 24386.

B. Toxicity

[2, unless noted otherwise.] The Commission's toxicity review indicates that mouthwashes with ethanol can present a serious ingestion hazard to children. Most of the popular adult mouthwashes contain between 14% and 27% ethanol. By comparison, beer contains between 5% and 7% ethanol and wine can contain 12% to 14% ethanol.

Ethanol depresses the central nervous system. Symptoms of acute ethanol poisoning in children include irritability, lethargy, and unconsciousness which can lead to coma and death at high doses. Lethal blood levels of ethanol in children are reported to range between 250 and 500 mg/dl, and the lethal dose of ethanol is 3 g/kg. Deaths or serious injury may occur at lower doses due to other ethanol-induced effects. Ethanol poisoning in children can produce certain metabolic complications, such as hypoglycemia, metabolic acidosis, and hypokalemia.

A review of the relevant literature shows that three deaths of children under 5 years of age have been reported. The most recent death reported occurred in 1992 and involved a 3-year-old girl who ingested an unknown amount of mouthwash that contained 18% ethanol. Several other cases of ethanol-induced hypoglycemia or toxicity following mouthwash ingestion are reported in the literature.

The National Electronic Injury Surveillance System (''NEISS'') reported 40 mouthwash cases involving children under age 5 from January 1987 through July 1994. [14] Based on these ingestions, it was estimated that a total of 1,840 mouthwash poisoning cases were treated in hospital emergency rooms in the United States during that time, or an average of about 240 per year. [14]

In addition to these sources, the American Association of Poison Control Centers' National Data Collection System (''AAPCC'') includes cases reported by participating poison control centers. The AAPCC reported 1,966 ingestions of mouthwash with ethanol by children under 5 years old in 1992. [14] Of these ingestions, 182 were referred to a health care facility by the poison control center. Another 64 cases either were already in a health care facility or were on the way to one when the poison control center was contacted.

C. Comments on the Proposal

The Commission received nine comments in response to the proposed rule. [13] The New York State Consumer Protection Board, the American Dental Association, and several students from Florida International University expressed strong support for the rule. The university students also submitted the results of an informal survey of mouthwash use.

The NDMA/CTFA Joint Oral Care Task Group and several industry members also favor the proposed rule. However, these and other commenters disagreed with the proposed effective date, and questions were raised about the application of the rule. The issues raised by the comments are discussed below.

Exemption for Certain Pump Dispensers

The manufacturer of one product that otherwise would have been subject to the proposed rule requested an exemption. [15] This product is an oral rinse concentrate marketed in a 2-oz (59 ml) glass bottle containing 24% ethanol by weight, for a total of 14.16 g of ethanol per package. This product utilizes a screw-on metered pump to dispense the product, and has a protective overcap. The use instructions call for five actuations of the pump (for a total of 0.6 ml, or less than 0.025 oz) into a small cup supplied with the product. This amount is then diluted with up to 1 oz of water for use. The Commission is unaware of any other manufacturer of a product subject to the rule that uses this type of package.

In 1987, one ingestion of a mouthwash made by this manufacturer was reported in the NEISS database. The child involved in that incident was treated and released. However, it cannot be determined from the report whether this incident involved the concentrated spray product or another, non-concentrated mouthwash that may have been available from that manufacturer at that time.

Human experience data submitted by the manufacturer show that from January 1990 to September 1994 there were 117 known cases of accidental ingestion of this product by children under 5 years old. [15] All cases resulted in either no effects or only minor ones. All but one of these cases were treated at home. In that one case, the child was taken to a health care facility at the insistence of the parents. These cases all involve product packaged in the current screw-on pump dispenser.

[1] Numbers in brackets refer to the number of a document as listed in App. 1 at the end of this notice.

The case reports indicate that 102 of the children (87%) gained access to the product by unscrewing the top of the bottle. None of the reports indicated that the child gained access to the product by using the pump, but 12 reports did not specify the way in which the child accessed the product.

If the product were marketed in a nonremovable pump, which the manufacturer has stated it intends to do in July 1995, the only way a child could access a regulated amount of the mouthwash concentrate would be to spray the product at least 100 times into the mouth and swallow the sprayed product. One study shows that many children physically could activate the pump this many times. However, the study did not note that any of the children sprayed the contents of the package (in this test, water) into their mouths. If they had, it likely would have been documented in the study.

Since this product is intended to be used in a diluted form, the packaged form contains a very high concentration of flavoring oils. The CPSC staff examined this aspect and concluded that the irritant properties of this concentrated flavoring would create unpleasant or painful sensations. [18] CPSC's Human Factors staff have concluded that it is highly unlikely that children would ingest a significant quantity of the product by means of repeated sprays. [18]

Based upon all of the above information, the Commission has decided that this rule should not apply to mouthwash products with nonremovable pump dispensers that contain at least 7% on a weight-to-weight basis of mint or cinnamon flavoring oils, that dispense no more than 0.03 grams of absolute ethanol per pump actuation, and that contain less than 15 grams of ethanol in a single unit.

Effective Date

The proposed rule specified that the rule should become effective on May 1, 1995, or 6 months after the rule is published in the **Federal Register**, whichever is earlier. A number of comments were received opposing an effective date any earlier than May 1, 1995. This issue is now moot, since May 1, 1995, is now the earlier of the two dates. The time needed to analyze issues concerning the requested exemption and how the effective date should apply to special situations, described below, prevented earlier publication of the final rule.

Manufacturers that claim to be responsible for over 95% of the production of ethanol-containing mouthwash are committed to be in compliance by May 1, 1995. This commitment, however, was based on there being no change in the Commission's PPPA test protocol. [8] However, the Commission has proposed to modify the test protocol by which CRP is evaluated in order to make the packaging easier for adults to open (referred to as ''senior-friendly'' packaging). 59 FR 13264 (March 21, 1994). Accordingly, the Commission's staff contacted five companies that will be subject to the rule for mouthwash containing ethanol to see how the possibility that the PPPA protocol may be amended to require senior-friendly packaging would affect these companies. [20]

Three of the companies contacted belong to the groups that are sponsoring the implementation of voluntary CRP for mouthwash containing ethanol by May 1, 1995. These three companies expect to have their products in packaging that meets the present protocol by that date.

One of the other companies contacted originally had intended to comply with the rule by reducing its ethanol concentration below the greater-than-5-percent level specified in the first version of the voluntary program and in the petition to the Commission. When the Commission proposed to regulate 3 grams or more in a single package, this manufacturer was no longer able to comply by reducing its ethanol content. Thus, this manufacturer had a late start in converting to CRP. This manufacturer now estimates that it may have CRP by July 1995. [21]

The remaining manufacturer contacted recently by the staff is a small company that estimates it will not be ready with a package that would satisfy either the current protocol or the proposed senior-friendly protocol until December 1995. The company states that this length of time is required because it must change its bottle molds, in addition to its capping equipment, in order to accept either current or senior-friendly CRP.

All five of these companies are aware of the proposed senior-friendly protocol. None of these companies anticipates major problems from a subsequent regulation requiring CRP to be senior-friendly. Of these manufacturers, one is already marketing its product in senior-friendly packaging, which it is purchasing from a supplier. Three others intend to purchase commercially available CRP. One of these intends to begin production by May 1, 1995. The other two of these manufacturers intend to have senior-friendly packaging in production by July 1995 and December 1995, respectively. The fifth contacted manufacturer is developing packages that it intends to ultimately be senior-friendly. This manufacturer intends to have the new package in production by May 1, 1995. That manufacturer states that, if its design is not senior-friendly initially, it can be modified to be so.

None of the manufacturers contacted stated that it would have to design an additional package if there are changes to the CRP protocol. The manufacturers contacted, together with another manufacturer known to be marketing its mouthwash in senior-friendly CRP, represent an estimated 70 percent of mouthwash sales. Thus, it appears that the possibility of changes to the test protocol to ensure that CRP is senior-friendly is not a significant factor in the choice of effective date for the CRP standard for mouthwash containing ethanol.

The Commission has learned of a few small manufacturers of concentrated mouthwash products, marketed in bottles with continuous-threaded (CT) caps. One of these manufacturers filed a late comment on the proposed rule. [13, No. CP94–2–9] That commenter's product contains 70% ethanol and is marketed in 2-, 4-, 8- and 16-oz sizes. The other manufacturers' products are believed to also have high ethanol concentrations. The commenter expressed concern about the proposed May 1, 1995, effective date, but did not expressly ask for a later date or say how long it would take to convert to CRP.

Some of the bottles used by these manufacturers can use existing CR or senior-friendly CR caps without modification; others will require a long-skirted cap, e.g., a 415 finish, to fit their existing bottles. [17] For the manufacturers needing a long-skirted cap, a major CRP manufacturer has said that senior-friendly caps in 20mm, 24mm, and 28mm sizes with a long-skirt special 415 finish have been commercially available since October 1994. [17] For those manufacturers that have to change caps, the capping equipment will need to be modified to account for the larger diameter of the CR cap. This is not a complicated or expensive modification. [17]

The only known manufacturer of the oral rinse concentrate that will be exempt from the rule if marketed in a nonremovable pump has indicated that it will switch to a crimped-on nonremovable pump in July 1995. [Telephone conversation, September 8, 1994.]

After considering the currently available information, the Commission concludes that an effective date of [insert date that is 6 months after

publication], which is 6 months after publication of the final rule, is reasonable. The vast majority of manufacturers are committed to being in compliance before this, by May 1, 1995. The one company that states it needs until December 1995 to comply may be able to do so much sooner. Moreover, this company may have sufficient inventory to cover the period of time between the effective date and the date complying packaging can be provided. Furthermore, revenue from mouthwash does not constitute the major portion of its sales.

For the instances where modifications to the bottles or development of special caps for these bottles are required, the manufacturers may not be able to incorporate them into production by July 24, 1995. In this event, these manufacturers may have to use other bottle/cap combinations from contract packagers until other arrangements can be made.

Applicability of the Effective Date

In the proposal, the effective date would apply to products packaged after the effective date. A commenter requests that the effective date should apply to products shipped on or after that date. The commenter's request that the effective date should apply to the shipping date would tend to reduce any potential motivation for stockpiling noncomplying product packaged before the effective date. This request cannot be granted, however, because PPPA § 8, 15 U.S.C. 1471n, mandates ''[n]o [special packaging] standard shall be effective as to household substances subject to this Act packaged prior to the effective date of such final regulation.''

Definition of ''Single Retail Unit''

The proposal specified that the rule applied to products containing 3 g or more in a single package. The proposal explained that the ''single package'' to be covered by the rule was a ''single retail unit.'' A commenter stated that the term ''single retail unit'' should be defined as ''a package intended to be made available to consumers for direct retail purchase.''

The use of the term ''single retail unit'' was intended to clarify that a regulated substance supplied in a retail package which contained smaller packages that, considered individually, would not be subject to the rule because each of the smaller packages contained less than the regulated amount, would be subject to the CRP standard if the total amount of the regulated substance in the retail package exceeded the regulated amount. The proposal did not intend to limit the applicability of the standard to packages sold at retail.

In view of this comment, the Commission concludes that the term ''single retail unit'' is confusing in this context. Rather, the Commission considers the term ''package'' to mean the container or wrapping in which a household substance is supplied for consumption, use, or storage by individuals in or about the household. This includes, but is not limited to, any package intended to be made available to consumers for retail purchase. This definition is not intended to be the same as the statutory definition of ''packaging'' at PPPA § 2(3), 15 U.S.C. 1471(3).

Definition of ''Household Substance''

A commenter contended that ''amenities'' do not fall within the definition of ''household substance'' in 15 U.S.C. 1471(2). Amenities are small quantities of substances, such as soap, shampoo, or mouthwash, that are placed in hotel rooms or other accommodations for use by the room's occupants. If the commenter's contention were correct, amenities would not be subject to an otherwise applicable PPPA standard.

The PPPA's definition of household substance includes ''any substance which is customarily produced or distributed for sale for consumption or use * * * by individuals in or about the household and which is * * * a hazardous substance as [defined in the Federal Hazardous Substances Act (''FHSA'')] * * * [or] a food, drug, or cosmetic [as defined in the Federal Food, Drug, & Cosmetic Act].'' PPPA § 2(2), 15 U.S.C. 1471(2). Mouthwash subject to the proposed rule clearly is either a hazardous substance or a drug or cosmetic. How the other elements of this definition apply to mouthwash distributed as amenities in hotel rooms is discussed below.

1. Mouthwash amenities are ''sold'' for use by individuals. If a hotel purchases prepackaged units of mouthwash to place in hotel rooms, such packages clearly are sold to the hotel for use by individuals. In the unlikely event that hotel employees repackage mouthwash from a larger container to a smaller one to be left in the room, the mouthwash is nevertheless sold to the hotel for use by individuals since only individuals can use mouthwash. In addition, the mouthwash amenity can be viewed as being sold to the hotel occupants, since the amount paid by the hotel guests for lodging also pays for providing the mouthwash.

2. Items used in hotel rooms are used ''in or about the household.'' One definition of the term household is ''the home and its affairs.'' ''Home'' in turn is defined as ''the house, apartment, etc., where one lives or is living temporarily; living quarters.'' Webster's New World Dictionary. Hotels and other places that provide amenities are places where people live, however temporarily. Therefore, hotels are households.

Another definition of household is ''those who dwell under the same roof and compose a family: A domestic establishment; specif: A social unit comprised of those living together in the same dwelling.'' Webster's Third New International Dictionary of the English Language Unabridged, 1986 Ed. (''Webster's Unabridged''). Thus, under this definition, a household refers to a group of people rather than to any particular type of building. Accordingly, if a hotel rents rooms where more than one member of a household may stay at a time, amenities used in those rooms are used ''in or about the household.''

The Commission's regulations under the FHSA state that an ''article is suitable for use in or around the household * * * [if] under any reasonably foreseeable condition of purchase, storage or use the article may be found in or around a dwelling.'' 16 C.F.R. 1500.3(c)(10)(i). The term ''dwelling'' means ''a building or construction used for residence: ABODE, HABITATION.'' *Webster's Unabridged*. This term is not limited to a permanent home or primary residence. Thus, the Commission's rules lend support to the interpretation that items used in hotels are used ''in or about the household.''

Finally, even if a hotel room were not a household, it is customary, and expected, that amenities will be removed from hotel rooms by guests for use at home. Thus, for this independent reason, amenities are ''customarily produced or distributed for sale for consumption or use * * * in or about the household.''

For the reasons given above, the Commission concludes that amenities supplied in hotel rooms and the like are household substances, as that term is used in the PPPA.

D. Statutory Considerations

1. Hazard to Children

As noted above, the toxicity data concerning children's ingestion of ethanol-containing mouthwash demonstrate that the amount of ethanol in available mouthwash preparations is sufficient to cause serious illness and injury to children. These mouthwash preparations are readily available to children. Even though the

manufacturers of these mouthwashes that are members of the NDMA and CFTA will voluntarily use CRP for their products, the Commission concludes that a regulation is needed to ensure that mouthwash will be placed in CRP by all mouthwash packagers. In addition, the regulation will enable the Commission to enforce the CRP requirement and ensure that effective CRP is used.

Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission finds that the degree and nature of the hazard to children from ingesting ethanol-containing mouthwashes is such that special packaging is required to protect children from serious illness. The Commission bases this finding on the toxic nature of such mouthwashes, described above, the accessibility of such preparations to children in the home, and the existing incident data involving ingestions by young children.

2. Technical Feasibility, Practicability, and Appropriateness

[17] In issuing a standard for special packaging under the PPPA, the Commission is required by section 3(a)(2) of the PPPA, 15 U.S.C. 1472(a)(2), to find that the special packaging is ''technically feasible, practicable, and appropriate.'' Technical feasibility exists when technology exists to produce packaging that conforms to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Appropriateness exists when packaging complying with the standards will adequately protect the integrity of the substance and not interfere with the intended storage or use.

CRP are mass produced for products that contain ethanol and have similar properties to mouthwashes. Two industry groups have indicated that their members would have CRP for one size of their mouthwashes by August 31, 1994, with their entire lines converted by May 1, 1995. In addition, one major manufacturer of mouthwash has introduced a popular size of its product in packaging that is not only child resistant, but is easier for adult consumers (and especially older adults) to open. Therefore, the Commission concludes that CRP for mouthwashes is technically feasible, practicable, and appropriate.

3. Other Considerations

In establishing a special packaging standard, section 3(b) of the PPPA, 15 U.S.C. 1472(b), requires the Commission to consider the following:

a. The reasonableness of the standard;

b. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

c. The manufacturing practices of industries affected by the PPPA; and

d. The nature and use of the household substance. 15 U.S.C. 1472(b).

These items have been considered with respect to the various determinations made in this notice, and the Commission finds no basis for concluding that the rule is unreasonable.

E. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n.

As discussed above in Section C of this notice, the Commission has established the effective date for this rule as July 24, 1995, which is 6 months after publication of the final rule.

F. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economics prepared an economic assessment of this rule to require special packaging for mouthwash preparations with 3 g or more of ethanol in a single package. [16] Based on this assessment, the Commission concludes that such a requirement would not have a significant impact on a substantial number of small businesses or other small entities because of the widespread acceptance of the voluntary CRP program. CRP for mouthwash preparations is readily available at a relatively low incremental cost, and the PPPA permits manufacturers to market preparations in one non-CR size. The relatively low costs of CRP should not be a burden to current small business manufacturers or an entry burden for future marketers. Manufacturers are given enough time to use up existing supplies of non-CRP and to obtain suitable CRP and incorporate its use into their packaging lines.

Individual firms and associations representing businesses affected by the proposed rule commented that impacts would not be significant as long as the effective date was no sooner than May 1, 1995, and there was no change in the PPPA test protocol. That date was originally proposed by the industry trade association in a voluntary program to provide CRP for mouthwash; the date was based on the length of time determined by the members to be reasonable and workable. Many commenters advised the Commission that an effective date of May 1, 1995, would allow sufficient time to complete package development, modify equipment, conduct protocol and stability testing, and implement marketing programs.

The Commission has decided to exempt from this regulation mouthwash products using nonremovable pumps that contain at least 7% on a weight-to-weight basis of mint or cinnamon flavoring oils, that dispense no more than 0.03 g of absolute ethanol per pump actuation, and that contain less than 15 g of ethanol in a single unit. This will potentially reduce the adverse impacts of the rule. However, the only known manufacturer of a product that would qualify for the exemption, except that its current pump is removable, is not a small entity. [Manufacturing USA, 2nd Ed. (1992), Gale Research, Detroit, p. 677.]

Based on a comment to the proposal, the Commission has learned that there are about four or five small businesses that market mouthwash products that will need CRP. If these marketers do not reformulate to eliminate ethanol from their products, they may incur incremental costs for CRP, compared to the non-CRP now used. They may also incur costs to modify equipment to accommodate new packaging components. However, these costs are not expected to be high. In any event, the Commission could grant a temporary enforcement exemption to companies—in this case, most likely only a few small companies—who demonstrate that, despite reasonable efforts, they are unable to meet the effective date.

Accordingly, for the reasons given above, the Commission concludes that the number of small entities that market products subject to the rule requiring special packaging for mouthwashes containing 3 g or more of ethanol is not substantial. Also, the economic effects on such firms will not be significant.

G. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the Poison Prevention Packaging Act (PPPA) packaging requirements for ethanol-containing products. [4]

The Commission's regulations at 16 CFR 1021.5(c)(3) state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. Analysis of the impact of this rule indicates that CRP for these mouthwash preparations will have no significant effects on the environment. This is because the rule will not significantly increase the total amount of CRP in use and, in any event, the manufacture, use, and disposal of CRP presents the same environmental effects as do the currently used non-CRP.

Therefore, because the rule will have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission amends 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231, 15 U.S.C. 2079(a).

2. Section 1700.14 is amended by adding new paragraph (a)(22), reading as follows (although unchanged, the introductory text of paragraph (a) is included below for context):

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(22) *Mouthwash.* Except as provided in the following sentence, mouthwash preparations for human use and containing 3 g or more of ethanol in a single package shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c). Mouthwash products with nonremovable pump dispensers that contain at least 7% on a weight-to-weight basis of mint or cinnamon flavoring oils, that dispense no more than 0.03 grams of absolute ethanol per pump actuation, and that contain less than 15 grams of ethanol in a single unit are exempt from this requirement. The term ''mouthwash'' includes liquid products that are variously called mouthwashes, mouthrinses, oral antiseptics, gargles, fluoride rinses, anti-plaque rinses, and breath fresheners. It does not include throat sprays or aerosol breath fresheners.

* * * * *

Dated: January 18, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

(**Note.** This list of relevant documents will not be printed in the Code of Federal Regulations.)

1. Briefing Memorandum with attached briefing package, September 30, 1993.

2. Memorandum from Jacqueline Ferrante, Ph.D., HSPS, to James F. Hoebel, Acting Associate Executive Director for Health Sciences, ''Recommendation for the level of regulation of mouthwash with ethanol,'' January 10, 1994.

3. Memorandum from Terry Kissinger, Ph.D., EPHA, to Jacqueline Ferrante, Ph.D., HSPS, ''Injury Data Related to the Toxicity of Ethanol-containing Mouthwash,'' January 31, 1994.

4. Memorandum from Marcia P. Robins, ECSS, to Jacqueline Ferrante, Ph.D., HSPS, ''Preliminary Assessment of Economic and Environmental Effects of a Proposal to Require Child-Resistant Packaging for Mouthwash Containing Ethanol,'' February 24, 1994.

5. Memorandum from Charles Wilbur, HSPS, to Jacqueline Ferrante, Ph.D., HSPS, ''Technical Feasibility, Practicability, and Appropriateness Determination for the Proposal to Require CRP for Mouthwash Preparations Containing Ethanol,'' February 24, 1994.

6. Memorandum from Marcia P. Robins, ECSS, to Ronald L. Medford, EXHR, ''Economic Effects of an Earlier Effective Date for CR Packaging of Mouthwash Preparations Containing Ethanol,'' April 6, 1994.

7. Briefing memorandum from Jacqueline N. Ferrante, Ph.D., HSPS, to the Commission, ''Proposed Special Packaging Standard for Mouthwash Products with Ethanol,'' with Tabs A–E, April 11, 1994.

8. NDMA/CTFA Joint Voluntary Program on Child Resistant Packaging for Alcohol Containing Mouthwashes (Revised).

9. Memorandum from Jacqueline Ferrante, Ph.D., HSPS, to the Commission, ''Revised industry voluntary program for child-resistant packaging of mouthwashes with ethanol,'' April 21, 1994.

10. Memorandum from Harleigh Ewell, GCRA, to the Commission, transmitting a revised **Federal Register** notice, April 21, 1994.

11. Letter from Eric A. Rubel, CPSC General Counsel, to Ms. Doris S. Freedman, Acting Chief Counsel for Advocacy, Small Business Administration, transmitting Regulatory Flexibility Act finding, May 4, 1994.

12. Proposed rule, 59 FR 24386 (May 11, 1994).

13. Public comments on proposed rule, Nos. CP94–2–1 through CP94–2–9.

14. Memorandum from Dr. Terry Kissinger, EPHA, to Jacqueline Ferrante, Ph.D., HSPS, ''Update of injury Data Related to the Toxicity of Ethanol-Containing Mouthwash,'' September 1, 1994.

15. Letter from David J. Aupperlee, Amway Corporation, to Jacqueline Ferrante, Ph.D., requesting an exemption for Amway Glister Anti-Plaque Oral Rinse [contains some claimed confidential information], October 19, 1994.

16. Memorandum from Marcia P. Robins, ECSS, to Jacqueline Ferrante, Ph.D., HSPS, ''Final Regulatory Flexibility Analysis: Child-Resistant Packaging for Mouthwash Containing Ethanol,'' October 27, 1994.

17. Memorandum from Charles Wilbur, HSPS, ''Technical Feasibility, Practicability, and Appropriateness Determination for the Final Rule to Require Child-Resistant Packaging for Mouthwash Preparations Containing Ethanol,'' November 1, 1994.

18. Memorandum from Catherine A. Sedney, EPHF, to Jacqueline Ferrante, Ph.D., HSPS, ''Request for Exemption from Requirements for Special Packaging for Mouthwash,'' November 17, 1994.

19. Briefing paper from Jacqueline Ferrante, Ph.D., HSPS, to the Commission, with Tabs A–G, November 29, 1994.

20. Memorandum from Jacqueline Ferrante, Ph.D., to the Commission, ''Supplemental information concerning a PPPA requirement for mouthwash with ethanol,'' December 12, 1994.

21. Letter from George Andrassy, Dep Corporation, to Sadye Dunn, Secretary of the CPSC, November 14, 1994.

[FR Doc. 95–1691 Filed 1–23–95; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

Louisiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Louisiana regulatory program (hereinafter referred to as the ''Louisiana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Louisiana proposed revisions to its rules and provided a clarifying policy statement, both of which pertain to revegetation success standards on reclaimed land developed for use as forestry. The amendment is intended to revise the Louisiana program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: January 24, 1995.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Louisiana Program

On October 10, 1980, the Secretary of the Interior conditionally approved the Louisiana program. General background information on the Louisiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Louisiana program can be found in the October 10, 1980, **Federal Register** (45 FR 67340). Subsequent actions concerning Louisiana's program and program amendments can be found at 30 CFR 918.15 and 918.16.

II. Proposed Amendment

By letter dated November 2, 1994, Louisiana submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. LA–351). Louisiana submitted the proposed amendment in response to the required program amendments at 30 CFR 918.16 (a) and (b). The provision of the Louisiana Surface Mining Regulations (LSMR) that Louisiana proposed to revise was LSMR 5423.B.4.a, concerning standards for success of revegetation at final bond release on reclaimed lands developed for forestry. Louisiana also proposed an associated Policy Statement No. PS–5, Revegetation Success Standards for Tree and Shrub Stocking on Lands With a Postmining Land Use of Forestry. In addition, Louisiana proposed to recodify LSMR 53101 through 53139 as LSMR 5401 through 5439, and LSMR 67101 through 67139 as LSMR 6801 through 6839.

OSM announced receipt of the proposed amendment in the November 23, 1994, **Federal Register** (59 FR 60342), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. LA–351.02). Because no one requested a public hearing or meeting, none was held. The public comment period ended on December 23, 1994.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Louisiana on November 2, 1994, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to Louisiana's Rules

Louisiana proposed revisions to the following previously-approved rules that are nonsubstantive in nature.

a. *Recodification of Louisiana's rules.* In order to be consistent with the Louisiana State Code, Louisiana proposed recodification of segments of its rules. In Chapter 53, permanent program performance standards for surface mining activities, LSMR 53101 through 53139 were recodified as LSMR 5401 through 5439. In Chapter 67, special rules applicable to surface coal mining review hearings and appeals, LSMR 67101 through 67139 were recodified as LSMR 6801 through 6839. No revisions of the text of these rules, with the exception of those discussed in finding No. 2 below, were proposed by Louisiana.

Because the proposed recodification is nonsubstantive in nature, the Director finds that the recodification does not cause Louisiana's rules at LSMR 5401 through 5439 and LSMR 6801 through 6839 to be less effective than the counterpart Federal regulations at 30 CFR Part 816 and the Federal administrative procedures at 43 CFR Part 4. The Director approves the recodification.

b. *LSMR 5423.B.4.* At LSMR 5423.B.4, Louisiana proposed to delete the phrase ''technical documents.'' LSMR 5423.B.4.a (discussed below) specifies technical success standards for areas developed for forestry. At LSMR 5423.B.1 through 3, for land uses other than commercial forestry, an applicant is given the option of developing revegetation success standards from reference areas, historic records, or technical documents. Because Louisiana, at LSMR 5423.B.4, does not allow for the development of success standards based on technical documents, the proposed deletion of the phrase ''technical documents'' is an editorial revision that eliminates confusion.

Because this proposed revision is nonsubstantive in nature, the Director finds that this proposed rule is no less effective than the counterpart Federal regulations at 30 CFR 816.116(b)(3). The Director approves this rule.

2. LSMR 5423.B.4.a and Policy Statement PS–5, Standards for Success of Revegetation at Final Bond Release on Reclaimed Lands Developed for Use as Forestry

At 30 CFR 918.16(a), OSM required that Louisiana revised LSMR 5423.B.4.a (previously codified as 53123.B.4.a), or otherwise modify its program, to require that trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall (1) have utility for the approved postmining land use and (2) be healthy. At 30 CFR 918.16(b), OSM required that Louisiana revise LSMR 5423.B.4.a, or otherwise modify its program, to either (1) clarify, by policy statement, that proposed LSMR 5423.B.4.a requires that 100 percent (i.e., all countable stems) of the trees must be in place for a minimum of 60 percent of the responsibility period or (2) add the requirement that at least 80 percent of the trees and shrubs used to determine success of revegetation shall have been in place for 60 percent of the applicable minimum period of responsibility (finding Nos. 1.b and 1.c, 59 FR 48171, September 20, 1994). Louisiana's proposed revisions in response to these required amendments are discussed below.

a. *LSMR 5423.B.4.a.* Louisiana proposed to revise LSMR 5423.B.4.a by adding the requirements that the trees that will be used in determining the success of stocking and the adequacy of the plant arrangement shall (1) ''have utility for the approved postmining land use'' and (2) ''be healthy.''

The Federal regulations at 30 CFR 816.116(b)(3)(ii) include the requirements that the trees and shrubs used in determining the success of stocking and the adequacy of the plant arrangement shall (1) have utility for the approved postmining land use and (2) be healthy.

The Director finds that Louisiana's proposed revision of LSMR 5423.B.4.a is substantively identical to and no less effective than the Federal regulations at 30 CFR 816.116(b)(3)(ii) in meeting SMCRA's requirements. Therefore, the Director approves the proposed revisions and removes the required amendment at 30 CFR 918.16(a).

b. *Policy Statement PS–5.* Louisiana's existing LSMR 5423.B.4.a requires that the technical success standards for revegetation success on lands reclaimed for use as forestry shall be 450 well-distributed free to grow live pine trees per acre of the same age or 250 well-distributed live hardwood trees per acre of the same age and the countable stems shall be a minimum of 3 years old.

Louisiana proposed Policy Statement, PS–5, Revegetation Success Standards for Tree and Shrub Stocking on Lands with a Postmining Land Use of Forestry, to clarify that the requirements in LSMR 5423.B.4.a mean that 100 percent (i.e., all countable stems) must be in place for a minimum of 60 percent of the responsibility period (i.e., 3 of the 5 year minimum period of responsibility).

The Federal regulations at 30 CFR 816.116(b)(3)(ii) include the requirement that, at the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for 60 percent of the applicable minimum period of responsibility.

The Director finds that Louisiana's proposed LSMR 5423.B.4.a, as clarified by its Policy Statement PS–5, is no less effective than the Federal Regulations at 30 CFR 816.116(b)(3)(ii) in meeting SMCRA's requirements. Therefore, the Director approves the proposed Policy Statement PS–5 and removes the required amendment at 30 CFR 918.16(b).

IV. Summary and Disposition of Comments

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

1. Public Comments

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

2. Federal Agency Comments

Purusant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Louisiana program (administrative record No. LA–351.01).

The U.S. Bureau of Mines responded on November 30, 1994, that it had no comments (administrative record No. LA–351.03).

The U.S. Army Corps of Engineers responded on December 1, 1994, that the proposed amendment was satisfactory (administrative record no. LA–351.04).

The U.S. Fish and Wildlife Service responded on December 2, 1994, that it had no objection to implementation of the proposed amendment (administrative record No. LA–351.05).

The U.S. Natural Resources Conservation Service (NRCS) responded on December 9, 1994, that Louisiana's requirement for 70 percent ground cover is 5 percent below the NRCS standard for ground cover of 75 percent (administrative record No. LA–351.08). Louisiana's requirement at LSMR 5423.B.4.a, that vegetative ground cover shall not be less than 70 percent, was previously approved by OSM (57 FR 48726, October 28, 1992). Louisiana's existing LSMR 5417.A.4, applicable to revegetation on land reclaimed for any use, requires that a vegetative cover be established that is capable of stabilizing the soil surface from erosion. Therefore, the requirement for 70 percent ground cover on land developed for forestry is a minimum standard that must be increased if it is insufficient to control erosion. In addition, Louisiana requires at LSMR 5421.A that suitable mulch and other soil stabilizing practices shall be used on all regarded and topsoiled areas to control erosion, promote germination of seeds, or increase the moisture content of soil. LSMR 5417.A.4 and LSMR 5421.A are no less effective than the requirements of the counterpart Federal regulations at, respectively, 30 CFR 816.111(a)(4) and 816.114. The Federal regulations at 30 CFR 816.116(b)(3)(iii) require, for areas to be developed for forestry, that vegetative ground cover shall not be less than that required to achieve the approved postmining land use. Louisiana's standard for ground cover at LSMR 5423.B.4.a, in conjunction with the requirements at LSMR 5417.A.4 and LSMR 5421.A, is consistent with and no less effective in meeting SMCRA's requirements than the Federal regulations at 30 CFR 816.116(b)(3)(iii). Therefore, the Director is not, in response to this comment, requiring that Louisiana revise the standard at LSMR 5423.B.4.a for ground cover on areas to be developed for forestry.

3. Environmental Protection Agency (EPA) Concurrence and Comments

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

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

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. LA–351.01). EPA responded on December 8, 1994, that it had no objections to OSM's approval of the proposed amendment (administrative record No. LA–351.07).

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

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. LA–351.01). ACHP did not respond to OSM's request. The SHPO responded on December 8, 1994, that it had no comments (administrative record No. LA–351.06).

V. Director's Decision

Based on the above findings, the Director approves Louisiana's proposed amendment as submitted on November 2, 1994.

The Director approves, as discussed in: finding No. 1.a, recodification of a segment of Louisiana's rules; finding No. 1.b, a nonsubstantive editorial revision at LSMR 5423.B.4; finding No. 2.a, LSMR 5423.B.4.a, concerning trees that will be used in determining the success of stocking and the adequacy of the plant arrangement on reclaimed lands developed for use as forestry; and finding No. 2.b, Policy Statement PS–5, concerning clarification of the revegetation success standards in LSMR 5423.B.4.a.

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

The Federal regulations at 30 CFR part 918, codifying decisions concerning the Louisiana program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay.

Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 13, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 918—LOUISIANA

1. The authority citation for part 918 continues to read as follows:

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

2. Section 918.15 is amended by adding paragraph (e) to read as follows:

§ 918.15 Approval of amendments to the Louisiana regulatory program.

* * * * *

(e) Revisions to the following rules, as submitted to OSM on November 2, 1994, are approved effective January 24, 1995:

LSMR 5423.B.4.a, revegetation success standards on reclaimed land developed for use as forestry, and

Policy Statement PS–5, Revegetation Success Standards for Tree and Shrub Stocking on Lands with a Postmining Land Use of Forestry.

3. Section 918.16 is amended by revising the introductory paragraph, removing and reserving paragraph (a), and removing paragraph (b) to read as follows:

§ 918.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), Louisiana is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed, that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Louisiana's established administrative or legislative procedures.

(a) [Reserved].

[FR Doc. 95–1707 Filed 1–23–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 23

RIN 0790–AF87

Grants and Agreements—Military Recruiting on Campus

AGENCY: Office of the Secretary, DoD.

ACTION: Interim rule.

SUMMARY: The Department of Defense adopts this interim rule to implement Section 558 of the National Defense Authorization Act for Fiscal Year 1995 [Public Law 103–337 (1994)], as it applies to grants. Section 558 states that funds available to the Department of Defense may not be provided by grant or contract to any institution of higher education that has a policy of denying, or which effectively prevents, the Secretary of Defense from obtaining for military recruiting purposes: entry to campuses; access to students on campuses; or access to directory information pertaining to students. The rule implements the law, as it applies to grants, by requiring inclusion of an appropriate clause in DoD grants with institutions of higher education. It also extends the requirement, as a matter of policy, to DoD cooperative agreements, because they are very similar to grants.

DATES: This interim rule is effective on January 24, 1995. Written comments on this rule must be received by March 27, 1995.

ADDRESSES: Forward comments to the Director for Research, 3080 Defense Pentagon, Washington, DC 20301–3080.

FOR FURTHER INFORMATION CONTACT: Mark Herbst, (703) 614–0205.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is not a ''significant regulatory action,'' as defined by Executive Order 12866. The Department of Defense believes that it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or

the principles set forth in Executive Order 12866.

Regulatory Flexibility Act of 1980 [5 U.S.C. 605(b)]

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Paperwork Reduction Act of 1980 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 23

Grant programs.

Accordingly, Title 32, Chapter I, Subchapter B of the Code of Federal Regulations is amended to add Part 23 to read as follows:

PART 23—GRANTS AND AGREEMENTS—MILITARY RECRUITING ON CAMPUS

Sec.
23.1 Military recruiting on campus.

Authority: 5 U.S.C. 301.

§ 23.1 Military recruiting on campus.

(a) *Clause for award documents.* (1) Grants officers shall include the following clause in grants and cooperative agreements with institutions of higher education:

''As a condition for receipt of funds available to the Department of Defense (DoD) under this award, the recipient agrees that it is not an institution that has a policy of denying, and that it is not an institution that effectively prevents, the Secretary of Defense from obtaining for military recruiting purposes: (A) Entry to campuses or access to students on campuses; or (B) access to directory information pertaining to students. If the recipient is determined, using procedures established by the Secretary of Defense to implement section 558 of Public Law 103–337 (1994), to be such an institution during the period of performance of this agreement, and therefore to be in breach of this clause, the Government will cease all payments of DoD funds under this agreement and all other DoD grants and cooperative agreements, and it may suspend or terminate such grants and agreements unilaterally for material failure to comply with the terms and conditions of award.''

(2) If a recipient refuses to accept the clause in paragraph (a)(1) of this section, the grants officer shall determine that the recipient is not qualified with respect to the award, and may award to an alternative recipient.

(b) *Language for program solicitations.* (1) To notify prospective recipients of the requirement in paragraph (a) of this section, grants officers shall include the following notice in program announcements or solicitations under which grants or cooperative agreements may be awarded to institutions of higher education:

''This is to notify potential proposers that each grant or cooperative agreement that is awarded under this announcement or solicitation to an institution of higher education must include the following clause:

''As a condition for receipt of funds available to the Department of Defense (DoD) under this award, the recipient agrees that it is not an institution that has a policy of denying, and that it is not an institution that effectively prevents, the Secretary of Defense from obtaining for military recruiting purposes: (A) Entry to campuses or access to students on campuses; or (B) access to directory information pertaining to students. If the recipient is determined, using procedures established by the Secretary of Defense to implement section 558 of Public Law 103–337 (1994), to be such an institution during the period of performance of this agreement, and therefore to be in breach of this clause, the Government will cease all payments of DoD funds under this agreement and all other DoD grants and cooperative agreements, and it may suspend or terminate such grants and agreements unilaterally for material failure to comply with the terms and conditions of award.''

''If your institution has been identified under the procedures established by the Secretary of Defense to implement section 558, then: (1) No funds available to DoD may be provided to your institution through any grant, including any existing grant; (2) as a matter of policy, this restriction also applies to any cooperative agreement; and (3) your institution is not eligible to receive a grant or cooperative agreement in response to this solicitation.''

(2) Grants officers may include introductory language with the language in paragraph (b)(1) of this section, to tailor the notice to the circumstances of the particular announcement (e.g., to reflect a Broad Agency Announcement under which a DoD Component would award contracts, as well as grants and cooperative agreements). However, the language and the intent in paragraph (b)(1) may not be changed without the approval of the Director, Defense Research and Engineering [requests for such approval are to be submitted, through appropriate channels, to: Director for Research, ODDR&E(R), 3080 Defense Pentagon; Washington, DC 20301–3080].

Dated: January 19, 1995.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–1727 Filed 1–23–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

32 CFR Part 989

RIN 0701–AA36

Environmental Impact Analysis Process (EIAP)

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force revised its regulations to update the Air Force process for compliance with the National Environmental Policy Act and Executive Order 12114, Environmental Effects Abroad of Major Federal Actions. This revision provides policy and guidance for consideration of environmental matters in the Air Force decision-making process. It implements the Council on Environmental Quality regulations and 32 CFR Part 188 as well as Executive Order 12114.

EFFECTIVE DATE: January 24, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth L. Reinertson or Mr. Jack C. Bush, (HQ USAF/CEVP), 1260 Air Force Pentagon, Washington, DC 20330–1260, telephone, (703) 695–8942.

SUPPLEMENTARY INFORMATION:

Discussion of Major Issues

Unless otherwise noted, the discussions in the following paragraphs only address issues where public comments were received and clarification is required. For portions of the final rule where comments were not received, the final rule is consistent with the proposed rule, and no further discussions are included. Portions of the proposed rule have also been changed so the final rule more clearly states the intended meaning. Some of these changes are based on public input, but are not addressed in a specific discussion.

Readers should note that as part of a reduction of bulk and clarification of this rule, specific reformatting has been accomplished. Section 989.9, formerly titled, Lead and cooperating agency, is now titled, Cooperation and adoption.

Section 989.32, Definitions, has now changed to, Attachment 1—Glossary of References, Abbreviations, Acronyms, and Terms. Section 989.32 is now titled, Procedures for analysis abroad, and § 989.33, Categorical exclusions, is now, Attachment 2—Categorical Exclusions.

Environmental considerations—global commons, § 989.34 and, Environmental considerations—foreign nations and protected global resources, § 989.35, have been reorganized as § 989.32, Procedures for analysis abroad,

and § 989.33, Requirements for analysis abroad. This reorganization of the rule was accomplished to show that Air Force environmental planning abroad is part of the EIAP, but is not considered a part of the Air Force's NEPA compliance. Air Force analysis abroad is strictly driven by 32 CFR Part 187, Environmental effects abroad of major DOD actions. Title 32 CFR Part 187 implements Executive Order 12114, Environmental Effects Abroad of Major Federal Actions.

The former § 989.36, Procedures for holding public hearings, has been reformatted as Attachment 3—Procedures for Holding Public Hearings on Draft Environmental Impact Statements.

1. Combining Documents

Comments: Commenters indicated that comprehensive planning is based upon a solid information base, quite similar to the information base required for the EIAP. Commenters further indicated that comprehensive plans should support good economic, environmental and social management goals, and the Air Force EIAP should be applied to comprehensive planning.

Response: Sections 1500.4(o), 1500.5(i) and 1506.4 of the CEQ regulations address combining environmental documents to reduce duplication and paperwork. This combination could include any other type of document so long as the actual NEPA document is in compliance with that law and the CEQ regulations. Air Force comprehensive planning includes as a fundamental planning component, environmental constraints and opportunities. It also incorporates operational, urban planning, and capital improvement programs, to identify and assess development alternatives and ensure compliance with applicable federal, state, and local laws, regulations and policies. No further changes will be made to this regulation with reference to wording addressing combining documents.

2. Environmental Assessments (EA)

Comment: Several commenters disagreed with Air Force's ''non-involvement'' of the public or oversight agencies in preparation of draft EAs. Further, commenters suggested that draft EAs be made available to the public for review and comment in the same manner as draft EISs. Commenters major concerns revolved around the potential for the Air Force to ''hide'' potential impacts and to take actions that would otherwise require an EIS and therefore require public hearings.

Response: CEQ has indicated their intent as to when public review of EAs is necessary. For example: borderline cases (reasonable argument for preparation of an EIS); unusual, new, or precedent setting cases; public controversy; or when the action is one which would normally require an EIS. CEQ has also indicated that where the proposal itself integrates mitigation from the beginning and it is impossible to define the proposal without including the mitigation, the agency may then rely on mitigation measures in determining if overall effects would not be significant. In those instances, agencies should make the FONSI and EA available for 30 days of public comment before taking action.

The Air Force has identified specific actions where a 30 day public review is required. Section 989.14 of this rule has been modified to identify procedures for public involvement in the development of an EA. The Air Force has included the public in the review of appropriate EAs, where the public input would assist in better decision-making.

The Air Force has specifically modified § 989.14(g) by adding a subparagraph (5) which will require all EAs that mitigate impacts to insignificance in lieu of an EIS, to be the subject of a public review period. Section 989.14(j) has been revised to define how to initiate a public review period for specified actions. The extent of public involvement will typically coincide with the magnitude and complexity of the proposed action and its potential effect on the area in question.

3. Finding of No Significant Impact (FONSI)

Comment: Commenters suggested that the final rule should provide provisions for public dissemination and comment on all FONSIs. Commenters also suggested that a public review period should be provided for all NEPA documentation.

Response: The Air Force considers all NEPA compliance documents public documents, unless classified for operational reasons. These documents are available to the public, upon request or as part of previously established mailing list. They are also available through regional offices of federal agencies having responsibility for a certain area of environmental protection, the state single point of contact and state agencies. The amount of time provided for review of an EA/FONSI is directly related to the magnitude of the action and potential environmental controversy. Section 989.15(e)(l) has been edited to clarify intent and to ensure that all Air Force organizations understand that a public review is the norm unless clearly unnecessary.

Section 989.15(f) has been modified by adding subparagraph (4) in cases where potential significant environmental impacts found during preparation of an EA/FONSI are mitigated to insignificance in lieu of preparing an EIS, as defined in § 989.22(c).

4. Public Involvement in the Environmental Impact Analysis Process (EIAP) (Air Force NEPA Compliance Process) Notice of Intent (NOI): Scoping and Review and Comments of Documentation

Comment: Commenters were concerned that the Air Force would attempt to keep the public involvement in a proposal to a minimum by not releasing information or ignoring public concerns. Commenters suggested that the Air Force would attempt to hide potential significant impacts related to a proposal. Further, commenters indicated that when a federal agency holds a public scoping meeting in a given community they must return to that same community to hold hearings on the DEIS.

Response: The Air Force includes the affected public in all its NEPA compliance actions (see 2 and 3 above) for the initiation of a proposal through the final decision (initial scoping process, the public review and comment process and responding to concerns raised by individuals, organizations and other federal agencies).

Section 1506.6. of the CEQ regulations requires agencies to make ''diligent efforts'' to involve the public in the agency's NEPA procedures. The Air Force includes the public as fully as is practicable in the NEPA decision-making process. Section 989.23, Public notification mandates not only legally required public involvement, but also encourages equally effective means for including public participation in the Air Force's NEPA process.

When the Air Force is preparing an EIS for an action that could potentially impact on a specific community, it is the Air Force's intent to fully incorporate the community in the process of scoping and public hearings. In the case where the action was carried no further than the scoping stage, because it may have been discontinued, the Air Force would not hold a public hearing. For continuing actions the Air Force will return to the scoping venue to hold public hearings on the DEIS, unless the scoping process has indicated a lack of interest. On the other hand, if

decision-making for a proposal was the subject of an EA, a determination as to whether or not a scoping meeting or public hearing will be held would be made based upon criteria provided in § 989.14(j). The Air Force has identified specific procedures for holding public hearings on draft EISs (see Attachment 3).

5. Draft Environmental Impact Statement (DEIS)

Comments: Commenters indicated that wording be revised to make clear what is being stated regarding distribution of summary documentation when the DEIS is unusually long. Commenters suggested that wording, to address unusually long DEISs, should be circulated which would include a list of locations (such as public libraries) where the entire DEIS may be reviewed. If the agency receives a timely request for the entire statement and for additional time to comment, the time for that requester only shall be extended by at least 15 days beyond the minimum review period.

Commenters suggested that when responding to comments the agency should, in the comment section of the document, refer the reader to the appropriate modified text. This would allow the reviewer to quickly find the appropriate response.

Response: Section 989.19(d) has been edited to clarify procedures for handling summary documents and making lengthy DEISs available for public review at specific locations. Section 989.19(e) has been added to provide guidance as to when and how to seek additional comments from the interested public. Guidance in sub-section (e) will be followed when there has been a significant change in circumstances, development of new information or where there is substantial controversy concerning a proposal.

Section 989.21(a) has been revised to reflect the correct procedural requirements for EPA filing of notices of availability. Section 989.28 has been revised to better discuss issues relative to air quality in NEPA documentation.

6. Final Environmental Impact Statement (FEIS)

Comments: Commenters suggested that the distribution process for the FEIS should be clarified to clearly indicate that FEISs must be furnished to any person, organization, or agencies that made comments on the DEIS. Commenters also indicated that a new section should be added which would give guidance as to when reevaluation of a completed NEPA analysis should occur.

Response: Section 989.20(a) has been modified to reflect concerns related to distribution of the FEIS. Also, a new subsection § 989.20(c) has been added. This section describes when, due to the lack of advancement of a proposal, reevaluation of the NEPA documentation should be accomplished to ensure its validity.

7. Mitigation

Comments: Commenters indicated that the regulation should mandate the inclusion of the cost of mitigation as a line item in the budget for a proposed action versus the currently existing ''where possible'' language. Commenters also indicated that the Air Force may burden proponents of actions by requiring them to prepare mitigation plans as described in § 989.22(d).

Response: The Air Force uses mitigations to reduce or eliminate potential impacts. Commitment to the use of mitigations, as defined both in the text of a NEPA analysis and the FONSI or ROD, are considered by the Air Force to be legally required and will be fulfilled. Mitigations are placed into a computer tracking system at HQ Air Force, with periodic status updates/validations being accomplished. Section 989.15(e)(2)(iv) has been added to require a 30-day review period for EA/FONSIs where potential impacts will be mitigated to insignificance. Also § 989.22(d) has been modified to better reflect Air Force intent relative to execution of mitigations.

8. Classified Actions

Comments: Commenters indicated that classifying NEPA compliance documentation should not be allowed. Commenters perceived that the Air Force would classify programs that released chemical toxins or radioactive materials into the environment, without informing the public because of the classified nature of the program producing the pollutants. Commenters further indicated that the Air Force would classify a program just to hide its environmental impacts or to avert Congressional scrutiny.

Response: As stated earlier, it is the Air Force's intent to include the public in all of its NEPA compliance actions. Classifying of an action will not be accomplished to ''hide'' potential environmental controversy. However, environmental documentation will be classified to safeguard issues of national security. Although an action may be classified, the Air Force intends to comply with NEPA, for classified actions, as described in § 989.25, and will make available, unclassified portions of environmental documents for public review.

9. Airspace

Comments: Commenters referred to an inter-agency agreement between the National Park Service (NPS), the Fish and Wildlife Service (FWS), the Bureau of Land Management (BLM), and the Federal Aviation Administration (FAA), where the FAA, recognizing the values for which the NPS, FWS, and BLM lands are managed, has established a 2,000′ Above Ground Level (AGL) advisory as the requested minimum altitude for aircraft flying over lands administered by these agencies. These agencies seek voluntary cooperation with the 2,000′ AGL minimum altitude advisory. Commenters expressed a concern regarding airspace reviews being considered in relation to potential impacts of over flights of the National Wildlife Refuge System. Commenters also indicated the Air Force should fully integrate land management agencies in development of NEPA documents.

Response: The Air Force has entered into a Memorandum of Understanding that outlines various airspace responsibilities, (see § 989.27, ''Airspace proposals.'' Further, the Air Force has identified 3000′ AGL as the base altitude to apply a CATEX (see Attachment 2 A.2.3.35). Any airspace proposal below 3000′ AGL will trigger the requirement to prepare a more in-depth level of NEPA analysis. The Air Force includes all land management agencies in NEPA compliance. Where necessary, the Air Force invites these agencies to act as ''Cooperating Agency'' for that agency's decision making purposes. For NEPA compliance documents related to airspace issues, a full analysis will be accomplished with input from the public and responsible agencies. The Air Force has added § 989.15(e)(1)(v) to require a 30-day review period for EAs analyzing proposed changes in airspace use or designation.

10. Categorical Exclusion (CATEX)

Comments: Commenters indicated that the list of actual CATEXes should be placed under § 989.13 so all requirements are found under one heading. Commenters also indicated that some of the Air Force CATEXes are too broad in scope.

Response: Due to the length of the CATEX list, it will remain as a separate section (now, Attachment 2—Categorical Exclusions). Although the initial perception may be that a CATEX is too broad, the Air Force believes that proper procedural application of the EIAP will provide for adequate scoping

of issues. The Air Force accomplishes this initial scoping via the Air Force Form 813, Request for Environmental Impact Analysis, as described in § 989.12. When this Form is applied as intended and filled out accurately, the determination of scope and whether or not a CATEX will apply, will be better determined.

The Department of the Air Force has determined that this rule is not a major rule because it will not have an annual effect on the economy of $100 million or more. The Secretary of the Air Force has certified that this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, because this rule does not have a significant economic impact on small entities as defined by the Act, and does not impose any obligatory information requirements beyond internal Air Force use. This rule revises and replaces Air Force Regulation (AFR) 19–2, Environmental Impact Analysis Process (EIAP), 10 August 1982, and AFR 19–3, Environmental Impact Analysis Process Overseas, 23 September 1981.

List of Subjects in 32 CFR Part 989

Environmental protection, Environmental impact statements.

Therefore 32 CFR Part 989 is revised to read as follows:

PART 989–ENVIRONMENTAL IMPACT ANALYSIS PROCESS (EIAP)

Sec.

989.1 Purpose.
989.2 Concept.
989.3 Responsibilities.
989.4 Initial considerations.
989.5 Organizational relationships.
989.6 Budgeting and funding.
989.7 Requests from non-Air Force agencies or entities.
989.8 Analysis of alternatives.
989.9 Cooperation and adoption.
989.10 Tiering.
989.11 Combining EIAP with other documentation.
989.12 Air Force Form 813, Request for Environmental Impact Analysis.
989.13 Categorical exclusion.
989.14 Environmental assessment.
989.15 Finding of no significant impact.
989.16 Environmental impact statement.
989.17 Notice of intent.
989.18 Scoping.
989.19 Draft EIS.
989.20 Final EIS.
989.21 Record of decision.
989.22 Mitigation.
989.23 Public notification.
989.24 Base closure and realignment.
989.25 Classified actions (40 CFR 1507.3(e)).
989.26 Occupational safety and health.
989.27 Airspace proposals.
989.28 Air quality.
989.29 Pollution prevention.
989.30 Special and emergency procedures.
989.31 Reporting requirements.
989.32 Procedures for analysis abroad.
989.33 Requirements for analysis abroad.
Attachment 1 to Part 989—Glossary of References, Abbreviations, Acronyms, and Terms.
Attachment 2 to Part 989—Categorical Exclusions.
Attachment 3 to Part 989—Procedures for Holding Public Hearings on Draft Environmental Impact Statements (EIS)

Authority: 10 U.S.C. 8013.

§ 989.1 Purpose.

(a) This part implements the Air Force Environmental Impact Analysis Process and provides procedures for environmental impact analysis both within the United States and abroad. Because the authority for, and rules governing, each aspect of the Environmental Impact Analysis Process differ depending on whether the action takes place in the United States or outside the United States, this part provides largely separate procedures for each type of action. Consequently, the main body of this part deals primarily with environmental impact analysis under the authority of the National Environmental Policy Act of 1969 (NEPA) (Public Law 91–190, 42 U.S.C. 4321–4347), while the primary procedures for environmental impact analysis of actions outside the United States in accordance with Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, are contained in §§ 989.32 and 989.33.

(b) The procedures in this part are essential to achieve and maintain compliance with NEPA and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA (40 CFR Parts 1500–1508, referred to as the ''CEQ Regulations''). Further requirements are contained in 32 CFR Part 188 (Department of Defense Directive (DoDD) 6050.1, Environmental Effects in the United States of DoD Actions, July 30, 1979), and DoD Instruction 5000.2, Defense Acquisition Management Policies and Procedures, February 23, 1991, with Change 1 [1] and Air Force Supplement 1, Acquisition Management Policies, 31 August 1993, with Change 1. To comply with NEPA and complete the EIAP, the CEQ Regulations and this part must be used together.

(c) Air Force activities abroad will comply with this part, Executive Order 12114, and 32 CFR Part 187 (DoDD 6050.7, Environmental Effects Abroad of Major Department of Defense Actions, March 31, 1979). To comply with Executive Order 12114 and complete the EIAP, the Executive Order, 32 CFR Part 187, and this part must be used together.

(d) Attachment 1 of this part is a glossary of references, abbreviations, acronyms, and terms. Refer to 40 CFR Part 1508 for other terminology used in this part.

§ 989.2 Concept.

(a) This part provides a framework on how to comply with NEPA and Executive Order 12114 according to Air Force Policy Directive (AFPD) 32–70 [2].

(b) Major commands (MAJCOM) provide additional implementing guidance in their supplemental publications to this part. MAJCOM supplements must identify the specific offices that have implementation responsibility and include any guidance needed to comply with this part. All references to MAJCOMs in this part include the Air National Guard Readiness Center (ANGRC) and other agencies designated as ''MAJCOM equivalent'' by HQ USAF.

§ 989.3 Responsibilities.

(a) *Office of the Secretary of the Air Force.* (1) The Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations, and Environment (SAF/MI):

(i) Promulgates and oversees policy to ensure integration of environmental considerations.

(ii) Determines the level of environmental analysis required for especially important, visible, or controversial Air Force proposals and approves selected Environmental Assessments (EA) and Findings of No Significant Impact (FONSI).

(iii) Is the liaison on environmental matters with Federal agencies and national-level public interest organizations.

(iv) Is the approval authority for all Environmental Impact Statements (EIS) prepared for Air Force actions, whether classified or unclassified.

(2) The General Counsel (SAF/GC). Provides final legal advice to SAF/MI, HQ USAF, and HQ USAF Environmental Protection Committee (EPC) on EIAP questions.

(3) Office of Legislative Liaison (SAF/LL):

(i) Distributes draft and final EISs to congressional delegations.

(ii) Reviews and provides the Office of the Secretary of Defense (OSD) with

[1] Copies of the publications are available, at cost, from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 989.1.

analyses of the Air Force position on proposed and enrolled legislation and executive department testimony dealing with EIAP issues.

(4) Office of Public Affairs (SAF/PA):

(i) Reviews environmental documents requiring Office of the Secretary of the Air Force approval prior to public release.

(ii) Assists the environmental planning function and the Air Force Legal Services Agency, Trial Judiciary Division (AFLSA/JAJT), in planning and conducting public scoping meetings and hearings.

(iii) Ensures that public affairs aspects of all EIAP actions are conducted in accordance with this part and Air Force Instruction (AFI) 35–202, Environmental Community Involvement[3].

(iv) The National Guard Bureau, Office of Public Affairs (NGB-PA), will assume the responsibilities of SAF/PA for the EIAP involving the National Guard Bureau, Air Directorate.

(b) *Headquarters US Air Force (HQ USAF).* The Civil Engineer (HQ USAF/CE) formulates and oversees execution of EIAP policy. The National Guard Bureau Air Directorate (NGB-CF) oversees the EIAP for Air National Guard actions.

(c) *MAJCOMs, Air Force Reserve (AFRES), ANG, and Field Operating Agencies (FOA).* These organizations establish procedures that comply with this part wherever they are the host unit for preparing and using required environmental documentation in making decisions about proposed actions and programs within their commands.

(1) *Air Force Center for Environmental Excellence (AFCEE).* The AFCEE Environmental Conservation and Planning Directorate (AFCEE/EC) provides technical assistance to major commands and the Air Force Base Conversion Agency.

(2) *Air Force Regional Compliance Offices (RCO).* RCOs review other agency environmental documents that may have an impact on the Air Force. Requests for review of such documents should be directed to the proper RCO (Atlanta, Dallas, or San Francisco) along with any relevant comments. The RCO:

(i) Notifies the proponent, after receipt, that the RCO is the single point of contact for the Air Force review of the document.

(ii) Requests comments from potentially affected installations, MAJCOMs, the ANG, and HQ USAF, as required.

(iii) Consolidates comments into the Air Force official response and submits the final response to the proponent.

(iv) Provides to HQ USAF, the appropriate MAJCOMs and installations a copy of the final response and a complete set of all review comments.

(3) *Headquarters Air Force Materiel Command (HQ AFMC).* HQ AFMC is responsible for applying EIAP to all proposed Air Force weapons systems and modifications to existing systems. These documents may be used as a basis for tiering documents in subsequent system beddown environmental analyses (see § 989.10). HQ AFMC ensures that:

(i) Environmental documents for acquisition of systems required for Defense Acquisition Board (DAB) decisions are completed prior to DAB milestone decisions.

(ii) Detailed guidance on the EIAP for acquisition programs, contained in DoD Instruction 5000.2 with Change 1, (part 6, Section I) and Air Force Supplement 7 with Change 1; DoD Manual 5000.2–M, Defense Acquisition Management Documentation and Reports, February 1991, with Change 1 (part 4, section F, Integrated Program Summary) and Air Force Supplement 1 with Change 1,[4] is complied with or is followed. Analysis requirements in this instruction apply where the Air Force is the sole acquisition agent or the lead service for joint programs.

(iii) EIAP studies involving real property, facilities, personnel, and training to support acquisition programs are coordinated through the HQ AFMC environmental planning function.

(d) *Environmental Planning Function (EPF).* The EPF is the interdisciplinary staff, at any level of command, responsible for the EIAP. The EPF:

(1) Assists the proponent in preparing a Description of Proposed Action and Alternatives (DOPAA) and actively supports the proponent during all phases of the EIAP.

(2) Evaluates proposed actions and completes Sections II and III of AF Form 813, Request for Environmental Impact Analysis, subsequent to submission by the proponent and determines whether a Categorical Exclusion (CATEX) applies. The EPF responsible official signs the AF Form 813 certification.

(3) Identifies and documents, with technical advice from the bioenvironmental engineer and other staff members, environmental quality standards that relate to the action under evaluation.

(4) Prepares environmental documents, or obtains technical assistance through Air Force channels or contract support and adopts the documents as official Air Force papers when completed and approved.

(5) Ensures the EIAP is conducted on base- and MAJCOM-level plans, including contingency plans for the training, movement, and operations of Air Force personnel and equipment.

(6) Prepares the Notice of Intent (NOI) to prepare an EIS with assistance from the proponent and the Public Affairs Office.

(7) Prepares applicable portions of the Certificate of Compliance for each military construction project according to AFI 32–1021, Planning and Programming of Facility Construction Projects.[5]

(e) *Proponent.* Each office, unit, or activity at any level that initiates Air Force actions is responsible for:

(1) Notifying the EPF of a pending action and completing Section I of the AF Form 813, including a DOPAA, for submittal to the EPF.

(2) Identifying key decision points and coordinating with the EPF on EIAP phasing to ensure that environmental documents are available to the decision-maker before the final decision is made and ensuring that, until the EIAP is complete, resources are not committed prejudicing the selection of alternatives nor actions taken having an adverse environmental impact or limiting the choice of reasonable alternatives.

(3) Integrating the EIAP into the planning stages of a proposed program or action and, with the EPF, determining as early as possible whether to prepare an EIS.

(4) Presenting the DOPAA to the EPC for review and comment.

(5) Coordinating with the EPF prior to organizing public or interagency meetings which deal with EIAP elements of a proposed action and involving persons or agencies outside the Air Force.

(6) Subsequent to the decision to prepare an EIS, assisting the EPF and Public Affairs Office in preparing a draft NOI to prepare an EIS. All NOIs must be forwarded to HQ USAF/CEV for review and publication in the **Federal Register**.

(f) *Environmental Protection Committee (EPC).* The EPC helps commanders assess, review and approve EIAP documents.

(g) *Staff Judge Advocate (SJA).* The Staff Judge Advocate:

(1) Advises the command-level proponent EPF and EPC on CATEX determinations and the legal sufficiency of environmental documents.

[3] See footnote 1 to § 989.1.

[4] See footnote 1 to § 989.1.

[5] See footnote 1 to § 989.1.

(2) Advises the EPF during the scoping process of issues that should be addressed in EISs and on procedures for the conduct of public hearings.

(3) Coordinates the appointment of the independent hearing officer with AFLSA/JAJT (or NGB-JA) and provides support for the hearing officer in cases of public hearings on the draft EIS. The proponent pays administrative and TDY costs. The hearing officer presides at hearings and makes final decisions regarding hearing procedures, with concurrence from HQ USAF/CEV (or ANGRC/CEV).

(4) Promptly refers all matters causing or likely to cause substantial public controversy or litigation through channels to AFLSA/JACE (or NGB-JA).

(h) *Public Affairs Officer.* This officer:

(1) Advises the EPF, the EPC, and the proponent on public affairs implications of proposed actions and reviews environmental documents for public affairs issues.

(2) Advises the EPF during the scoping process of issues that should be addressed in the EIS.

(3) Prepares, coordinates, and distributes news releases related to the proposal and associated EIAP documents.

(4) Notifies the media (television, radio, newspaper) and purchases advertisements when newspapers will not run notices free of charge.

(5) For more comprehensive instructions about public affairs activities in environmental matters, see AFI 35–202.[6]

(i) *Medical Service.* The Medical Service, represented by the bioenvironmental engineer, provides technical assistance to EPFs in the areas of environmental health standards, environmental effects, and environmental monitoring capabilities. The Air Force Armstrong Laboratory, Occupational and Environmental Health Directorate, provides additional technical support.

(j) *Safety Office.* The Safety Office provides technical assistance to EPFs to ensure consideration of safety standards and requirements.

§ 989.4 Initial considerations.

Air Force personnel will:

(a) Consider and document environmental effects of proposed Air Force actions through AF Forms 813, EAs, FONSIs, EISs, EIS Records of Decision (ROD), and documents prepared according to Executive Order (E.O.) 12114.

(b) Evaluate proposed actions for possible categorical exclusion (CATEX) from environmental impact analysis (attachment 2 of this part). CATEXs may apply to actions in the United States, its territories and possessions, and abroad.

(c) Make environmental documents, comments, and responses, including those of other Federal, state, and local agencies and the public, part of the record available for review and use at all levels of decision making.

(d) Review the specific alternatives analyzed in the EIAP when evaluating the proposal prior to decision making.

(e) Ensure that alternatives considered by the decision-maker are both reasonable and within the range of alternatives analyzed in the environmental documents.

(f) Pursue the objective of furthering foreign policy and national security interests while at the same time considering important environmental factors.

(g) Consider the environmental effects of actions that affect the global commons.

(h) Carry out actions that affect the environment of a foreign nation in a way that allows consideration of the environment, existing international agreements, and the sovereignty of other nations.

(i) Determine whether any foreign government should be informed of the availability of environmental documents. Formal arrangements with foreign governments concerning environmental matters and communications with foreign governments concerning environmental agreements will be coordinated with the Department of State by the Deputy Assistant Secretary of the Air Force for Environment, Safety, and Occupational Health (SAF/MIQ) through the Assistant Secretary of Defense. This coordination requirement does not apply to informal working-level communications and arrangements.

§ 989.5 Organizational relationships.

The host EPF manages the EIAP using an interdisciplinary team approach. This is especially important for tenant-proposed actions, because the host command is responsible for the EIAP for actions related to the host command's installations.

(a) The host command prepares environmental documents internally or directs the host base to prepare the environmental documents. Environmental document preparation may be by contract (requiring the tenant to fund the EIAP), or by the tenant unit. Regardless of the preparation method, the host command will ensure the required environmental analysis is accomplished before a decision is made on the proposal and an action is undertaken. Host/tenant agreements should provide specific procedures to ensure host oversight of tenant compliance.

(b) For aircraft beddown and unit realignment actions, program elements are identified in the Program Objective Memorandum. Subsequent Program Change Requests must include AF Form 813. When a program for a given year has sufficient support, HQ USAF/XOO notifies the host command or NGB–XO to initiate the EIAP. For classified actions, MAJCOMs and ANG begin reporting monthly EIAP status to HQ USAF/XO (copy to SAF/MIQ and HQ USAF/CEV) while the proposal is still classified, and upon declassification, to HQ USAF/CEV. MAJCOMs and ANG continue reporting until the EIAP is complete for all projects.

(c) To ensure timely initiation of the EIAP, SAF/AQ forwards information copies of all Mission Need Statements and System Operational Requirements Documents to SAF/MIQ, HQ USAF/CEV (or ANGRC/CEV), the Air Force Medical Operations Agency, Aerospace Medicine Office (AFMOA/SG), and the affected MAJCOM EPFs.

(d) The MAJCOM of the scheduling unit managing affected airspace is responsible for preparing and approving environmental analyses. The scheduling unit's higher headquarters may choose whether to prepare the environmental document, but is ultimately responsible for EIAP document accomplishment and approval.

§ 989.6 Budgeting and funding.

Contract EIAP efforts are proponent MAJCOM responsibilities. Each year, the EPF budgets for the anticipated EIAP workload based on reports of command proponents. If proponent offices exceed the budget in a given year or identify unforeseen requirements, the proponent offices must provide the remaining funding. For HQ AFMC, the system program office or project office budgets and funds EIAP efforts relating to research, development, testing, and evaluation activities.

§ 989.7 Requests from non-Air Force agencies or entities.

Non-Air Force agencies or entities may request the Air Force to undertake an action, such as issuing a permit or outleasing Air Force property, that may primarily benefit the requester or an agency other than the Air Force. The EPF and other Air Force staff elements must identify such requests and coordinate with the proponent of the non-Air Force proposal, as well as with

[6] See footnote 1 to § 989.1.

concerned state, local, and tribal authorities.

(a) Air Force decisions on such proposals must take into consideration the potential environmental impacts of the applicant's proposed activity (as described in an Air Force environmental document), insofar as the proposed action involves Air Force property or programs, or requires Air Force approval.

(b) The Air Force may require the requester to prepare, at the requester's expense, an analysis of environmental impacts (40 CFR 1506.5), or the requester may be required to pay for an EA or EIS to be prepared by a contractor selected and supervised by the Air Force. The EPF may permit requesters to submit draft EAs for their proposed actions, except for actions described in § 989.16 (a) and (b), or for actions the EPF has reason to believe will ultimately require an EIS. For EISs, the EPF has the responsibility to prepare the environmental document, although responsibility for funding remains with the requester. The fact that the requester has prepared environmental documents at its own expense does not commit the Air Force to allow or undertake the proposed action or its alternatives. The requester is not entitled to any preference over other potential parties with whom the Air Force might contract or make similar arrangements.

(c) In no event is the requester who prepares or funds an environmental analysis entitled to reimbursement from the Air Force. When requesters prepare environmental documents outside the Air Force, the Air Force must independently evaluate and approve the scope and content of the environmental analyses before using the analyses to fulfill EIAP requirements. Any outside environmental analysis must evaluate reasonable alternatives as defined in § 989.8.

§ 989.8 Analysis of alternatives.

The Air Force must analyze reasonable alternatives to the proposed action and the ''no action'' alternative in all EAs and EISs, as fully as the proposed action alternative.

(a) ''Reasonable'' alternatives are those that meet the underlying purpose and need for the proposed action and that would cause a reasonable person to inquire further before choosing a particular course of action. Reasonable alternatives are not limited to those directly within the power of the Air Force to implement. They may involve another government agency or military service to assist in the project or even to become the lead agency. The Air Force must also consider reasonable alternatives raised during the scoping process (see § 989.18) or suggested by others, as well as combinations of alternatives. The Air Force need not analyze highly speculative alternatives, such as those requiring a major, unlikely change in law or governmental policy. If the Air Force identifies a large number of reasonable alternatives, it may limit alternatives selected for detailed environmental analysis to a reasonable range or to a reasonable number of examples covering the full spectrum of alternatives.

(b) The Air Force may expressly eliminate alternatives from detailed analysis, based on reasonable selection standards (for example, operational, technical, or environmental standards suitable to a particular project). Proponents may develop written selection standards to firmly establish what is a ''reasonable'' alternative for a particular project, but they must not so narrowly define these standards that they unnecessarily limit consideration to the proposal initially favored by proponents. This discussion of reasonable alternatives applies equally to EAs and EISs.

(c) Except where excused by law, the Air Force must always consider and assess the environmental impacts of the ''no action'' alternative. ''No action'' may mean either that current management practice will not change or that the proposed action will not take place. If no action would result in other predictable actions, those actions should be discussed within the no action alternative section. The discussion of the no action alternative and the other alternatives should be comparable in detail to that of the proposed action.

§ 989.9 Cooperation and adoption.

(a) *Lead and Cooperating Agency (40 CFR 1501.5–1501.6).* When the Air Force is a cooperating agency in the preparation of an EIS, the Air Force reviews and approves principal environmental documents within the EIAP as if they were prepared by the Air Force. The Air Force executes a Record of Decision for its program decisions that are based on an EIS for which the Air Force is a cooperating agency. The Air Force may also be a lead or cooperating agency on an EA using similar procedures, but the MAJCOM EPC retains approval authority unless otherwise directed by HQ USAF. Before invoking provisions of 40 CFR 1501.5(e), the lowest authority level possible resolves disputes concerning which agency is the lead or cooperating agency.

(b) *Adoption of EA or EIS.* The Air Force, even though not a cooperating agency, may adopt an EA or EIS prepared by another entity where the proposed action is substantially the same as the action described in the EA or EIS. In this case, the EA or EIS must be recirculated as a final EA or EIS but the Air Force must independently review the EA or EIS and determine that it is current and that it satisfies the requirements of this part. The Air Force then prepares its own FONSI or ROD, as the case may be. In the situation where the proposed action is not substantially the same as that described in the EA or the EIS, the Air Force may adopt the EA or EIS, or a portion thereof, by circulating the EA or EIS as a draft and then preparing the final EA or EIS.

§ 989.10 Tiering.

The Air Force should use tiered (40 CFR 1502.20) environmental documents, and environmental documents prepared by other agencies, to eliminate repetitive discussions of the same issues and to focus on the issues relating to specific actions. If the Air Force adopts another Federal agency's environmental document, subsequent Air Force environmental documents may also be tiered.

§ 989.11 Combining EIAP with other documentation.

(a) The EPF combines environmental analysis with other related documentation when practicable (40 CFR 1506.4) following the procedures prescribed by the CEQ regulations and this part.

(b) The EPF must integrate comprehensive planning (AFI 32–7062, Air Force Comprehensive Planning)[7] with the requirements of NEPA and the EIAP. Prior to making a decision to proceed, the EPF must analyze the environmental impacts that could result from implementation of a proposal identified in the comprehensive plan.

§ 989.12 Air Force Form 813, request for environmental impact analysis.

The Air Force uses AF Form 813 to document the need for environmental analysis or for certain CATEX determinations for proposed actions. The form helps narrow and focus the issues to potential environmental impacts. AF Form 813 must be retained with the EA or EIS to record the focusing of environmental issues. The rationale for not addressing environmental issues must also be recorded in the EA or EIS.

[7] See footnote 1 to § 989.1.

§ 989.13 Categorical exclusion.

(a) CATEXs apply to those classes of actions that do not individually or cumulatively have potential for significant effect on the environment and do not, therefore, require further environmental analysis in an EA or an EIS. The list of Air Force-approved CATEXs is in attachment 2 of this part. Command supplements to this part may not add CATEXs or expand the scope of the CATEXs in attachment 2 of this part.

(b) Characteristics of categories of actions that usually do not require either an EIS or an EA (in the absence of extraordinary circumstances) include:

(1) Minimal adverse effect on environmental quality.

(2) No significant change to existing environmental conditions.

(3) No significant cumulative environmental impact.

(4) Socioeconomic effects only.

(5) Similarity to actions previously assessed and found to have no significant environmental impacts.

(c) CATEXs apply to actions in the United States and abroad. General exemptions specific to actions abroad are in 32 CFR Part 187. The EPF or other decision-maker forwards requests for additional exemption determinations for actions abroad to HQ USAF/CEV with a justification letter.

(d) Normally, any decision-making level may determine the applicability of a CATEX and need not formally record the determination on AF Form 813 or elsewhere, except as noted in the CATEX list.

(e) Application of a CATEX to an action does not eliminate the need to meet air conformity requirements (see § 989.28).

§ 989.14 Environmental assessment.

(a) When a proposed action is one not usually requiring an EIS but is not categorically excluded, the EPF must prepare an EA (40 CFR 1508.9). Every EA must lead to either a FONSI, a decision to prepare an EIS, or no decision on the proposal.

(b) Whenever a proposed action usually requires an EIS, the EPF responsible for the EIAP may prepare an EA to definitively determine if an EIS is required based on the analysis of environmental impacts. Alternatively, the EPF may choose to bypass the EA and proceed with preparation of an EIS.

(c) An EA is a written analysis that:

(1) Provides analysis sufficient to determine whether to prepare an EIS or a FONSI.

(2) Aids the Air Force in complying with the NEPA when no EIS is required.

(d) An EA discusses the need for the proposed action, reasonable alternatives to the proposed action, the affected environment, the environmental impacts of the proposed action and alternatives (including the ''no action'' alternative), and a listing of agencies and persons consulted during preparation.

(e) The format for the EA is the same as the EIS. The alternatives section of an EA and an EIS are similar and should follow the alternatives analysis guidance outlined in § 989.8.

(f) The EPF should design the EA to facilitate rapidly transforming the document into an EIS if the environmental analysis reveals a significant impact.

(g) Certain EAs require SAF/MIQ approval because they involve topics of special importance or interest. Unless directed otherwise by SAF/MIQ, the EPF must forward the following types of EAs to SAF/MIQ through HQ USAF/CEV (copy to AFCEE/EC for technical review), along with an unsigned FONSI:

(1) EAs for actions where the Air Force has wetlands or floodplains compliance responsibilities (E.O. 11988 and E.O. 11990). A Finding of No Practicable Alternative (FONPA) must be submitted to HQ USAF/CEV when the alternative selected is located in wetlands or floodplains, and must discuss why no other practical alternative exists to avoid impacts. See AFI 32–7064, Integrated Resources Management.[8]

(2) System acquisition EAs.

(3) All EAs on non-Air Force agency proposals that require an Air Force decision, such as use of Air Force property for highways and joint-use proposals.

(4) EAs for actions that require the Air Force to make conformity determinations pursuant to the Clean Air Act, as amended, and the implementing rules. Conformity determinations are made by SAF/MIQ, see § 989.28.

(5) EAs where mitigation to insignificance is accomplished in lieu of initiating an EIS (§ 989.22(c)).

(h) A few examples of actions that normally require preparation of an EA (except as indicated in the CATEX list) include:

(1) Public land withdrawals of less than 5,000 acres.

(2) Minor mission realignments and aircraft beddowns.

(3) Building construction on base within developed areas.

(4) Minor modifications to Military Operating Areas (MOA), air-to-ground weapons ranges, and military training routes.

(5) Remediation of hazardous waste disposal sites.

(i) Abbreviated Environmental Assessment. In special circumstances, when the potential environmental impacts of a proposed action are clearly insignificant (as documented on AF Form 813) and none of the CATEXs in attachment 2 of this part apply, the EPF can use an abbreviated EA to assess the action. At a minimum, the abbreviated EA will consist of:

(1) AF Form 813 with attachments analyzing the environmental impacts of the proposed action and reasonable alternatives.

(2) A concise description of the affected environment.

(3) A concise FONSI (see § 989.15).

(j) The Air Force should involve environmental agencies, applicants, and the public in the preparation of EAs (40 CFR 1501.4(b)). The extent of involvement usually coincides with the magnitude and complexity of the proposed action and its potential environmental effect on the area. For proposed actions described in § 989.15(e)(2), use either the scoping process described in § 989.18 or the public notice process in § 989.23(b) and (c).

§ 989.15 Finding of no significant impact.

(a) The FONSI (40 CFR 1508.13) briefly describes why an action would not have a significant effect on the environment and thus will not be the subject of an EIS. The FONSI must summarize the EA or, preferably, have it attached and incorporated by reference, and must note any other environmental documents related to the action.

(b) If the EA is not attached, the FONSI must include:

(1) Name of the action.

(2) Brief description of the action (including alternatives considered and the chosen alternative).

(3) Brief discussion of anticipated environmental effects.

(4) Conclusions leading to the FONSI.

(5) All mitigation actions that will be adopted with implementation of the proposal (see § 989.22).

(c) Keep FONSIs as brief as possible. Most FONSIs should not exceed two typewritten pages. Stand-alone FONSIs without an attached EA may be longer.

(d) For actions of regional or local interest, disseminate the FONSI according to § 989.23. The MAJCOM and NGB are responsible for release of FONSIs to regional offices of Federal agencies, the state single point of contact (SPOC), and state agencies concurrent with local release by the installations.

[8] See footnote 1 to § 989.1.

(e) The EPF must provide the FONSI and complete EA to organizations and individuals requesting them and to whomever the proponent or the EPF has reason to believe is interested in the action. The EPF provides a copy of the documents without cost to organizations and individuals requesting them. The earliest of the FONSI transmittal date (date of letter of transmittal) to the SPOC or other interested party is the official notification date.

(1) The EPF must make the draft EA/FONSI available to the affected public unless disclosure is precluded for security classification reasons. Before the FONSI is signed and the action is implemented, the EPF should allow sufficient time to receive comments from the public. The time period will reflect the magnitude of the proposed action and its potential for controversy. The greater the magnitude of the proposed action or its potential for controversy, the longer the time that must be allowed for public review. Mandatory review periods for certain defined actions are contained in § 989.15(e)(2). These are not all inclusive but merely specific examples. In every case where an EA/FONSI is prepared, the proponent and EPF must determine how much time will be allowed for public review. In all cases, other than classified actions, a public review period should be the norm unless clearly unnecessary due to the lack of potential controversy.

(2) In the following circumstances, the EA and draft FONSI are made available for public review for at least 30 days before FONSI approval and implementing the action (40 CFR 1501.4(e)(2)):

(i) When the proposed action is, or is closely similar to, one that usually requires preparation of an EIS (see § 989.16).

(ii) If it is an unusual case, a new kind of action, or a precedent-setting case in terms of its potential environmental impacts.

(iii) If the proposed action would be located in a floodplain or wetland.

(iv) If the action is mitigated to insignificance in the FONSI, in lieu of an EIS (§ 989.22(c)).

(v) If the proposed action is a change to airspace use or designation.

(f) As a rule, the same organizational level that prepares the EA reviews and recommends the FONSI for approval by the EPC. MAJCOMs may decide the level of EA approval and FONSI signature, except as provided in § 989.14(g).

(g) Air Force staff must get permission to deviate from the procedures outlined in this part from SAF/MIQ in accordance with § 989.30.

§ 989.16 Environmental impact statement.

(a) Certain classes of environmental impacts require preparation of an EIS (40 CFR Part 1502). These include, but are not limited to:

(1) Potential for significant degradation of the environment.

(2) Potential for significant threat or hazard to public health or safety.

(3) Substantial environmental controversy concerning the significance or nature of the environmental impact of a proposed action.

(b) Certain other actions normally, but not always, require an EIS. These include, but are not limited to:

(1) Public land withdrawals of over 5,000 acres (Engle Act, 43 U.S.C. 155–158).

(2) Establishment of new air-to-ground weapons ranges.

(3) Site selection of new airfields.

(4) Site selection of major installations.

(5) Development of major new weapons systems (at decision points that involve demonstration, validation, production, deployment, and area or site selection for deployment).

(6) Establishing or expanding supersonic training areas over land below 30,000 feet MSL (mean sea level).

(7) Disposal and reuse of closing installations.

§ 989.17 Notice of intent.

The EPF must furnish to HQ USAF/CEV the NOI (40 CFR 1508.22) describing the proposed action for publication in the **Federal Register**. The EPF, through the host base public affairs office, will also provide the NOI to newspapers and other media in the area potentially affected by the proposed action. The EPF must provide copies of the notice to the proper state SPOC (E.O. 12372) and must also distribute it to requesting agencies, organizations, and individuals. Along with the draft NOI, the EPF must also forward the completed DOPAA to HQ USAF for review.

§ 989.18 Scoping.

After publication of the NOI for an EIS, the EPF must initiate the public scoping process (40 CFR 1501.7) to determine the scope of issues to be addressed and to help identify significant environmental issues to be analyzed in depth. Methods of scoping range from soliciting written comments to conducting public scoping meetings (see 40 CFR 1501.7 and 1506.6(e)). The purpose of this process is to de-emphasize insignificant issues and focus the scope of the environmental analysis on significant issues (40 CFR 1500.4(g)). The result of scoping is that the proponent and EPF determine the range of actions, alternatives, and impacts to be considered in the EIS (40 CFR 1508.25). The EPF must send meeting plans for scoping meetings to AF/CEV (or ANGRC/CEV) for SAF/MIQ concurrence no later than 30 days before the first scoping meeting. Scoping meeting plans are similar in content to public hearing plans (see attachment 3 of this part).

§ 989.19 Draft EIS.

(a) *Preliminary draft.* The EPF prepares a Preliminary draft EIS (PDEIS) (40 CFR 1502.9) based on the scope of issues decided on during the scoping process. The format of the EIS must be in accordance with the format recommended in the CEQ regulations (40 CFR 1502.10 and 1502.11). The CEQ regulations indicate that EISs are normally fewer than 150 pages (300 pages for proposals of unusual complexity). The EPF provides a sufficient number of copies of the PDEIS to HQ USAF/CEV for HQ USAF EPC review and to AFCEE/EC for technical review.

(b) *Review of draft EIS.* After the HQ USAF EPC review, the EPF makes any necessary revisions to the PDEIS and forwards it to HQ USAF/CEV as a draft EIS for security and policy review. Once the draft EIS is approved, HQ USAF/CEV notifies the EPF to print sufficient copies of the draft EIS for distribution to congressional delegations and interested agencies. After congressional distribution, the EPF sends the draft EIS to all others on the distribution list. HQ USAF/CEV then files the document with the Environmental Protection Agency (EPA) and provides a copy to the Deputy Under Secretary of Defense for Environmental Security.

(c) *Public review of draft EIS (40 CFR 1502.19).* (1) The public comment period for the draft EIS is at least 45 days from the publication date of the notice of availability (NOA) of the draft EIS in the **Federal Register**. EPA publishes in the **Federal Register**, each week, NOAs of EISs filed during the preceding week. This public comment period may be extended an additional 15 days, at the request of the EPF. If the draft EIS is unusually long, the EPF may distribute a summary to the public with an attached list of locations (such as public libraries) where the entire draft EIS may be reviewed. The EPF must distribute the full draft EIS to certain entities, for example agencies with jurisdiction by law or agencies with special expertise in evaluating the

environmental impacts, and anyone else requesting the entire draft EIS (40 CFR 1502.19).

(2) The EPF holds public hearings on the draft EIS according to the procedures in 40 CFR 1506.6(c) and (d). Hearings take place no sooner than 15 days after the **Federal Register** NOA and at least 15 days before the end of the comment period. Scheduling hearings toward the end of the comment period is encouraged to allow the public to obtain and more thoroughly review the draft EIS. The EPF must provide hearing plans to HQ USAF/CEV (or ANGRC/CEV) for SAF/MIQ concurrence no later than 30 days prior to the first public hearing. See attachment 3 of this part for public hearing procedures.

(d) *Response to comments (40 CFR 1503.4).* The EPF must incorporate its responses to comments in the final EIS by either modifying the text and referring in the appendix to where the appropriate modification is addressed or providing a written explanation in the comments section, or both. The EPF may group comments of a similar nature together to allow a common response and may also respond to individuals separately.

(e) *Seeking additional comments.* The EPF may, at any time during the EIS process, seek additional public comments, such as when there has been a significant change in circumstances, development of significant new information of a relevant nature, or where there is substantial environmental controversy concerning the proposed action. Significant new information leading to public controversy regarding the scope after the scoping process is such a changed circumstance. An additional public comment period may also be necessary after the publication of the draft EIS due to public controversy or changes made as the result of previous public comments. Such periods when additional public comments are sought shall last for at least 30 days.

§ 989.20 Final EIS.

(a) If changes in the draft EIS are minor or limited to factual corrections and responses to comments, the proponent may, with the prior approval of SAF/MIQ, prepare a document containing only draft EIS comments, Air Force responses, and errata sheets of changes staffed to the HQ USAF EPC for coordination. However, the proponent must submit the draft EIS and all of the above documents, with a new cover sheet indicating that it is a final EIS (40 CFR 1503.4(c)), to HQ USAF/CEV for filing with the EPA (40 CFR 1506.9). If more extensive modifications are required, the EPF must prepare a preliminary final EIS incorporating these modifications for coordination within the Air Force. Regardless of which procedure is followed, the final EIS must be processed in the same way as the draft EIS, except that the public need not be invited to comment during the 30-day post-filing waiting period. The final EIS should be furnished to every person, organization, or agency that made substantive comments on the draft EIS or requested a copy. Although the EPF is not required to respond to public comments received during this period, comments received must be considered in determining final decisions such as identifying the preferred alternative, appropriate mitigations, or if a supplemental analysis is required.

(b) The EPF processes all necessary supplements to EISs (40 CFR 1502.9) in the same way as the original draft and final EIS, except that a new scoping process is not required.

(c) If major steps to advance the proposal have not occurred within 5 years from the date of the FEIS approval, reevaluation of the documentation should be accomplished to ensure its continued validity.

§ 989.21 Record of decision.

(a) The MAJCOM prepares draft RODs, formally staffs them to HQ USAF/CEV for verification of adequacy, and forwards them to the final decision-maker for signature. A ROD (40 CFR 1505.2) is a concise public document stating what an agency's decision is on a specific action. The ROD may be integrated into any other document required to implement the agency's decision. A decision on a course of action may not be made until 30 days after publication of the NOA of the final EIS in the **Federal Register**. EPA publishes NOAs each Friday; when Friday is a holiday, the notice is published on Thursday.

(b) The Air Force must announce the ROD to the affected public as specified in § 989.23, except for classified portions. The ROD should be concise and should explain the conclusion, the reason for the selection, and the alternatives considered. The ROD must identify the course of action (proposed action or an alternative) that is considered environmentally preferable regardless of whether it is the alternative selected for implementation. The ROD should summarize all the major factors the agency weighed in making its decision, including essential considerations of national policy.

(c) The ROD must state whether the selected alternative employs all practicable means to avoid, minimize, or mitigate environmental impacts and, if not, explain why.

§ 989.22 Mitigation.

(a) When preparing EIAP documents, indicate clearly whether mitigation measures (40 CFR 1508.20) must be implemented for the alternative selected. Discuss mitigation measures in terms of ''will'' and ''would'' when such measures have already been incorporated into the proposal. Use terms like ''may'' and ''could'' when proposing or suggesting mitigation measures. Both the public and the Air Force community need to know what commitments are being considered and selected, and who will be responsible for implementing, funding, and monitoring the mitigation measures.

(b) The proponent funds and implements mitigation measures in the mitigation plan that are approved by the decision-maker. Where possible and appropriate because of amount, the proponent should include the cost of mitigation as a line item in the budget for a proposed project. The proponent must keep the EPF informed of the status of mitigation measures when the proponent implements the action. The EPF monitors the progress of mitigation implementation and reports its status to HQ USAF/CEV on a periodic basis. Upon request, the EPF must also provide the results of relevant mitigation monitoring to the public.

(c) The proponent may ''mitigate to insignificance'' potentially significant environmental impacts found during preparation of an EA, in lieu of preparing an EIS. The FONSI for the EA must include these mitigation measures. Such mitigations are legally binding and must be carried out as the proponent implements the project. If, for any reason, the project proponent later abandons or revises in environmentally-adverse ways the mitigation commitments made in the FONSI, the proponent must prepare a supplemental EIAP document before continuing the project. If potentially significant environmental impacts would result from any project revisions, the proponent must prepare an EIS.

(d) For each FONSI or ROD containing mitigation measures, the proponent publishes a plan specifically identifying each mitigation, discussing how the proponent will execute the mitigations, identifying who will fund and implement the mitigations, and stating when the proponent will complete the mitigation. The mitigation plan will be forwarded to HQ USAF/CEV for review within 90 days from the date of signature of the FONSI or ROD.

§ 989.23 Public notification.

Except as provided in § 989.25, public notification is required for various aspects of the EIAP.

(a) Activities that require public notification include:

(1) The FONSI for an EA.

(2) An EIS NOI.

(3) Public scoping meetings.

(4) Availability of the draft EIS.

(5) Public hearings on the draft EIS (which should be included in the NOA for the draft EIS).

(6) Availability of the final EIS.

(7) The ROD for an EIS.

(b) For actions of local concern, the list of possible notification methods in 40 CFR 1506.6(b)(3) is only illustrative. The EPF may use other equally effective means of notification as a substitute for any of the methods listed. Because many Air Force actions are of limited interest to persons or organizations outside the Air Force, the EPF may limit local notification to the SPOC, local government representatives, and local news media. For all FONSI or EIS notices, if the news media fail to carry the story and, in the case of a FONSI, if the action requires that, after public notice of the FONSI, 30 days must pass before a decision or any action is permissible (see § 989.15(e)(2)), the public affairs officer must purchase an advertisement in the local newspaper(s) of general circulation (not ''legal'' newspapers or ''legal section'' of general newspapers).

(c) For the purpose of EIAP, the EPF begins the time period of local notification when it sends written notification to the state SPOC or other organization (date of letter of notification) or when the local media carries the story (date of story), whichever occurs first. Operations and maintenance funds pay for the advertisements.

§ 989.24 Base closure and realignment.

Base closure or realignment may entail special requirements for environmental analysis. The permanent base closure and realignment law, 10 U.S.C. 2687, requires a report to the Congress when an installation where at least 300 DoD civilian personnel are authorized to be employed is closed, or when a realignment reduces such an installation by at least 50 percent or 1,000 of such personnel, whichever is less. In addition, other base closure laws may be in effect during particular periods. Such non-permanent closure laws frequently contain provisions limiting the extent of environmental analysis required for actions taken under them. Such provisions may also add requirements for studies not necessarily required by NEPA. When dealing with base closure or realignment EIAP documents, MAJCOMs and HQ USAF offices should obtain legal advice on special congressional requirements. Consult with HQ USAF/XOO, the HQ USAF focal point for the realignment process, decision documents, and congressional requirements.

§ 989.25 Classified actions (40 CFR 1507.3(c)).

(a) Classification of an action for national defense or foreign policy purposes does not relieve the requirement of complying with NEPA. In classified matters, the Air Force must prepare and make available normal NEPA environmental analysis documents to aid in the decision making process; however, Air Force staff must prepare, safeguard and disseminate these documents according to established procedures for protecting classified documents. If an EIAP document must be classified, the Air Force may modify or eliminate associated requirements for public notice (including publication in the **Federal Register**) or public involvement in the EIAP. However, the Air Force should obtain comments on classified proposed actions or classified aspects of generally unclassified actions, from public agencies having jurisdiction by law or special expertise, to the extent that such review and comment is consistent with security requirements. Where feasible, the EPF may need to help appropriate personnel from those agencies obtain necessary security clearances to gain access to documents so they can comment on scoping or review the documents.

(b) Where the proposed action is classified and unavailable to the public, the Air Force may keep the entire NEPA process classified and protected under the applicable procedures for the classification level pertinent to the particular information. At times (for example, during weapons system development and base closures and realignments), certain but not all aspects of NEPA documents may later be declassified. In those cases, the EPF should organize the EIAP documents, to the extent practicable, in a way that keeps the most sensitive classified information (which is not expected to be released at any early date) in a separate annex that can remain classified; the rest of the EIAP documents, when declassified, will then be comprehensible as a unit and suitable for release to the public. Thus, the documents will reflect, as much as possible, the nature of the action and its environmental impacts, as well as Air Force compliance with NEPA requirements.

(c) Where the proposed action is not classified, but certain aspects of it need to be protected by security classification, the EPF should tailor the EIAP for a proposed action to permit as normal a level of public involvement as possible, but also fully protect the classified part of the action and environmental analysis. In some instances, the EPF can do this by keeping the classified sections of the EIAP documents in a separate, classified annex.

(d) For § 989.25(b) actions, an NOI or NOA will not be published in the **Federal Register** until the proposed action is declassified. For § 989.25(c) actions, the **Federal Register** will run an unclassified NOA which will advise the public that at some time in the future the Air Force may or will publicly release a declassified document.

(e) The EPF similarly protects classified aspects of FONSIs, RODs, or other environmental documents that are part of the EIAP for a proposed action, such as by preparing separate classified annexes to unclassified documents, as necessary.

(f) Whenever a proponent believes that EIAP documents should be kept classified, the EPF must make a report of the matter to SAF/MIQ, including proposed modifications of the normal EIAP to protect classified information. The EPF may make such submissions at whatever level of security classification is needed to provide a comprehensive understanding of the issues. SAF/MIQ, with support from SAF/GC and other staff elements as necessary, makes final decisions on EIAP procedures for classified actions.

§ 989.26 Occupational safety and health.

Assess direct and indirect impacts of proposed actions on the safety and health of Air Force employees and others at a work site. Normally, compliance with Occupational Safety and Health Administration (OSHA) standards will mitigate hazards. The EIAP document does not need to specify such compliance procedures. However, the EIAP documents should discuss impacts that require a change in work practices to achieve an adequate level of health and safety.

§ 989.27 Airspace proposals.

The DoD and the Federal Aviation Administration (FAA) have entered into a Memorandum of Understanding (MOU) that outlines various airspace responsibilities. For purposes of compliance with NEPA, the DoD is the ''lead agency'' for all proposals initiated

by DoD, with the FAA acting as the ''cooperating agency.'' Where airspace proposals initiated by the FAA affect military use, the roles are reversed. The proponent's action officers (civil engineering and local airspace management) must ensure that the FAA is fully integrated into the airspace proposal and related EIAP from the very beginning and that the action officers review the FAA's responsibilities as a cooperating agency. The proponent's airspace manager develops the preliminary airspace proposal per appropriate FAA handbooks and the FAA-DoD MOU. The preliminary airspace proposal is the basis for initial dialogue between DoD and the FAA on the proposed action. A close working relationship between DoD and the FAA, through the FAA regional Air Force representative, greatly facilitates the airspace proposal process and helps resolve many NEPA issues during the EIAP.

§ 989.28 Air quality.

Section 176(c) of the Clean Air Act Amendments of 1990, 42 U.S.C. 7506(c), establishes a conformity requirement for Federal agencies which has been implemented by regulation, 40 CFR Part 93, Subpart B. All EIAP documents must address applicable conformity requirements and the status of compliance. Conformity applicability analyses and determinations are separate and distinct requirements and should be documented separately. To increase the utility of a conformity determination in performing the EIAP, the conformity determination should be completed prior to the completion of the EIAP so as to allow incorporation of the information from the conformity determination into the EIAP.

§ 989.29 Pollution prevention.

The Pollution Prevention Act of 1990, 42 U.S.C. 13101(b), established a national policy to prevent or reduce pollution at the source, whenever feasible. Pollution prevention approaches should be applied to all pollution-generating activities. The environmental document should analyze potential pollution that may result from the proposed action and alternatives and must incorporate pollution prevention measures whenever feasible. Where pollution cannot be prevented, the environmental analysis and proposed mitigation measures should include, wherever possible, recycling, energy recovery, treatment, and environmentally safe disposal actions (see AFI 32–7080, Pollution Prevention Program [9]).

§ 989.30 Special and emergency procedures.

(a) *Special procedures.* During the EIAP, unique situations may arise that require EIAP strategies different than those set forth in this part. These situations may warrant modification of the procedures in this part. EPFs should only consider procedural deviations when the resulting process would benefit the Air Force and still comply with NEPA and CEQ regulations. EPFs must forward all requests for procedural deviations to HQ USAF/CEV (or ANGRC/CEV) for review and approval by SAF/MIQ.

(b) *Emergency procedures (40 CFR 1506.11).* Certain emergency situations may make it necessary to take immediate action having significant environmental impact, without observing all the provisions of the CEQ regulations or this part. If possible, promptly notify HQ USAF/CEV, for SAF/MIQ coordination and CEQ consultation, before undertaking emergency actions that would otherwise not comply with NEPA or this part. The immediate notification requirement does not apply where emergency action must be taken without delay. Coordination in this instance must take place as soon as practicable.

§ 989.31 Reporting requirements.

(a) EAs, EISs, and mitigation measures will be tracked through the Work Information Management System-Environmental Subsystem (WIMS–ES), as required by AFI 32–7002, Environmental Information Management System.[10] ANGRC/CE will provide EIAP updates to HQ USAF/CEV through the WIMS–ES.

(b) All documentation will be disposed of according to AFMAN 37–139, Records Disposition—Standards (formerly AFR 4–20, Volume 2 [11]).

§ 989.32 Procedures for analysis abroad.

Procedures for analysis of environmental actions abroad are contained in 32 CFR Part 187. That directive provides comprehensive policies, definitions, and procedures for implementing E.O. 12114, Environmental Effects Abroad of Major Federal Actions. For analysis of Air Force actions abroad, 32 CFR Part 187 will be followed. Also, refer to *Environmental Defense Fund* v. *Massey*, 986 F. 2d 528.

[9] See footnote 1 to § 989.1.

[10] See footnote 1 to § 989.1.

[11] See footnote 1 to § 989.1.

§ 989.33 Requirements for analysis abroad.

The EPF will generally perform the same functions for analysis of actions abroad that it performs in the United States. In addition to the requirements of 32 CFR Part 187, the following Air Force specific rules apply:

(a) For EAs dealing with global commons, HQ USAF/CEV will review actions that are above the MAJCOM approval authority. In this instance, approval authority refers to the same approval authority that would apply to an EA in the United States. The EPF documents a decision not to do an EIS.

(b) For EISs dealing with the global commons, the EPF provides sufficient copies to HQ USAF/CEV for the HQ USAF EPC review and AFCEE/EC technical review. After EPC review, the EPF makes a recommendation as to whether the proposed draft EIS will be released as a draft EIS.

(c) For environmental studies and environmental reviews, forward all environmental studies and reviews to HQ USAF/CEV for coordination among appropriate Federal agencies. HQ USAF/CEV makes environmental studies and reviews available to the Department of State and other interested Federal agencies, and, on request, to the United States public, in accordance with 32 CFR Part 187. HQ USAF/CEV also may inform interested foreign governments or furnish copies of studies, in accordance with 32 CFR Part 187.

Attachment 1 to Part 989—Glossary of References, Abbreviations, Acronyms, and Terms

References

Legislative

10 U.S.C. 2687, *Base closures and realignments*

42 U.S.C. 4321–4347, *National Environmental Policy Act of 1969*

42 U.S.C. 7506(c), *Clean Air Act Amendments of 1990*

42 U.S.C. 13101(b), *Pollution Prevention Act of 1990*

43 U.S.C. 155–158, *Engle Act*

Executive Orders

Executive Order 11988, *Floodplain Management*, May 24, 1977 (3 CFR, 1977 Comp., p. 117)

Executive Order 11990, *Protection of Wetlands*, May 24, 1977 (3 CFR, 1977 Comp., p. 121)

Executive Order 12114, *Environmental Effects Abroad of Major Federal Actions*, January 4, 1979 (3 CFR, 1979 Comp., p. 356)

Executive Order 12372, *Intergovernmental Review of Federal Programs*, July 14, 1982 (3 CFR, 1982 Comp., p. 197)

US Government Agency Publications

Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National

Environmental Policy Act, 40 CFR Parts 1500–1508
DoD Instruction 5000.2, *Defense Acquisition Management Policies and Procedures*, February 23, 1991, with Change 1, and Air Force Supplement 1, Acquisition Management Policies, 31 August 1993, with Change 1
DoD Manual 5000.2–M, *Defense Acquisition Management Documentation and Reports*, February 1991
DoD Directive 6050.1, *Environmental Effects in the United States of DoD Actions*, July 30, 1979 (32 CFR Part 188)
DoD Directive 6050.7, *Environmental Effects Abroad of Major Department of Defense Actions*, March 31, 1979 (32 CFR Part 187)
Air Force Publications
AFPD 32–70, *Environmental Quality*
AFI 32–1021, *Planning and Programming of Facility Construction Projects*
AFI 32–7002, *Environmental Information Management System*
AFI 32–7062, *Air Force Comprehensive Planning*
AFI 32–7064, *Integrated Resources Management*
AFI 32–7080, *Pollution Prevention Program*
AFI 35–202, *Environmental Community Involvement*
AFMAN 37–139, *Records Disposition—Standards*
Abbreviations and Acronyms
Abbreviation or acronym Definition
AFCEE Air Force Center for Environmental Excellence
AFCEE/EC Air Force Center for Environmental Excellence/Environmental Conservation and Planning Directorate
AFI Air Force Instruction
AFLSA/JACE Air Force Legal Services Agency/Environmental Law and Litigation Division
AFLSA/JAJT Air Force Legal Services Agency/Trial Judiciary Division
AFMAN Air Force Manual
AFMOA/SG Air Force Medical Operations Agency/Aerospace Medicine Office
AFPD Air Force Policy Directive
AFRES Air Force Reserve
ANG Air National Guard
ANGRC Air National Guard Readiness Center
CATEX Categorical Exclusion
CEQ Council on Environmental Quality
CFR Code of Federal Regulations
DAB Defense Acquisition Board
DoD Department of Defense
DoDD Department of Defense Directive
DoDM Department of Defense Manual
DOPAA Description of Proposed Action and Alternatives
EA Environmental Assessment
EIAP Environmental Impact Analysis Process
EIS Environmental Impact Statement
E.O. Executive Order
EPA Environmental Protection Agency
EPC Environmental Protection Committee
EPF Environmental Planning Function
FAA Federal Aviation Administration
FEIS Final Environmental Impact Statement
FOA Field Operating Agency
FONPA Finding of No Practicable Alternative
FONSI Finding of No Significant Impact
GSA General Services Administration
HQ AFMC Headquarters, Air Force Materiel Command
HQ USAF Headquarters, United States Air Force
HQ USAF/CE The Air Force Civil Engineer
MAJCOM Major Command
MOA Military Operating Area
MOU Memorandum of Understanding
MSL Mean Sea Level
NEPA National Environmental Policy Act of 1969
NGB–CF National Guard Bureau Air Directorate
NGB–JA National Guard Bureau Office of the Staff Judge Advocate
NGB–PA National Guard Bureau Office of Public Affairs
NOA Notice of Availability
NOI Notice of Intent
OSD Office of the Secretary of Defense
OSHA Occupational Safety and Health Administration
PDEIS Preliminary Draft Environmental Impact Statement
RCO Air Force Regional Compliance Office
ROD Record of Decision
SAF/GC Air Force General Counsel
SAF/LL Air Force Office of Legislative Liaison
SAF/MI Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations, and Environment
SAF/MIQ Deputy Assistant Secretary of the Air Force (Environment, Safety, and Occupational Health)
SAF/PA Air Force Office of Public Affairs
SJA Staff Judge Advocate
SPOC Single Point of Contact
TDY Temporary Duty
U.S.C. United States Code
WIMS–ES Work Information Management System-Environmental Subsystem
Terms

Note: All terms listed in the CEQ Regulations, 40 CFR Part 1508, apply to this part. In addition, the following terms apply:

Description of Proposed Action and Alternatives (DOPAA)—An Air Force document that is the framework for assessing the environmental impact of a proposal. It describes the purpose and need for the action, the alternatives to be considered, and the rationale used to arrive at the proposed action.

Environmental Impact Analysis Process (EIAP)—The Air Force program that implements the requirements of NEPA and requirements for analysis of environmental effects abroad under E.O. 12114.

Finding of No Practicable Alternative (FONPA)—Documentation according to Executive Orders 11988 and 11990 that explains why there are no practicable alternatives to an action affecting a wetland or floodplain, based on appropriate EIAP analysis or other documentation.

Interdisciplinary—An approach to environmental analysis involving more than one discipline or branch of learning.

National Environmental Policy Act of 1969 (NEPA)—The basic national charter to protect the environment that requires all Federal agencies to consider environmental impacts when making decisions regarding proposed actions.

Pollution Prevention—''Source reduction'', as defined under the Pollution Prevention Act, and other practices that reduce or eliminate pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or in the protection of natural resources by conservation.

Proponent—Any office, unit, or activity that proposes to initiate an action.

Scoping—A public process for proposing alternatives to be addressed and for identifying the significant issues related to a proposed action.

United States—All states, commonwealths, the District of Columbia, territories and possessions of the United States, and all waters and airspace subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Virgin Islands, American Samoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, and Kingman Reef.

Attachment 2 to Part 989—Categorical Exclusions

A2.1. Proponent/EPF Responsibility. Although a proposed action may qualify for a categorical exclusion from the requirements for environmental impact analysis under NEPA, this exclusion does not relieve the EPF or the proponent of responsibility for complying with all other environmental requirements related to the proposal, including requirements for permits, state regulatory agency review of plans, and so on.

A2.2. Additional Analysis. Circumstances may arise in which usually categorically excluded actions may have a significant environmental impact and, therefore, may generate a requirement for further environmental analysis. Examples of situations where such unique circumstances may be present include:

A.2.2.1. Actions of greater scope or size than generally experienced for a particular category of action.

A2.2.2. Potential for degradation (even though slight) of already marginal or poor environmental conditions.

A2.2.3. Initiating a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

A2.2.4. Use of unproven technology.

A2.2.5. Use of hazardous or toxic substances that may come in contact with the surrounding environment.

A2.2.6. Presence of threatened or endangered species, archaeological remains, historical sites, or other protected resources.

A2.2.7. Proposals adversely affecting areas of critical environmental concern, such as prime or unique agricultural lands, wetlands, coastal zones, wilderness areas, floodplains, or wild and scenic river areas.

A2.3. CATEX List. Actions that are categorically excluded in the absence of unique circumstances are:

A2.3.1. Routine procurement of goods and services.

A2.3.2. Routine Commissary and Exchange operations.

A2.3.3. Routine recreational and welfare activities.

A2.3.4. Normal personnel, fiscal or budgeting, and administrative activities and

decisions including those involving military and civilian personnel (for example, recruiting, processing, paying, and records keeping).

A2.3.5. Preparing, revising, or adopting regulations, instructions, directives, or guidance documents that do not, themselves, result in an action being taken.

A2.3.6. Preparing, revising, or adopting regulations, instructions, directives, or guidance documents that implement (without substantial change) the regulations, instructions, directives, or guidance documents from higher headquarters or other Federal agencies with superior subject matter jurisdiction.

A2.3.7. Continuation or resumption of pre-existing actions, where there is no substantial change in existing conditions or existing land uses and where the actions were originally evaluated in accordance with applicable law and regulations, and surrounding circumstances have not changed.

A2.3.8. Performing interior and exterior construction within the 5-foot line of a building without changing the land use of the existing building.

A2.3.9. Repairing and replacing real property installed equipment.

A2.3.10. Routine facility maintenance and repair that does not involve disturbing significant quantities of hazardous materials such as asbestos.

A2.3.11. Actions similar to other actions which have been determined to have an insignificant impact in a similar setting as established in an EIS or an EA resulting in a FONSI. The EPF must document application of this CATEX on AF Form 813, specifically identifying the previous Air Force approved environmental document which provides the basis for this determination.

A2.3.12. Installing, operating, modifying, and routinely repairing and replacing utility and communications systems, data processing cable, and similar electronic equipment that use existing rights of way, easements, distribution systems, or facilities.

A2.3.13. Installing or modifying airfield operational equipment (such as runway visual range equipment, visual glide path systems, and remote transmitter or receiver facilities) on airfield property and usually accessible only to maintenance personnel.

A2.3.14. Installing on previously developed land, equipment that does not substantially alter land use (i.e., land use of more than one acre). This includes outgrants to private lessees for similar construction. The EPF must document application of this CATEX on AF Form 813.

A2.3.15. Laying-away or mothballing a production facility or adopting a reduced maintenance level at a closing installation when (1) agreement on any required historic preservation effort has been reached with the state historic preservation officer and the Advisory Council on Historic Preservation, and (2) no degradation in the environmental restoration program will occur.

A2.3.16. Acquiring land and ingrants (50 acres or less) for activities otherwise subject to CATEX. The EPF must document application of this CATEX on AF Form 813.

A2.3.17. Transferring land, facilities, and personal property for which the General Services Administration (GSA) is the action agency. Such transfers are excluded only if there is no change in land use and GSA complies with its NEPA requirements.

A2.3.18. Transferring administrative control of real property within the Air Force or to another military department or to another Federal agency, including returning public domain lands to the Department of the Interior.

A2.3.19. Granting easements, leases, licenses, rights of entry, and permits to use Air Force controlled property for activities that, if conducted by the Air Force, could be categorically excluded in accordance with this attachment. The EPF must document application of this CATEX on AF Form 813.

A2.3.20. Converting in-house services to contract services.

A2.3.21. Routine personnel decreases and increases, including work force conversion to either on-base contractor operation or to military operation from contractor operation (excluding base closure and realignment actions which are subject to congressional reporting under 10 U.S.C. § 2687).

A2.3.22. Routine, temporary movement of personnel, including deployments of personnel on a temporary duty (TDY) basis where existing facilities are used.

A2.3.23. Personnel reductions resulting from workload adjustments, reduced personnel funding levels, skill imbalances, or other similar causes.

A2.3.24. Study efforts that involve no commitment of resources other than personnel and funding allocations.

A2.3.25. The analysis and assessment of the natural environment without altering it (inspections, audits, surveys, investigations). This CATEX includes the granting of any permits necessary for such surveys, provided that the technology or procedure involved is well understood and there are no adverse environmental impacts anticipated from it. The EPF must document application of this CATEX on AF Form 813.

A2.3.26. Undertaking specific investigatory activities to support remedial action activities for purposes of cleanup of hazardous spillage or waste sites or contaminated groundwater or soil. These activities include soil borings and sampling, installation, and operation of test or monitoring wells. This CATEX applies to studies that assist in determining final cleanup actions when they are conducted in accordance with interagency agreements, administrative orders, or work plans previously agreed to by EPA or state regulators. *Note:* This CATEX does not apply to the selection of the remedial action.

A2.3.27. Normal or routine basic and applied scientific research confined to the laboratory and in compliance with all applicable safety, environmental, and natural resource conservation laws.

A2.3.28. Routine transporting of hazardous materials and wastes in accordance with applicable Federal, state, interstate, and local laws.

A2.3.29. Emergency handling and transporting of small quantities of chemical surety material or suspected chemical surety material, whether or not classified as hazardous or toxic waste, from a discovery site to a permitted storage, treatment, or disposal facility.

A2.3.30. Immediate responses to the release or discharge of oil or hazardous materials in accordance with an approved Spill Prevention and Response Plan or Spill Contingency Plan or that are otherwise consistent with the requirements of the National Contingency Plan. Long-term cleanup and remediation activities should be evaluated separately.

A2.3.31. Relocating a small number of aircraft to an installation with similar aircraft that does not result in a significant increase of total flying hours or the total number of aircraft operations, a change in flight tracks, or an increase in permanent personnel or logistics support requirements at the receiving installation.

A2.3.32. Temporary (for less than 30 days) increases in air operations up to 50 percent of the typical installation aircraft operation rate or increases of 50 operations a day, whichever is greater.

A2.3.33. Flying activities that comply with the Federal aviation regulations, that are dispersed over a wide area and that do not frequently (more than once a day) pass near the same ground points. This CATEX does not cover regular activity on established routes or within special use airspace.

A2.3.34. Supersonic flying operations over land and above 30,000 feet MSL, or over water and above 10,000 feet MSL and more than 15 nautical miles from land.

A2.3.35. Formal requests to the FAA, or host-nation equivalent agency, to establish or modify special use airspace (for example, restricted areas, warning areas, military operating areas) and military training routes for subsonic operations that have a base altitude of 3,000 feet above ground level or higher. The EPF must document application of this CATEX on AF Form 813, which must accompany the request to the FAA.

A2.3.36. Adopting airfield approach, departure, and en route procedures that do not route air traffic over noise-sensitive areas, including residential neighborhoods or cultural, historical, and outdoor recreational areas. The EPF may categorically exclude such air traffic patterns at or greater than 3,000 feet above ground level regardless of underlying land use.

A2.3.37. Participating in ''air shows'' and fly-overs by Air Force aircraft at non-Air Force public events after obtaining FAA coordination and approval.

A2.3.38. Conducting Air Force ''open houses'' and similar events, including air shows, golf tournaments, home shows, and the like, where crowds gather at an Air Force installation, so long as crowd and traffic control, etc., have not in the past presented significant safety or environmental impacts.

Attachment 3 to Part 989—Procedures for Holding Public Hearings on Draft Environmental Impact Statements (EIS)

A.3.1. General Information:

A.3.1.1. The Air Force solicits the views of the public and special interest groups and, in appropriate cases, holds public hearings on the draft EIS.

A3.1.2. The Office of the Judge Advocate General, through the Air Force Legal Services

Agency/Trial Judiciary Division (AFLSA/JAJT) and its field organization, is responsible for conducting public hearings.

A3.1.3. The proponent EPF establishes the date and location, arranges for hiring the court reporter, funds temporary duty costs for the hearing officer, makes logistical arrangements (for example, publishing notices, arranging for press coverage, obtaining tables and chairs, etc.), and forwards the transcripts of the hearings to AFLSA/JAJT.

A3.2. Notice of Hearing (40 CFR 1506.6):

A3.2.1. Public Affairs officers:

A3.2.1.1. Announce public hearings and assemble a mailing list of individuals to be invited.

A3.2.1.2. Distribute announcements of a hearing to all interested individuals and agencies, including the print and electronic media.

A3.2.1.3. Under certain circumstances, purchase an advertisement announcing the time and place of the hearing as well as other pertinent particulars.

A3.2.1.4. Distribute the notice in a timely manner so it will reach recipients or be published at least 15 days before the hearing date. Distribute notices fewer than 15 days before the hearing date when you have substantial justification and if the justification for a shortened notice period appears in the notice.

A3.2.2. If an action has effects of national concern, publish notices in the **Federal Register** and mail notices to national organizations that have an interest in the matter.

A3.2.2.1. Because of the longer lead time required by the **Federal Register**, send out notices for publication in the **Federal Register** to arrive at HQ USAF/CEV no later than 30 days before the hearing date.

A3.2.3. The notice should include:

A3.2.3.1. Date, time, place, and subject of the hearing.

A3.2.3.2. A description of the general format of the hearing.

A3.2.3.3. The name and telephone number of a person to contact for more information.

A3.2.3.4. The request that speakers submit (in writing or by return call) their intention to participate, with an indication of which environmental impact (or impacts) they wish to address.

A3.2.3.5. Any limitation on the length of oral statements.

A3.2.3.6. A suggestion that speakers submit statements of considerable length in writing.

A3.2.3.7. A summary of the proposed action.

A3.2.3.8. The offices or location where the Draft EIS and any appendices are available for examination.

A.3.3. Availability of the Draft EIS to the Public. The EPF makes copies of the Draft EIS available to the public at an Air Force installation or other suitable place in the vicinity of the proposed action and public hearing.

A3.4. Place of the Hearing. The EPF arranges to hold the hearing at a time and place and in an area readily accessible to military and civilian organizations and individuals interested in the proposed action. Generally, the EPF should arrange to hold the hearing in an off-base civilian facility, which is more accessible to the public.

A3.5. Hearing Officer:

A3.5.1. The AFLSA/JAJT selects a judge advocate, who is a military judge with experience in conducting public meetings, to preside over hearings. The hearing officer does not need to have personal knowledge of the project, other than familiarity with the Draft EIS. In no event should the hearing officer be the Staff Judge Advocate of the proponent command, have participated personally in the development of the project, or have rendered legal advice or assistance with respect to it (or be expected to do so in the future). The principal qualification of the hearing officer should be the ability to conduct a hearing as an impartial participant.

A3.5.2. The primary duties of the hearing officer are to make sure that the hearing is orderly, is recorded, and that interested parties have a reasonable opportunity to speak. The presiding officer should direct the speakers' attention to the purpose of the hearing, which is to consider the environmental impacts of the proposed project. Each speaker should have a time limit to provide maximum public input to the decision-maker.

A3.6. Record of the Hearing. The hearing officer must make sure a verbatim transcribed record of the hearing is prepared, including all stated positions, all questions, and all responses. The hearing officer should append all written submissions that parties provide to the hearing officer during the hearing to the record as attachments. The hearing officer should also append a list of persons who spoke at the hearing and submitted written comments and a list of the organizations or interests they represent with addresses. The hearing officer must make sure a verbatim transcript of the hearing is provided to the EPF for inclusion as an appendix to the Final EIS. The officer should also ensure that all persons who request a copy of the transcript get a copy when it is completed. Copying charges are determined according to 40 CFR 1506.6(f).

A3.7. Hearing Format. Use the format outlined below as a general guideline for conducting a hearing. Hearing officers should tailor the format to meet the hearing objectives. These objectives provide information to the public, record opinions of interested persons on environmental impacts of the proposed action, and set out alternatives for improving the EIS and for later consideration.

A3.7.1. Organizing Speakers by Subject. If time and circumstances permit, the hearing officer should group speakers by subject matter. For example, all persons wishing to address water quality issues should make their presentations one after the other so the EIS preparation team can review the transcript and make summaries from it more easily.

A3.7.2. Record of Attendees. The hearing officer should make a list of all persons who wish to speak at the hearing to help the hearing officer in calling on these individuals, to ensure an accurate transcript of the hearing, and to enable the officer to send a copy of the Final EIS (40 CFR § 1502.19) to any person, organization, or agency that provided substantive comments at the hearing. The hearing officer should assign assistants to the entrance of the hearing room to provide cards on which individuals can voluntarily write their names, addresses, telephone numbers, organizations they represent, and titles; whether they desire to make a statement at the hearing; and what environmental area(s) they wish to address. The hearing officer can then use the cards to call on individuals who desire to make statements. However, the hearing officer will not deny entry to the hearing or the right to speak to people who decline to submit this information on cards.

A3.7.3. Introductory Remarks. The hearing officer should first introduce himself or herself and the EIS preparation team. Then the hearing officer should make a brief statement on the purpose of the hearing and give the general ground rules on how it will be conducted. This is the proper time to welcome any dignitaries who are present. The hearing officer should explain that he or she does not make any recommendation or decision on whether the proposed project should be continued, modified, or abandoned or how the EIS should be prepared.

A3.7.4. Explanation of the Proposed Action. The Air Force EIS preparation team representative should next explain the proposed action, the alternatives, the potential environmental consequences, and the EIAP.

A3.7.5. Questions by Attendees. After the EIS team representative explains the proposed action, alternatives, and consequences, the hearing officer should give attendees a chance to ask questions to clarify points they may not have understood. The hearing officer may have to reply in writing, at a later date, to some of the questions. While the Air Force EIS preparation team should be as responsive as possible in answering questions about the proposal, they should not become involved in debate with questioners over the merits of the proposed action. Cross-examination of speakers, either those of the Air Force or the public, is not the purpose of an informal hearing. If necessary, the hearing officer may limit questioning or conduct portions of the hearing to ensure proper lines of inquiry. However, the hearing officer should include all questions in the hearing record.

A3.7.6. Statement of Attendees. The hearing officer must give the persons attending the hearing a chance to present oral or written statements. The hearing officer should be sure the recorder has the name and address of each person who submits an oral or written statement. The officer should also permit the attendees to submit written statements within a reasonable time, usually two weeks, following the hearing. The officer should allot a reasonable length of time at the hearing for receiving oral statements. The officer may waive any announced time limit at his or her discretion. The hearing officer may allow those who have not previously indicated a desire to speak to identify themselves and be recognized only after those who have previously indicated their intentions to speak have spoken.

A3.7.7. Ending or Extending a Hearing. The hearing officer has the power to end the

hearing if the hearing becomes disorderly, if the speakers become repetitive, or for other good cause. In any such case, the hearing officer must make a statement for the record on the reasons for terminating the hearing. The hearing officer may also extend the hearing beyond the originally announced date and time. The officer should announce the extension to a later date or time during the hearing and prior to the hearing if possible.

A3.8. Adjourning the Hearing. After all persons have had a chance to speak, when the hearing has culled a representative view of public opinion, or when the time set for the hearing and any reasonable extension of time has ended, the hearing officer adjourns the hearing. In certain circumstances (for example, if the hearing officer believes it is likely that some participants will introduce new and relevant information), the hearing officer may justify scheduling an additional, separate hearing session. If the hearing officer makes the decision to hold another hearing while presiding over the original hearing he or she should announce that another public hearing will be scheduled or is under consideration. The officer gives notice of a decision to continue these hearings in essentially the same way he or she announced the original hearing, time permitting. The Public Affairs officer provides the required public notices and directs notices to interested parties in coordination with the hearing officer. Because of lead time constraints, SAF/MIQ may waive **Federal Register** notice requirements or advertisements in local publications. At the conclusion of the hearing, the hearing officer should inform the attendees of the deadline (usually 2 weeks) to submit additional written remarks in the hearing record. The officer should also notify attendees of the deadline for the commenting period of the Draft EIS.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–1607 Filed 1–23–95; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–94–029]

RIN 2115–AE47

Drawbridge Operation Regulations; Superior Oil Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulation governing the operation of the swing span bridge on State Route 82, across Superior Oil Canal, mile 6.3, between Grand Chenier and Pecan Island, Cameron Parish, Louisiana, by permitting the draw to remain closed to navigation unless 8 hours, notice is given for an opening of the draw. Presently, the draw is required to open on signal from 6 a.m. to 6 p.m. and from 6 p.m. to 6 a.m. the bridge opens on 4 hours, notice. This action will provide relief to the bridge owner, thereby creating a savings to the taxpayer, and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on February 23, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Commander (ob), Eighth Coast Guard District, 501 Magazine Street, Room 1313, New Orleans, Louisiana 70130–3396, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–6951.

FOR FURTHER INFORMATION CONTACT: John Wachter, Bridge Administration Manager, (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT Elisa Holland, project attorney.

Regulatory History

On October 4, 1994, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulation; Superior Oil Canal, LA, in the **Federal Register** (59 FR 50530). The Coast Guard received three letters commenting on the proposal. No public hearing was requested, and none was held.

Background and Purpose

LDOTD requested the 8 hours, notice for an opening of the draw versus on-signal opening between 6 a.m. and 6 p.m. and 4 hours, notice from 6 p.m. to 6 a.m. because of a decline in vessel traffic that passes the Superior Oil Canal bridge. This rule will eliminate the requirement of having a person on duty from 6 a.m. to 6 p.m. at the bridge site, creating a savings to the taxpayer while still serving the reasonable needs of navigational interests.

Discussion of Comments and Changes

Three letters of comment were received in response to Public Notice CGD08–94–029 issued on October 14, 1994. The Federal Emergency Management Agency, the National Marine Fisheries Service and the Louisiana Department of Wildlife & Fisheries offered no objection to the rule change. Therefore, the Final Rule remains unchanged from the Proposed Rule.

Assessment

This regulation is not a significant regulatory action under Section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under Section 6a(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).

Small Entities

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is the number of vessels which pass the bridge, (1.9 per 24 hour period). The three comments received offered no objection to the proposed rule. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.495 is revised to read as follows:

§ 117.495 Superior Oil Canal.

The draw of the S82 bridge, mile 6.3, in Cameron Parish shall open on signal if at least 8 hours notice is given. Public vessels of the United States and vessels in distress shall be passed as soon as possible.

Dated: January 4, 1995.

R.C. North,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 95–1628 Filed 1–23–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AH17

Vocational Rehabilitation: Increase in Rates of Subsistence Allowance Payable

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs regulations regarding the monthly rates of subsistence allowance payable under the Vocational Rehabilitation Program to reflect a 2.44% increase in these rates pursuant to statutory formula. This amendment is necessary to establish the correct rate in accordance with the statutory formula.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Charles A. Graffam, Rehabilitation Program Specialist, Policy and Program Development, Vocational Rehabilitation and Counseling Service (281), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7410.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 3108 provides that, for all fiscal years beginning on or after October 1, 1994, the rate of subsistence allowance payable to VA Rehabilitation Program participants must be increased by the percentage that the Consumer Price Index for all items, United States city average (CPI–W), for the 12-month period ending on the preceding June 30 exceeds the CPI–W for the previous 12-month period. The CPI–W increase as of June 30, 1994, was 2.44%. Hence, the regulations setting the rates of subsistence allowance payable under the Vocational Rehabilitation Program are amended to reflect this 2.44% increase. This amendment to regulations merely conforms to the statutory formula.

VA has determined that prior publication for notice and public comment is unnecessary since the amendment merely reflects a change pursuant to statutory formula and is not subject to rule-making requirements.

The Secretary of Veterans Affairs hereby certifies that this final regulation will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this final regulation merely reflects a change pursuant to statutory formula.

The Catalog of Federal Domestic Assistance Program number for these regulations is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 11, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reason set forth in the preamble, 38 CFR, Part 21, is amended as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation Under U.S.C. Chapter 31

1. The authority citation for part 21, subpart A is revised to read as follows:

Authority: 38 U.S.C. 501(a); 38 U.S.C. 3108.

2. In § 21.260, paragraph (b) is revised to read as follows:

§ 21.260 Subsistence allowance.

* * * * *

(b) *Rate of payment.* Subsistence allowance is paid at the following rates effective October 1, 1994.

MONTHLY RATE OF SUBSISTENCE ALLOWANCE

Type of program	No dependents	One dependent	Two dependents	Addt'l amount for each dependent over two
Institutional [1]:				
Full-time	$374.93	$465.08	$548.05	$39.95
¾ time	281.71	349.32	409.76	30.73
½ time	188.49	233.56	274.54	20.49
Nonpay on-job training in a Federal, state, or local agency, training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor:				
Full-time only	374.93	465.88	548.05	39.95
Nonpay work experience in a Federal, state or local agency:				
Full-time	374.93	465.08	548.05	39.95
¾ time	281.71	349.32	409.76	30.73
½ time	188.49	233.56	274.54	20.49
Farm cooperative, apprenticeship, or other on-job training [2]:				
Full-time only	327.81	396.44	456.88	29.71
Combination of Institutional and OJT (Full-time only):				
Institutional greater than ½ time	374.93	465.08	548.05	39.95
OJT greater than ½ time	327.81	396.44	456.88	29.71
Non-farm cooperative (Full-time only):				
Institutional	374.93	465.08	548.05	39.95
On-job	327.81	396.44	456.88	29.71

MONTHLY RATE OF SUBSISTENCE ALLOWANCE—Continued

Type of program	No dependents	One dependent	Two dependents	Addt'l amount for each dependent over two
Improvement of rehabilitation potential:				
Full-time only	374.93	465.08	548.05	39.95
¾ time	281.71	349.32	409.76	30.73
½ time	188.49	233.56	274.54	20.49
¼ time [3]	94.24	116.78	137.27	10.24

[1] For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.
[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.
[3] The quarter-time rate may be paid only during extended evaluation. (Authority: 38 U.S.C. 3108; Pub. L. 102–568)

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[FR Doc. 95–1659 Filed 1–23–95; 8:45 am]
BILLING CODE 8320–01–P–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 43–3–6704; FRL–5138–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on August 11, 1994. The revisions concern a rule from the Santa Barbara County Air Pollution Control District (SBCAPCD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule 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 rule controls VOC emissions from organic liquid loading facilities. Thus, EPA is finalizing the approval of this revision 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.

EFFECTIVE DATE: This final rule is effective on February 23, 1995.

ADDRESSES: Copies of the rule and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics 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, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Duane F. James, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1191.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1994, in 59 FR 41263, EPA proposed to approve the following rule into the California SIP: SBCAPCD's Rule 346, ''Loading of Organic Cargo Vessels'' (the NPRM). Rule 346 was adopted by the SBCAPCD on October 13, 1992. The rule was submitted by the California Air Resources Board to EPA on January 11, 1993, and was submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for the above rule and nonattainment area is provided in the NPRM cited above.

EPA has evaluated the above rule for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the rule meets the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in the NPRM and in the technical support document (TSD) available at EPA's Region IX office, dated January 28, 1994.

Response to Public Comments

A 30-day public comment period was provided in the NPRM. EPA received no comments on Rule 346.

EPA Action

EPA is finalizing this action to approve the above rule for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of VOCs in accordance with the requirements of the CAA.

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.

Regulatory Process

The OMB has exempted this action from review under Executive Order 12866.

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.

Dated: January 3, 1995.

Felicia Marcus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(191)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(191) * * *

(i) * * *

(B) Santa Barbara County Air Pollution Control District.

(*1*) Rule 346, adopted on October 13, 1992.

* * * * *

[FR Doc. 95–1687 Filed 1–23–95; 8:45 am]

BILLING CODE 6560–50–W

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40 CFR Part 70

[CO–001; FRL–5143–5]

Clean Air Act Final Interim Approval of Operating Permits Program; State of Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of Colorado for the purpose of complying with Federal requirements for an approvable State Program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: February 23, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laura Farris, 8ART-AP, U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 294–7539.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 (part 70) require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On October 14, 1994, EPA published a **Federal Register** document proposing interim approval of the Operating Permits Program for the State of Colorado (PROGRAM). See 59 FR 52123. The EPA received adverse comments on this proposed interim approval, which are summarized and addressed below. In this rulemaking EPA is taking final action to promulgate interim approval of the Colorado PROGRAM.

II. Final Action and Implications

A. Analysis of State Submission

The Governor of Colorado submitted an administratively complete title V Operating Permit Program for the State of Colorado on November 5, 1993. The Colorado PROGRAM, including the operating permit regulations (part C of Regulation No. 3), substantially meets the requirements of 40 CFR 70.2 and 70.3 with respect to applicability; 40 CFR 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; 40 CFR 70.5 with respect to complete application forms and criteria which define insignificant activities; 40 CFR 70.7 with respect to public participation and minor permit modifications; and 40 CFR 70.11 with respect to requirements for enforcement authority.

Comments noting deficiencies in the Colorado PROGRAM were sent to the State in a letter dated April 8, 1994. The deficiencies were segregated into those that require corrective action prior to interim PROGRAM approval, and those that require corrective action prior to full PROGRAM approval. The State committed to address the deficiencies that require corrective action prior to interim PROGRAM approval in a letter dated May 12, 1994, and subsequently held a public hearing to consider and finalize these changes on August 18, 1994. EPA has reviewed these changes and has determined that they are adequate to allow for interim approval. One issue noted in the April 8th letter related to insignificant activities that requires further corrective action prior to full PROGRAM approval is discussed below in section C ''Final Action.'' An additional deficiency that requires corrective action prior to full PROGRAM approval regarding the implementation of section 112(r) of the Act is also discussed below in section C ''Final Action.''

B. Response to Comments

The comments received on the October 14, 1994 **Federal Register** document proposing interim approval of the Colorado PROGRAM, and EPA's response to those comments, are as follows:

Comment #1: The commenter objected to EPA's proposed approval of Colorado's preconstruction permitting program for purposes of implementing section 112(g) of the Act during the transition period between PROGRAM approval and adoption of a State rule implementing EPA's section 112(g) regulations. The commenter argued that there is no legal basis for delegating to Colorado the section 112(g) program until EPA has promulgated a section 112(g) regulation and the State has a section 112(g) program in place. In addition, the commenter argued that the Colorado PROGRAM fails to address critical threshold questions of when an emission increase is greater than de minimis and when, if it is, it has been offset satisfactorily.

EPA Response: EPA disagrees with the commenter's contention that section 112(g) cannot take effect until after EPA has promulgated implementing regulations. The statutory language in section 112(g)(2) prohibits the modification, construction, or reconstruction of a hazardous air pollutant (HAP) source after the effective date of a title V program unless a Maximum Achievable Control Technology (MACT) standard (determined on a case-by-case basis, if

necessary) is met. The plain meaning of this provision is that implementation of section 112(g) is a title V requirement of the Act and that the prohibition takes effect upon EPA's approval of the State's PROGRAM regardless of whether EPA or a state has promulgated implementing regulations.

The EPA has acknowledged that states may encounter difficulties implementing section 112(g) prior to the promulgation of final EPA regulations and has provided guidance on the 112(g) process (see April 13, 1993 memorandum entitled, ''Title V Program Approval Criteria for Section 112 Activities'' and June 28, 1994 memorandum entitled, ''Guidance for Initial Implementation of Section 112(g),'' signed by John Seitz, Director of the Office of Air Quality Planning and Standards). In addition, EPA has issued guidance, in the form of a proposed rule, which may be used to determine whether a physical or operational change at a source is not a modification either because it is below de minimis levels or because it has been offset by a decrease of more hazardous emissions. See 59 FR 15004 (April 1, 1994). EPA believes the proposed rule provides sufficient guidance to Colorado and their sources until such time as EPA's section 112(g) rulemaking is finalized and subsequently adopted by the State.

The EPA is aware that Colorado lacks a program designed specifically to implement section 112(g). However, Colorado does have a preconstruction review program that can serve as a procedural vehicle for establishing a case-by-case MACT or offset determination and making these requirements federally enforceable. The EPA wishes to clarify that Colorado's preconstruction review program may be used for this purpose during the transition period to meet the requirements of section 112(g).

Note that in the notice of proposed interim approval of Colorado's PROGRAM, EPA referred to part B of Colorado Regulation No. 3 as the location of Colorado's preconstruction permitting program. While this is the correct citation in Colorado's current version of Regulation No. 3 (which was recently revised and reorganized), EPA has not yet approved the recent revisions and reorganization as part of the State Implementation Plan (SIP). However, EPA has approved the State's preconstruction permitting program as part of the SIP under the previous organization of Regulation No. 3, and EPA believes Colorado's preconstruction permitting program is adequate to meet the requirements of section 112(g). Specifically, section III.A.1. of the EPA-approved version of Regulation No. 3 requires that a preconstruction permit be obtained for construction or modification of a stationary source. ''Stationary source'' is defined in Colorado's Common Provisions Regulation as ''any building, structure, facility, or installation...which emits any air pollutant regulated under the Federal Act.'' ''Air pollutant'' is defined very broadly by the State and would consequently include all HAPs. Thus, the State has adequate authority to issue preconstruction permits to new and modified sources of HAPs and, because the State's preconstruction permitting program has been approved as part of the SIP, these permits would be considered federally enforceable.

Another consequence of the fact that Colorado lacks a program designed specifically to implement 112(g) is that the applicability criteria found in its preconstruction review program may differ from the criteria in section 112(g). EPA will expect Colorado to utilize the statutory provisions of section 112(g) and the proposed rule as guidance in determining when case-by-case MACT or offsets are required. As noted in the June 28, 1994 guidance, EPA intends to defer wherever possible to a State's judgement regarding applicability determinations. This deference must be subject to obvious limitations. For instance, a physical or operational change resulting in a net increase in HAP emissions above 10 tons per year could not be viewed as a de minimis increase under any interpretation of the Act. In such a case, the EPA would expect Colorado to issue a preconstruction permit containing a case-by-case determination of MACT.

Comment #2: The commenter asserted that Colorado has authority to issue preconstruction permits only to sources of HAPs that are components of criteria pollutants, such as PM–10 and volatile organic compounds (VOCs).

EPA Response: EPA disagrees with this assertion. As described above, EPA believes the State's preconstruction permitting program requires permits for all new and modified sources of HAPs. The exemptions to the construction permitting requirements in section III.D. of the EPA-approved version of Regulation No. 3 support this claim, in that many of the exemptions specifically clarify that the construction permit exemptions do not apply to HAPs, and HAPs are defined in the Common Provisions Regulation as including all of those pollutants listed in section 112(b) of the Act. Therefore, EPA believes that, until the 112(g) rule has been promulgated and adopted by the State, the State has the authority to issue preconstruction permits to all new and modified major sources of HAPs.

Comment #3: Two commenters expressed concern with the EPA proposal to consider Colorado's law (S.B. 94–139) preventing the admission of voluntary environmental audit reports as evidence in any civil, criminal or administrative proceeding as ''wholly external'' to Colorado's PROGRAM and asserted that these provisions are consistent with congressional intent and EPA policy, and the Federal Government should not interfere in the State's interpretation and exercise of its own prosecutorial discretion. In addition, one commenter also stated that, absent the audit privilege, it would be unlikely that voluntarily disclosed information would be identified and further indicated that, although title V may be delegated by EPA, such delegation does not preempt or require the State to defend its laws to EPA.

EPA Response: EPA did not identify this as an approval issue and stated that it is not clear at this time what effect this privilege might have on title V enforcement actions. A national position on approval of environmental programs in states which adopt statutes that confer an evidentiary privilege for environmental audit reports is being established by EPA. Further, EPA disagrees with the commenter's interpretation of congressional intent and EPA policy. Congressional intent was to encourage owners and operators to do self-auditing and correct any problems expeditiously, but this is not the same as providing an evidentiary privilege and enforcement shield. Congress could have provided such a privilege and shield in the Act, but did not. Section 113 of the Act and title V contain no exceptions for withholding self-auditing reports as evidence in any enforcement proceeding. Likewise, 40 CFR part 70 contains no such exceptions. Also, EPA disagrees with the commenter's assumption that, absent the audit privilege provided by Colorado law, it is unlikely that voluntarily disclosed information would otherwise be identified. For example, section 114 of the Act gives EPA the authority to issue information requests and requires disclosure of information regardless of whether it is generated through a self-audit. Colorado has similar authority. EPA agrees that Colorado has the authority to adopt its own laws regarding environmental matters as long as the area has not been preempted by Congress. However, title V of the Act and the part 70 regulations give EPA the responsibility to ensure

that states implement their operating permit programs in accordance with title V and part 70. Thus, if Colorado's self-audit privilege impedes Colorado's ability to implement and enforce its PROGRAM consistent with title V and part 70, EPA may find it necessary to withdraw its approval of the Colorado PROGRAM.

Comment #4: Two commenters objected to EPA's requirement that the State obtain EPA approval of any new additions to Colorado's list of insignificant activities before such exemptions can be utilized by a source. One commenter stated that the State's administrative process was for adding new exemptions to the State's Air Pollution Emission Notice (APEN) requirements (which is a State program separate from the part 70 operating permit program) and not for adding new insignificant activities to be exempt from part 70 permitting requirements.

EPA Response: 40 CFR 70.5(c) requires EPA approval for lists of insignificant activities identified in a state's title V operating permit program. States have discretion to develop such lists but EPA is required to review and approve these lists initially during the program review and later during implementation as states seek to add new exemptions to the list. Section 70.5(c) states, in part, ''the Administrator may approve as part of a State program a list of insignificant activities and emissions levels . . .'' [emphasis added]. Thus, EPA is not interfering with Colorado's legitimate exercise of discretion but is merely requiring Colorado to include EPA review and approval when amending its PROGRAM so it is consistent with 40 CFR 70.5(c). In addition, EPA agrees with the commenter that Colorado's Exemption From APEN Requirements (Regulation 3, section II.D.1. of part A) is separate from title V's insignificant activities list and additions or changes to the list would not be effective until approved by the Colorado Air Quality Control Commission as a revision to Regulation 3. However, Regulation 3, part A, section II.D.5. specifically states that ''any person may request the Division to examine a particular source category or activity for exemption from APEN or permit requirements'' [emphasis added]. Thus, this provision would allow Colorado to add new exemptions from permit requirements (which could include part 70 operating permit requirements) without requiring EPA review and approval. This is inconsistent with title V requirements and must be corrected to include EPA review and approval.

Comment #5: The commenter objected to EPA's statement that Colorado's PROGRAM ''should'' define the meaning of ''prompt'' as used in the requirements for reporting deviations from applicable requirements, but that an ''acceptable alternative'' is for the State to define ''prompt'' in each individual permit. The commenter stated that EPA should not deny interim or full approval to any title V operating permit program on grounds that it allows for defining ''prompt'' in the permit and that several earlier interim approval notices must be revised.

EPA Response: EPA stated in the **Federal Register** notice proposing interim approval of the Colorado PROGRAM that it believes that ''prompt'' should be defined in the PROGRAM regulations for purposes of administrative efficiency and clarity. However, EPA agrees that the State can define ''prompt'' for deviation reporting in each individual permit but cautioned that EPA may veto permits that do not contain sufficiently prompt reporting of deviations. This was not identified as an approval issue. In addition, it would be inappropriate in this notice to comment on how the definition of ''prompt'' was handled in notices for other states' part 70 approvals.

Comment #6: The commenter expressed concern with EPA's statement that the contents of risk management plans are not considered an applicable requirement at this time but that rulemaking is ongoing and changes to the State PROGRAM may be necessary to comply with new or supplemental section 112(r) rulemaking. The commenter believes that risk management plans should not be subject to permit revision procedures under title V. The commenter also supports Colorado's position that it will only implement the accidental release prevention program under section 112(r) if Federal funds are available and further notes that the State has no authority under title V to use permit fees to fund risk management plan implementation.

EPA Response: Guidance issued April 13, 1993 (a memorandum from John Seitz entitled: ''Title V Program Approval Criteria for Section 112 Activities'') states that when general statutory authority to issue permits implementing title V is present, but the Attorney General is unable to certify explicit legal authority to carry out specific section 112 requirements at the time of PROGRAM submittal, the Governor may instead submit commitments to adopt and implement applicable section 112 requirements. The memo further states that the EPA will rely on these commitments in granting part 70 program approvals provided the underlying legislative authority would not prevent the State from meeting the commitments. Another guidance memorandum issued June 24, 1994 (from John Seitz and Jim Makris entitled: ''Relationship between the Part 70 Operating Permit Program and section 112(r)'') states that the final risk management program rule, which has not been promulgated at this time, will likely expand the scope of section 112(r) applicable requirements for sources. If Colorado's funding restriction is incompatible with the final section 112(r) rule, the State must eliminate this restriction from their legislation.

Comment #7: The commenter expressed a general concern that, ''Although Colorado chooses not to provide explicit variances through its operating permit program, EPA should acknowledge that the state retains enforcement discretion for any violation of permit requirements.''

EPA Response: As the commenter noted, Colorado does not include variances in its PROGRAM. 40 CFR part 70 does not allow states to grant variances from title V requirements. EPA recognizes that title V permits may include compliance schedules for sources which are out of compliance with applicable requirements. However, such measures to bring a source into compliance are not the same as variances, which normally provide a complete exemption from a requirement. EPA also recognizes that Colorado may exercise enforcement discretion when addressing permit violations, but such discretion is not unlimited.

Comment #8: The commenter objected to EPA granting interim approval of Colorado's PROGRAM because the Colorado SIP, according to the commenter, has not been corrected to conform with the National Ambient Air Quality Standard (NAAQS) for PM_{10}. The commenter contends that Colorado's SIP is based on total suspended particulate (TSP), which they believe has no legal or regulatory basis as an air quality standard. The commenter also asserts that EPA's listing of TSP as a regulated pollutant in the April 26, 1993 guidance memorandum entitled ''Definition of Regulated Air Pollutant for Purposes of Title V'' is an error and claims the correct regulated pollutant should be total particulate, not TSP. Last, the commenter stated that ''enforcing policies based on TSP instead of PM_{10} violates EPA's own regional consistency rule'' found in 40 CFR 56.1–56.7.

EPA Response: EPA disagrees with the commenter's claim that the Colorado SIP has not been revised to conform with the NAAQS for PM_{10}. On the contrary, Colorado has developed nonattainment plans regulating sources of PM_{10} for all of the State's PM_{10} nonattainment areas designated upon enactment of the 1990 Amendments. All of those plans have been approved in at least some form (i.e., full, conditional, partial, or limited approval) by EPA. Further, the State has updated its nonattainment new source review (NSR) and prevention of significant deterioration (PSD) permitting requirements to apply to new and modified major sources of PM_{10}, and these programs require compliance with the NAAQS (including the PM_{10} NAAQS) as a condition of permit issuance. EPA approved these revisions to the State's permitting program as conforming to the PM_{10} NAAQS on June 17, 1992 (57 FR 26997).

However, the State has retained some requirements pertaining to sources of TSP, as follows: The State's PSD permitting program applies to new and modified major sources of particulate matter (of which TSP is a subset), as well as PM_{10}. Regulation of such sources of particulate matter is required by the Federal PSD permitting regulations. Also, the State regulates minor sources of TSP in its minor NSR permitting regulations, and the State regulations still include the previous Federal ambient air quality standard for TSP. However, on June 24, 1993, when the State adopted the PM_{10} NAAQS into its regulations, the State temporarily suspended the TSP ambient standard while the State determines whether to retain, revise, or delete the TSP standard. In any case, the State always has the option of adopting requirements that are more stringent than the Federal requirements, as provided by section 116 of the Act. Further, EPA has, in general, approved State provisions that are more stringent than the Federal requirements as part of the SIP if such provisions can be considered to control NAAQS (i.e., criteria) pollutants or their precursors. Colorado's regulation of TSP under the minor NSR program and its TSP ambient air quality standard will control PM_{10} emissions, since PM_{10} is a component of TSP. Thus, EPA believes there is legal basis for the State retaining some controls on TSP in its SIP.

In regard to the comment that TSP is not a regulated pollutant, the commenter is correct. As pointed out in a June 14, 1993 memorandum from John Seitz, some EPA guidance documents have incorrectly used the term ''TSP'' interchangeably with ''particulate matter emissions.'' However, TSP is not a regulated air pollutant as defined in 40 CFR 70.2. Particulate matter emissions (of which TSP is a component), on the other hand, are considered to be regulated pollutants as defined in 40 CFR 70.2. The EPA notes that Colorado's definition of ''regulated air pollutant'' in its part 70 operating permit regulations includes both particulate matter and PM_{10}, so there is no flaw relative to this issue which would prevent interim approval of Colorado's PROGRAM. If Colorado also considers TSP as a regulated pollutant under its PROGRAM, EPA would have no concerns with this issue as states' part 70 programs are generally allowed to be more stringent than the corresponding Federal requirements. Last, EPA does not believe it is violating the regional consistency rules in 40 CFR 56.1–56.7 by allowing a State to be more stringent than the corresponding Federal requirements. As discussed above, EPA believes section 116 of the Act provides states with the option of adopting requirements that are more stringent than the Federal requirements. In fact, it has generally been a national policy to allow state rules to be more stringent than the Federal requirements, except in those cases where the Act or the corresponding Federal regulations prohibit a state rule from being more stringent. (For example, some of the operational flexibility rules in 40 CFR 70.4(b)(12) are a required element of states' part 70 programs, and states do not have the option of prohibiting such flexibility.) Thus, in this case, EPA believes it has followed its regional consistency rules, and the fact that Colorado's SIP still regulates TSP does not impact EPA's ability to grant interim approval to Colorado's PROGRAM.

Comment #9: The commenter expressed concern that EPA was requiring the State of Colorado to authorize automatic annual increases in spending to administer the State's PROGRAM. In addition, the commenter stated that ''Colorado may, in the future, charge whatever fees it wants in whatever combination it wishes, with or without any specific, annual fee escalation mechanism, so long as it can run the aspects of the Program set forth in Part 70.9(b)(1).''

EPA Response: EPA disagrees with the commenter's assertion that EPA was requiring Colorado to authorize automatic annual increases in spending. EPA simply wished to clarify that, regardless of the amount of money the State collects to adequately fund all reasonable direct and indirect costs of the PROGRAM, the State Legislature retains spending authority and must annually authorize the spending of the necessary fee revenue by the Permitting Authority. If adequate spending authority is not authorized, and the State is therefore unable to fund all the reasonable direct and indirect costs of the PROGRAM, the EPA would be required to disapprove or withdraw the part 70 PROGRAM, impose sanctions and implement a Federal permitting program. This language was intended to clarify EPA's position and was not considered an issue for interim approval. In addition, EPA agrees with the commenter's statement regarding Colorado's authority to levy fees in whatever combination it wishes so long as the State can adequately fund its PROGRAM.

Comment #10: The commenter requested that EPA's final interim approval of the Colorado PROGRAM clearly reflect OAQPS guidance stating that preconstruction permits containing federally enforceable section 112(g) conditions need not be reopened subsequent to Colorado's adoption of EPA's final section 112(g) rule.

EPA Response: The June 28, 1994 memorandum entitled ''Guidance for Initial Implementation of Section 112(g)'' provides that ''if the State issues a final, federally enforceable preconstruction permit before the final section 112(g) rule is promulgated, the EPA recommends relying on that permit rather than requiring the permit to be reopened as a result of the final rule, so long as the permit reflects compliance with the requirements of section 112(g).'' However, EPA wishes to clarify the previous guidance statement by emphasizing that it cannot unequivocally declare that all existing federally enforceable preconstruction permits will not need to be reopened. EPA does not know which permits, if any, will need to be reopened until after the section 112(g) rule is promulgated, and this will be a case-by-case determination. Until the section 112(g) rule is final, EPA will expect states to implement the section 112(g) requirements using the guidance that has been provided.

Comment #11: The commenter stated that Colorado's PROGRAM allows minor New Source Review changes to be processed as minor permit modifications under Regulation No. 3, part C, consistent with EPA's proposed interim approval criteria published at 59 FR 44572 (August 29, 1994), and that EPA's proposed interim approval correctly leaves intact Colorado's procedures for minor permit modifications. The commenter also stated that EPA should not lose sight of the importance of this flexibility

between the date of interim approval of Colorado's PROGRAM and final PROGRAM approval. In addition the commenter believes that classifying minor new source review changes as title I modifications would have disastrous consequences for industry.

EPA Response: EPA does not consider this an adverse comment regarding approval of the Colorado PROGRAM since Colorado has submitted a SIP revision to their new source review regulations (Regulation 3, part B) which will enable minor modifications to be processed under the title V minor permit modification procedures. However, the commenter should note that EPA has not yet acted on this SIP revision and therefore, it is not currently available. EPA expects to approve this SIP revision before processing Colorado's full PROGRAM approval. In addition, the broader issue of whether or not minor new source review changes should be classified as title I modifications must be addressed at the National level.

Comment #12: The commenter submitted comments it had previously filed on the proposed part 70 rule and stated that it objected to the interim approval of the Colorado PROGRAM for the same reasons it had objected to the part 70 rule itself.

EPA Response: EPA believes the appropriate forum for pursuing objections to the legal validity of the part 70 rule is through a petition for review of the rule brought in the D.C. Circuit Court of Appeals. EPA notes that this commenter has filed such a petition. However, unless and until the part 70 rule is revised, EPA must evaluate programs according to the rule that is in effect.

C. Final Action

The EPA is promulgating interim approval of the PROGRAM submitted by the State of Colorado on November 5, 1993. The State must make the following changes to receive full PROGRAM approval:

(1) The State must revise its administrative process in section II.D.5 of part A of Regulation 3, for adding additional exemptions to the insignificant activities list, to require approval by the EPA of any new exemptions before such exemptions can be utilized by a source.

(2) The State must revise the Colorado Air Quality Control Act (25–7–109.6(5)) to remove the condition that an accidental release prevention program pursuant to section 112(r) of the Act will only be implemented if Federal funds are available.

Refer to the technical support document accompanying this rulemaking for a detailed explanation of each PROGRAM deficiency.

In Colorado's part 70 program submission, the State did not seek part 70 PROGRAM approval within the exterior boundaries of Indian Reservations in Colorado. The scope of Colorado's part 70 program approved in this notice applies to all part 70 sources (as defined in the approved PROGRAM) within the State, except the following: any sources of air pollution located in ''Indian Country,'' as defined in 18 U.S.C. 1151, including the Southern Ute Indian Reservation and the Ute Mountain Ute Indian Reservation, or any other sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–55818 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' See section 302(r) of the CAA; see also 59 FR 43955, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

In not extending the scope of Colorado's approved PROGRAM to sources located in ''Indian Country,'' EPA is not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over such sources. Should the State of Colorado choose to seek PROGRAM approval within ''Indian Country,'' it may do so without prejudice. Before EPA would approve the State's part 70 PROGRAM for any portion of ''Indian Country,'' EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval, that such approval would constitute sound administrative practice, and that those sources are not subject to the jurisdiction of any Indian Tribe.

This interim approval, which may not be renewed, extends until February 24, 1997. During this interim approval period, the State of Colorado is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the State of Colorado. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the State of Colorado fails to submit a complete corrective PROGRAM for full approval by August 24, 1996, EPA will start an 18-month clock for mandatory sanctions. If the State of Colorado then fails to submit a corrective PROGRAM that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the State of Colorado has corrected the deficiency by submitting a complete corrective PROGRAM. Moreover, if the Administrator finds a lack of good faith on the part of the State of Colorado, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that the State of Colorado had come into compliance. In any case, if, six months after application of the first sanction, the State of Colorado still has not submitted a corrective PROGRAM that EPA has found complete, a second sanction will be required.

If EPA disapproves the State of Colorado's complete corrective PROGRAM, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of Colorado has submitted a revised PROGRAM and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the State of Colorado, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the State of Colorado has come into compliance. In all cases, if, six months after EPA applies the first sanction, the State of Colorado has not submitted a revised PROGRAM that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the State of Colorado has not timely submitted a complete corrective PROGRAM or EPA has disapproved its submitted corrective PROGRAM. Moreover, if EPA has not granted full approval to the Colorado PROGRAM by the expiration of this interim approval and that expiration

occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the State of Colorado upon interim approval expiration.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 PROGRAM.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including public comments received and reviewed by EPA on the proposal, are maintained in a docket at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: January 13, 1995.

Jack McGraw,

Acting Regional Administrator.

Part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by adding the entry for Colorado in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Colorado

(a) Colorado Department Health–Air Pollution Control Division: submitted on November 5, 1993; effective on [date 30 days after date of publication]; interim approval expires February 24, 1997.

(b) [Reserved]

* * * * *

[FR Doc. 95–1736 Filed 1–23–95; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 300

[FRL–5143–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Suffolk City landfill site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Suffolk City Landfill in Suffolk, Virginia, from the National Priorities List (NPL). The NPL is 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 of 1980, as amended (CERCLA). EPA has determined that all appropriate CERCLA response actions have been implemented and that no further CERCLA response actions are appropriate. Moreover, EPA has determined that response actions conducted at the Site to date have been protective of public health, welfare, and the environment. The Commonwealth of Virginia has concurred with these determinations.

EFFECTIVE DATE: January 11, 1995.

FOR FURTHER INFORMATION CONTACT: Ronnie M. Davis, US EPA Region 3, 841 Chestnut Building, Philadelphia, PA 19107; (215) 597–1727.

SUPPLEMENTARY INFORMATION: The Site to be deleted from the NPL is the ''Suffolk City Landfill Site,'' Suffolk City, Virginia. A Notice of Intent to Delete for this Site was published on October 20, 1994 (59 FR 52949). The initial closing date for public comment was November 21, 1994. EPA extended the comment period through December 8, 1994. EPA received no comments during the comment period.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as a list of the most serious of those sites. Sites on the NPL may be the subject of remedial response actions financed using the Hazardous Substances Response Trust Fund (Fund). Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.424(e)(3) of the NCP, 40 CFR 300.424(e)(3), provides that in the event of a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the Hazard Ranking System, one of the means by which a site may be promulgated to the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste.

Dated: January 11, 1995.

Peter H. Kostmayer,

Regional Administrator, Environmental Protection Agency, Region III.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923; E.O. 12777, 56 FR 54747.

Appendix B—[Amended]

2. Table 1 of appendix B is amended by removing the site for the Suffolk City Landfill Site, Suffolk City, Virginia.

[FR Doc. 95–1739 Filed 1–23–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 93–197, FCC 95–18]

Revisions to Price Cap Rules for AT&T Corp.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action is taken to remove commercial service from price cap regulation. The Commission feels that there is sufficient evidence to conclude that American Telephone and Telegraph's (AT&T's) commercial long distance services are subject to substantial competition. It is intended that this action will provide streamlined regulation for commercial service.

EFFECTIVE DATE: February 23, 1995.

FOR FURTHER INFORMATION CONTACT: Suzan Friedman, (202) 418–1530.

SUPPLEMENTARY INFORMATION: On January 12, 1995, the Commission adopted and released a Report and Order in CC Docket No. 93–197 revising the Commission's Rules on Price Cap rules for AT&T. This Order removes commercial services from price cap regulation and initiates streamlined regulation for those services. The commercial services classification was created by AT&T pursuant to Section 201(b) of the Communications Act. It permits the creation of specific classifications of services, including commercial. Commercial services refers to services used by AT&T's customers who are classified as business, as opposed to residential customers by local telephone companies.

The full text of this item 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 NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendment to the Commission's Rules

Part 61 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 61—TARIFFS

1. The authority citation for Part 61 continues to read as follows:

Authority: Sec. 4, Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. In § 61.42, paragraphs (a)(1) and (b)(1) are amended by removing the words ''and small business'' and paragraph (c) is amended by redesignating paragraph (c)(17) as paragraph (c)(18) and adding a new paragraph (c)(17) to read as follows:

§ 61.42 Price cap baskets and service categories.

* * * * *

(c) * * *

(17) Commercial services.

* * * * *

[FR Doc. 95–1713 Filed 1–23–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 235

Defense Federal Acquisition Regulation Supplement; Manufacturing Science and Technology Program

AGENCIES: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Defense is revising the Defense FAR Supplement to require competition and cost-sharing for acquisitions under the Manufacturing Science and Technology Program.

DATES: Effective date: January 17, 1995.

Comment date: Comments on the interim rule should be submitted in writing at the address shown below on or before March 27, 1995, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulation Council, ATTN: Mr. Richard G. Layser, PDUSD(A&T)DP/DAR, IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax Number (703) 602–0350. Please cite DFARS Case 94–D307 in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Section 256 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) requires that competitive procedures be used in awarding contracts under the Manufacturing arrangement be used unless an alternative is approved by the Secretary of Defense. This interim DFARS rule implements these requirements.

B. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Compelling reasons exist to promulgate this rule without prior opportunity for public comment because Section 256 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) became effective upon enactment of the Act, October 5, 1994. This interim rule is necessary to ensure that DoD contracting activities become aware of the statutory requirement for competition and cost-sharing arrangements when awarding contracts under the Manufacturing Science and Technology Program. However, comments received in response to the publication of this rule will be considered in formulating the final rule.

C. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to acquisitions under the Manufacturing Science and Technology Program. In the past, small entities have not participated in any substantial numbers. This rule is not expected to change small entities participation. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 94–D307 in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this final rule does not impose any new recordkeeping, information collection requirements, or collection of information from offerors, contractors, or members of the public which require

the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 235

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 235 is amended as follows:

1. The authority citation for part 235 is revised to read as follows:

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

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

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

235.006 Contracting methods and contract type.

(a) All contracts under the Manufacturing Science and Technology Program shall be awarded using competitive procedures (10 U.S.C. 2525). (See DoDD 5000.2, Defense Acquisition Management Policies and Procedures and DoDI 4200.15, Manufacturing Technology Program.)

(b) * * *

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

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

(B) Is of sufficiently high risk to discourage cost sharing by non-Federal Government sources. (See DoDI 4200.15, Manufacturing Technology Program, and FAR 16.303.)

[FR Doc. 95–1604 Filed 1–23–95; 8:45 am]

BILLING CODE 3810–01–M

Proposed Rules

Federal Register
Vol. 60, No. 15
Tuesday, January 24, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1040

[Docket No. AO–225–A45–RO1; DA–92–10]

Milk in the Southern Michigan Marketing Area; Extension of Time for Filing Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions to proposed rules.

SUMMARY: This notice extends the time for filing exceptions to the December 2, 1994, revised recommended decision on multiple component pricing for the Southern Michigan Federal milk order. The time has been extended 14 days to January 27, 1995, at the request of an interested person.

DATES: Exceptions now are due on or before January 27, 1995.

ADDRESSES: Exceptions (four copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued December 3, 1992; published December 10, 1992 (57 FR 58418).

Supplemental Notice of Hearing: Issued January 19, 1993; published January 29, 1993 (58 FR 6447).

Recommended Decision: Issued November 29, 1993; published December 6, 1993 (58 FR 64176).

Notice of Reopened Hearing: Issued February 18, 1994; published February 24, 1994 (59 FR 8874).

Extension of Time for Filing Briefs: Issued April 6, 1994; published April 13, 1994 (59 FR 17497).

Emergency Partial Final Decision: Issued May 12, 1994; published May 23, 1994 (59 FR 26603).

Final Rule: Issued June 22, 1994; published June 29, 1994 (59 FR 33418).

Revised Recommended Decision: Issued December 2, 1994; published December 14, 1994 (59 FR 64464).

Notice is hereby given that the time for filing exceptions to the December 2, 1994, recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Southern Michigan milk marketing area is hereby extended from January 13, 1995, to January 27, 1995.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Dated: January 18, 1995.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 95–1748 Filed 1–23–95; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Parts 1405 and 1413

RIN 0560–AD86

Common Provisions for the 1995 Wheat, Feed Grains, Cotton, and Rice Programs, and Cost Reduction Options

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Act of 1949, as amended (1949 Act), sets forth numerous discretionary provisions that may be implemented by the Commodity Credit Corporation (CCC) with respect to the 1995 crops of wheat, feed grains, upland and extra long staple (ELS) cotton, and rice. The Food Security Act of 1985, as amended (1985 Act), permits the Secretary of Agriculture to take certain actions related to nonrecourse loans and acreage reduction programs if it is determined that they will reduce total direct and indirect commodity program costs without adversely affecting incomes of small- and medium-sized producers. CCC proposes to make the following program determinations with respect to the price support and production adjustment programs: (a) the percentage of the estimated deficiency payments that should be made available in advance to producers of the 1995 crop of wheat, feed grains, cotton, and rice; (b) the types of crops that may not be planted on ''flexible acreage''; (c) whether to permit targeted option payments (TOP); (d) whether to allow the planting of designated crops on up to one-half of the reduced acreage; (e) whether to allow the planting of oats on wheat and feed grains acreage conservation reserve (ACR); (f) whether to allow planting of conserving crops on ACR; (g) whether to allow alternative crops on conserving use acreage for payment; and (h) whether to implement cost reduction options. This proposed rule sets forth CCC's proposed action regarding these determinations.

DATES: Comments must be received on or before January 27, 1995, in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to Acting Deputy Administrator, Policy Analysis, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–7583.

FOR FURTHER INFORMATION CONTACT: James A. Langley, Consolidated Farm Service Agency, U.S. Department of Agriculture (USDA), Room 3090–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–690–0640.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by OMB under Executive Order 12886.

Preliminary Regulatory Impact Analysis

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of the proposed rule are not retroactive and preempt State laws only to the extent such provisions are inconsistent with State laws. Before any judicial action may be brought concerning these provisions, the administrative appeal remedies at 7 CFR part 780 must be exhausted.

Federal Assistance Programs

The titles and numbers of the Federal Assistance Programs, as found in the catalog of Federal Domestic Assistance, to which this rule applies are as follows:

Titles	Numbers
Commodity Loans and Purchases	10.051
Cotton Production Stabilization	10.052
Feed Grains Production Stabilization	10.055
Wheat Production Stabilization	10.058
Rice Production Stabilization	10.065

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

This proposed rule does not change the information collection requirements that were previously approved by the Office of Management and Budget (OMB) under provisions of 44 USC 33.

Background

This proposed rule would amend 7 CFR part 1413 to set forth the determination of whether certain discretionary cost reduction options of the 1985 Act will be implemented. Accordingly, the Secretary may take the following actions if it is determined that they will reduce total direct and indirect commodity program costs without adversely affecting incomes of small- and medium-sized producers: (a) enter into the commercial market to purchase commodities covered by nonrecourse loans if the cost would be less than later acquiring the commodity through loan defaults; (b) provide for settlement of nonrecourse loans (including nonrecourse loans made to producers under the Farmer-Owned Reserve Program) at less than full principal plus interest; or (c) reopen signup to allow producers to submit bids for the conversion of planted acreage to diverted acreage with payment in kind from CCC stocks.

If, after the comment period, no cost reduction options are implemented under the final rule, the Secretary still reserves the right to initiate at a later date any action authorized by section 1009 of the 1985 Act, including the right to reopen and change a contract entered into by a producer under the program if the producer voluntarily agrees to the change.

This proposed rule would also amend 7 CFR part 1413 to set forth the determination of whether certain discretionary provisions of the 1949 Act will be implemented and, if implemented, the manner in which implementation would be made. Accordingly, the following program determinations are proposed to be made with respect to the provisions that are applicable to the 1995 crops of wheat, feed grains, upland and ELS cotton, and rice:

A. The percentage of the estimated deficiency payments that should be made available in advance to producers of the 1995 crop of wheat, feed grains, cotton and rice.

Section 114 of the 1949 Act requires that advance deficiency payments be made available to producers of wheat, feed grains, upland cotton, and rice if an acreage limitation is in effect. Section 103 of the 1949 Act provides discretionary authority to provide such payments for ELS cotton. Producers who participate in farm programs have the option to request advance deficiency payments. Advance payments must be between 40 and 50 percent of the projected payments for wheat and feed grains and between 30 and 50 percent for upland cotton and rice. Advance payment for ELS cotton, if offered, cannot exceed 50 percent of the projected payment rate.

CCC intends to make available advance deficiency payments of 50 percent of the projected payments for the 1995 crop of wheat, feed grains, rice, upland cotton and, if applicable, ELS cotton.

B. The types of crops that may not be planted on flexible acres.

Section 504 of the 1949 Act states that producers may plant on a farm crops other than the program crop on an acreage not to exceed 25 percent of any crop acreage base enrolled in the applicable CCC price support and production adjustment program. This acreage is known as ''flexible'' acreage.

Crops that may be planted on flexible acreage are: (a) any program crop; (b) any oilseed crop; (c) any other crop, except any fruit or vegetable crop (including dry edible beans, lentils, peas, and potatoes); and (d) mung beans. The planting of certain fruits or vegetables may be permitted if such crop is an industrial or experimental crop, or if no substantial domestic production or market exists for the crop. The planting of any crop on flexible acres may also be prohibited.

CCC intends to permit the same crops to be grown on flexible acreage in 1995 as were allowed in 1994. However, CCC will consider adding or removing crops to the list of prohibited crops that is set forth at 7 CFR part 1413.43(b)(6).

C. Whether to implement TOP.

Sections 107B(e)(3), 105B(e)(3), 103B(e)(3), and 101B(e)(3) of the 1949 Act, with respect to wheat, feed grains, upland cotton, or rice, provide that if an acreage limitation program is in effect, the Secretary may offer producers the option of increasing or decreasing the acreage reduction level, within certain restrictions, with a corresponding increase or decrease in the established (target) price of the commodity. The target price may be increased or decreased by not less than 0.5 percent nor more than 1 percent for each percentage point change in the acreage reduction level. The acreage limitation requirement cannot be increased by more than 15 percentage points or above 25 percent total for wheat; by more than 10 percentage points or above 20 percent of the total for feed grains; by more than 10 percentage points or above 25 percent of the total for cotton; nor by more than 5 percentage points or above 25 percent of the total for rice. The decrease in the acreage limitation requirement for all crops cannot be more than one-half of the announced acreage limitation percentage.

The Secretary shall, to the extent practicable, ensure that the TOP option does not have a significant effect on program participation or total production and will result in no additional budget outlays.

Comments on whether this provision should be implemented for the 1995 crops are requested.

D. Whether to permit the planting of designated crops on up to half of the announced acreage reduction.

Sections 107B(e)(2)(F)(i), 105B(e)(2)(F)(i), 103B(e)(2)(F)(i), and 101B(e)(2)(F)(i) of the 1949 Act, with respect to wheat, feed grains, upland cotton, and rice, provide that the Secretary may permit producers to plant a designated crop on not more than one-half of the reduced acreage on the farm.

The designated crops may be: (a) any oilseed crop; (b) any industrial or experimental crop designated by CCC; and (c) any other crop, except any fruit or vegetable (including dry edible beans, lentils, peas, and potatoes), not designated by the Secretary as (i) an industrial or experimental crop, or (ii) a crop for which no substantial domestic production or market exist. Program crops may not be planted on the reduced acreage on the farm.

If producers on a farm elect to plant a designated crop, the amount of deficiency payments that the producers are otherwise eligible to receive shall be reduced, for each acre that is planted to the designated crop, by an amount equal to the deficiency payment that would be made with respect to a number of acres of the crop that the Secretary considers appropriate. Such reductions in deficiency payments must be sufficient to ensure that this provision does not increase CCC outlays.

CCC intends to permit the harvesting of designated crops on up to one-half of ACR for the 1995 crops.

E. Whether to permit the planting of oats on wheat and feed grain ACR.

In any crop year that it is determined that projected domestic production of oats will not fulfill the projected domestic demand for oats, CCC: (a) may provide that acreage designated as ACR under the wheat and feed grains programs may be planted to oats for harvest under sections 107B(e)(8) and 105B(e)(8) of the 1949 Act; (b) may make program benefits (including loans, purchases, and payments) available under the annual program for oats under section 105B of the 1949 Act for oats planted on ACR; and (c) shall not make program benefits other than the benefits specified in (b) available to producers with respect to acreage planted to oats under this provision.

It is proposed that the planting of oats on wheat and feed grains ACR for harvest not be permitted for the 1995 crops.

F. Whether to permit conserving crops to be planted on ACR.

Under sections 107B(e)(4)(B)(iii), 105B(e)(4)(B)(iii), 103B(e)(4)(B)(iii), and 101B(e)(4)(B)(iii) of the 1949 Act, with respect to wheat, feed grains, upland cotton, and rice, producers may be authorized to plant all or any part of the ACR to castor beans, crambe, guar, milkweed, mung beans, plantago ovato, sesame, sweet sorghum, rye, triticale, or other commodity, if the Secretary determines that the production is needed to provide an adequate supply of the commodities, is not likely to increase the cost of the price support program, and will not adversely affect farm income.

CCC intends to permit the harvesting of the following conserving crops on ACR: castor beans, chia, crambe, crotalaria, cuphea, guar, guayule, hesperaloe, kenaf, lesquerella, meadowfoam, milkweed, plantago ovato, and sesame. However, CCC will consider adding to or removing crops from the list of eligible conserving crops that is set forth at 7 CFR part 1413.8.

G. Whether to permit alternative crops on conserving use acres.

Under sections 107B(c)(1)(F)(i), 105B(c)(1)(F)(i), 103B(c)(1)(E)(i), and 101B(c)(1)(E)(i) of the 1949 Act, with respect to wheat, feed grains, upland cotton, and rice, producers may be authorized to plant all or any part of acreage otherwise required to be devoted to conserving uses as a condition of qualifying for payment under the so-called ''0/85/92'' or ''50/85/92'' provisions of the price support and production adjustment programs to castor beans, guar, millet, mung beans, plantago ovato, sweet sorghum, rye, triticale, commodities for which no substantial domestic production or market exists but that could yield industrial raw material being imported, or likely to be imported, or commodities grown for experimental purposes (including kenaf and milkweed). The Secretary may permit these crops to be planted on conserving use acres only if the Secretary determines that the production is not likely to increase the cost of the price support program, is needed to provide an adequate supply of the commodities, or is needed to encourage domestic manufacture of industrial raw materials derived from these crops.

CCC intends to permit the harvesting of the following alternative crops on conserving use acres: castor beans, chia, crambe, crotalaria, cuphea, guar, guayule, hesperaloe, kenaf, lesquerella, meadowfoam, milkweed, plantago ovato, and sesame. However, CCC will consider adding to or removing crops from the list of eligible alternative crops that is set forth at 7 CFR part 1413.8.

Accordingly, comments are requested with respect to these foregoing issues.

List of Subjects

7 CFR Part 1405

Loan programs/agriculture, Price support programs.

7 CFR Part 1413

Cotton, Feed grains, Price support programs, Rice, Wheat.

Accordingly, it is proposed that 7 CFR parts 1405 and 1413 be amended as follows:

PART 1405—LOANS, PURCHASES AND OTHER OPERATIONS

1. The authority citation for 7 CFR part 1405 is amended to read as follows:

Authority: 15 U.S.C. 714b and 714c; 7 U.S.C. 1308a.

2. Part 1405 is amended by adding a new § 1405.6 to read as follows:

§ 1405.6 Cost reduction options.

With respect to the 1995 crop, no cost reduction options specified in section 1009(c), (d), or (e) of the Food Security Act of 1985, as amended (the 1985 Act), will be initially included in the program. However, the Secretary reserves the right to initiate at a later date any action not previously included but authorized by section 1009 of the 1985 Act, including the right to reopen and change a contract entered into by a producer under the program if the producer voluntarily agrees to the change.

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. In section 1413.54, paragraph (f) is revised to read as follows:

§ 1413.54 Acreage reduction program provisions.

* * * * *

(f) Producers may plant designated minor oilseeds, soybeans and mung beans on up to 50 percent of the designated ACR acreage,

* * * * *

3. In § 1413.64, the introductory text of paragraph (c) and paragraph (d) are revised to read as follows:

§ 1413.64 Nationally approved cover crops and practices for ACR and CU for payment acreages.

* * * * *

(c) Producers may plant designated oilseeds, soybeans and mung beans on up to 50 percent of the designated ACR acreage;

* * * * *

(d) Acreage designated as ACR or CU for payment under the 1995 wheat, feed grain, upland cotton and rice programs may be planted to IOCs.

* * * * *

4. In § 1413.66, paragraph (c)(2) is revised to read as follows:

§ 1413.66 Use of ACR and CU for payment acreage.

* * * * *

(c) * * *

(2) IOCs or designated crops planted on ACR and IOCs planted on CU for payment acreage.

* * * * *

5. In § 1413.105 paragraph (d) is revised to read as follows:

§ 1413.105 Timing and calculation of deficiency payments.

* * * * *

(d)(1) For the 1994 and 1995 crops of wheat, feed grains, upland cotton, ELS cotton and rice, if an acreage limitation program is in effect, CCC shall make available 50 percent of the projected final deficiency payments, made in accordance with Sec. 1413.104, as an advance payment to producers in the manner determined and announced by CCC.

(2) For the 1996 and 1997 crops of wheat, feed grains, upland cotton, ELS cotton and rice, if an acreage limitation program is in effect, CCC shall make available 40 percent of the projected final deficiency payments made in accordance with § 1413.104, as an advance payment to producers in the manner determined and announced by CCC.

Signed January 19, 1995 at Washington, DC.

Bruce R. Weber,

Acting Executive Vice President Commodity Credit Corporation.

[FR Doc. 95–1778 Filed 1–19–95; 4:32 pm]

BILLING CODE 3410–05–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 122

Business Loans—Microloans

AGENCY: Small Business Administration (SBA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: On October 22, 1994, the ''Small Business Administration Reauthorization and Amendments Act of 1994'' was enacted. It amends section 7(m) of the Small Business Act (Act) regarding the SBA microloan financing program. These proposed rules would implement that amendment. Included among the proposed changes are regulations implementing a pilot program which authorizes SBA to guarantee up to 100 percent of loans made to intermediary lenders, the inlcusion of native American tribal governments as eligible to participate as intermediaries in the program, authorization for SBA to provide additional grant assistance to an intermediary which by its lending assists residents in economically distressed areas, and an extension of the sunset date of the microloan for an additional fiscal year.

DATES: Comments may be submitted on or before March 27, 1995.

ADDRESSES: Comments may be mailed to John R. Cox, Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street, S.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: John R. Cox, 202/205–6490.

SUPPLEMENTARY INFORMATION: Pub. L. 103–403, enacted on October 22, 1994 (1994 legislation), amends various portions of subsection 7(m) of the Act (15 U.S.C. 636(m)), relating to the SBA microloan financing program. These proposed rules, if promulgated in final form, would implement the statutory amendments in the following ways.

Consistent with section 202 of the 1994 legislation, § 122.61–2 of SBA's regulations (13 CFR 122.61–2) would be amended by including in the definition of an intermediary eligible to participate in the program as a mircoloan lender an agency or a nonprofit entity established by a native American tribal government. This proposed change would expand the category of intermediary lenders beyond the present regulatory parameters which prescribe private, nonprofit entities or quasi-governmental entities as microlenders.

Consistent with section 203 of the 1994 legisltion, § 122.61–1 of SBA's regulations would be amended to extend the sunset date for the entire microloan program an additional year, to October 1, 1997.

Consistent with section 206 of the 1994 legislation, § 122.61–6 of SBA's present regulations would be amended to increase the aggregate maximum amount of SBA lending available to an intermediary during the intermediary's partiicpation in the microloan program. The previous limitation was $1,250,000 and the proposed new aggregate maximum would be $2,500,000.

Consistent with section 207 of the 1994 legislation, § 122.61–9 of SBA's present regulations would be amended to authorize an intermediary to expend no more than fifteen percent of grant funds provided to it by the SBA for the provision of information and technical assistance to small business concerns which are prospective borrowers. An intermediary receiving a grant would not be required to provide such assistance to prospective microloan borrowers, but this proposed rule recognizes that intermediaries do hold outreach seminars, perform screening analysis, and provide other assistance for prospective borrowers, and it should encourage intermediaries to continue these programs and to use their technical assistance grants efficiently and cost effectively.

Under its present rules, SBA ensures that at least one half of the intermediaries provide microloans to small business concerns located in rural areas. Consistent with section 205 of the 1994 legislation, § 122.61–3 of SBA's regulations would be amended so that, in selecting intermediaries for the program, SBA must select entities that will ensure availability of loans for small business concerns in all industries located throughout the lender's jurisdiction in both rural and urban areas. Thus, the SBA would no longer be required to meet numerical requirements for its portfolio of lenders based on intended borrowers in selecting entities to participate as intermediaries in the microloan program. Under the proposed rule, SBA would consider, however, the additional criterion of whether a proposed intermediary would provide assistance to a variety of industries.

Under SBA's present rules, in order for an intermediary to qualify for an SBA grant, it must contribute or match an amount equal to twenty-five percent of the amount of such grant. Consistent with section 208(a)(1) of the 1994 legislation, § 122.61–9 SBA's regulations would be amended to provide that such twenty-five percent requirement would be inapplicable to an intermediary which provides not less than fifty percent of its loans to small business concerns located in or owned by one or more residents of an economically distressed area. As a result, if this rule is promulgated in final form, if an intermediary would make sixty percent of its loans in an economically distressed geographic area, it would not have to provide a twenty-five percent match to an SBA grant.

Under current rules, each intermediary is eligible to receive an SBA grant equal to twenty-five percent of the total outstanding balance of loans which SBA had made to it. Consistent with section 208(a)(2) of the 1994 legislation, § 122.61–9 of SBA's regulations would be amended to provide that if an intermediary would provide no less than twenty-five percent of its loans to small business concerns located in or owned by residents of an economically distressed area, it would be entitled to receive an additional SBA grant equal to five percent of the total outstanding balance of SBA loans made to the intermediary. Thus, if an intermediary made at least twenty five percent of its loans in an economically distressed area, it would be eligible for an additional SBA grant of five percent which it would not be required to match.

Consistent with section 208(b) of the 1994 legislation, § 122.61–2 of SBA's regulations would be amended to define ''economically distressed area'' to mean a county or equivalent division of local government of a state in which the small business concern is located in which, according to the Bureau of the Census, not less than forty percent of the residents have an annual income that is at or below the poverty level. SBA will obtain this information from the Bureau of the Census.

Finally, consistent with section 201 of the 1994 legislation, proposed new § 122.61–13 of SBA's regulations would implement a microloan financing pilot in which SBA would have the authority to guarantee no less than ninety and no more than one hundred percent of a loan made to an intermediary by a for-profit or non-profit entity or by an alliance of such entities. This guaranty authority by SBA would terminate on September 30, 1997. Under this proposed rule, SBA would not guarantee loans to more than ten intermediaries in urban areas and ten in rural areas. An SBA guaranteed loan to an intermediary under this pilot would have a maturity of ten years. During the first year of the loan, the intermediary would not be required to repay principal or interest, although interest would continue to accrue during this period. During the second through fifth years of such a loan, the intermediary would pay only interest. During the sixth through tenth years of the loan, the intermediary would make interest payments and fully amortize the principal. There would be no balloon payments. Interest on these SBA guaranteed loans to intermediaries would be calculable as set forth in § 122.61–6 of SBA's regulations (13 CFR 122.61–6).

Compliance With Executive Orders 12612, 12778 and 12866, the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this proposed rule, if promulgated in final form, will not have a significant economic impact on a substantial number of small entities.

SBA certifies that this proposed rule, if promulgated in final form, will not constitute a significant regulatory action for the purposes of Executive Order 12866, since the proposed change is not likely to result in an annual effect on the economy of $100 million or more.

SBA certifies that the proposed rule, if promulgated in final form, would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

SBA certifies that this proposed rule would not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Further, for purposes of Executive Order 12778, SBA certifies that this proposed rule, if promulgated in final form, is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

(Catalog of Federal Domestic Assistance Programs, No. 59.012)

List of Subjects in 13 CFR Part 122

Loan programs—business, Small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend part 122, chapter I, title 13, Code of Federal Regulations, as follows:

PART 122—BUSINESS LOANS

1. The authority citation for Part 122 would continue to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(a), 636(m).

2. Section 122.61–1(a) would be amended by revising the last sentence to read as follows:

§ 122.61–1 Policy.

(a) *Program*. * * * This Microloan Demonstration Program terminates on October 1, 1997.

* * * * *

3. Section 122.61–2 would be amended by republishing paragraph (d) introductory text, by removing the ''or'' at the end of paragraph (d)(3), by removing the period at the end of paragraph (d)(4) and adding ''; or'' in its place, and adding new paragraphs (d)(5) and (h) to read as follows:

§ 122.61–2 Definitions.

* * * * *

(d) *Intermediary* menas: * * *

(5) An agency or a nonprofit entity established by a Native American Tribal Government.

* * * * *

(h) *Economically distressed area* means a county or equivalent division of local government of a state in which, according to the most recent data available from the United States Bureau of the Census, not less than 40 percent of residents have an annual income that is at or below the poverty level.

4. Section 122.61–3 would be amended by adding a new sentence at the end of paragraph (a) to read as follows:

§ 122.61–3 Participation of intermediary.

(a) *Eligibility*. * * * In evaluating applications to become an intermediary, SBA shall select such intermediaries as will ensure appropriate availability of loans for small business concerns in all industries located throughout each state, located in both urban and in rural areas.

* * * * *

5. Section 122.61–6 would be amended by revising paragraph (e) to read as follows:

§ 122.61–6 Conditions on SBA loan to intermediary.

* * * * *

(e) *Loan Limits by SBA*. Notwithstanding any other provision of law to the contrary, no loan shall be made to an intermediary by SBA under this program if the total amount outstanding and committed (excluding outstanding grants) to such intermediary (and its affiliates, if any) from the business loan and investment fund established under section 4(c) of the Act would, as a result of such loan, exceed $750,000 in the first year of such intermediary's participation in the program, and $2,500,000 in the remaining years of the intermediary's participation in the program.

* * * * *

6. Section 122.61–9 would be amended by adding a new sentence after the second sentence in paragraph (a), by revising paragraph (b)(1), and by adding a new sentence at the end of paragraph (b)(2) to read as follows:

§ 122.61–9 SBA grant to intermediary for marketing, management, and technical assistance.

(a) *General.* * * * In addition, each intermediary is authorized to expend no more than fifteen (15) percent of the grant funds received from SBA to provide information and technical assistance to small business concerns that are prospective borrowers under this program. * * *

(b) *Amount of Grant.* (1) Subject to the requirement of paragraph (b)(2) of this section, and the availability of appropriations, each intermediary under this program shall be eligible to receive a grant equal to 25 percent of the total outstanding balance of loans made to it by SBA, *provided, however,* that if an intermediary provides no less than 25 percent of its loans to small business concerns located in or owned by one or more residents of an economically distressed area, it shall be eligible to receive an additional grant from SBA equal to 5 percent of the total outstanding balance of SBA loans made to the intermediary. The intermediary shall not be required to match such grant.

(2) * * * The requirement that the intermediary contribute 25 percent of the amount of the SBA grant is inapplicable to an intermediary which provides not less than 50 percent of its loans to small business concerns located in or owned by one or more residents of an economically distressed area.

* * * * *

7. A new § 122.61–13 would be added to read as follows:

§ 122.61–13 SBA guaranteed loans to intermediaries.

(a) *Purpose.* SBA may guarantee not less than 90 percent nor more than 100 percent of a loan made to an intermediary by a for-profit or non-profit entity or by alliances of such entities.

(b) *Number of Intermediaries.* SBA shall not guarantee loans to more than 10 intermediaries in urban areas or more than 10 intermediaries in rural areas.

(c) *Maturity and Repayment of Microloan Guaranteed Loan.* An SBA guaranteed loan made to an intermediary under this section shall have a maturity of 10 years. During the first year of each such loan, the intermediary shall not be required to repay any interest or principal, although interest will continue to accrue during this period. During the second through fifth years of such a loan, the intermediary shall pay interest only. During the sixth through tenth years of the loan, the intermediary shall make interest payments and fully amortize the principal.

(d) *Interest rate.* The interest rate on a SBA guaranteed loan to an intermediary shall be calculable as set forth in § 122.61–6.

(e) *Termination of SBA Authority to Guarantee.* The authority of SBA to guarantee loans to intermediaries under this § 122.61–13 shall terminate on September 30, 1997.

Dated: December 21, 1994.

Philip Lader,

Administrator.

[FR Doc. 95–1742 Filed 1–23–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

17 CFR Parts 404 and 405

RIN 1505–AA53

Amendments to Regulations for the Government Securities Act of 1986

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Government Securities Act Amendments of 1993 authorize the Secretary of the Treasury (Treasury) to prescribe rules requiring persons holding, maintaining or controlling large positions in to-be-issued or recently issued Treasury securities to keep records and file reports of such large positions. The Treasury is issuing this Advance Notice of Proposed Rulemaking (ANPR) to advise market participants of our intention to issue large position recordkeeping and reporting regulations, describe the purposes of, and objectives to be achieved by, such rules and identify key elements related to any rule proposal. We invite comments, advice and recommendations from interested parties regarding how the large position recordkeeping and reporting requirements should be structured. To assist in the solicitation of comments and to facilitate in the development of rules, responses to specific questions are requested.

DATES: Comments must be received on or before April 24, 1995.

ADDRESSES: Comments should be sent to: Government Securities Regulations Staff, Bureau of the Public Debt, Department of the Treasury, 999 E Street NW., Room 515, Washington, D.C. 20239–0001. Comments received will be available for public inspection and copying at the Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Ken Papaj (Director) or Don Hammond (Assistant Director), Government Securities Regulations Staff, at 202–219–3632. (TDD for the hearing impaired is 202–219–3988.)

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. government securities market is the largest and most liquid securities market in the world. The enormous liquidity and pricing efficiency of this market provide incalculable benefits to other financial markets in the United States, and throughout the world, by providing a continuous benchmark for interest rates on dollar-denominated instruments across the maturity spectrum. The government securities market has consistently demonstrated its ability to absorb the large amounts of Treasury securities that must be issued to finance the operations of the U.S. Government in a cost-effective manner for the taxpayer, which is the market's primary public purpose. However, certain events that occurred in 1991, specifically a ''short squeeze'' [1] in two different Treasury securities led to the realization that Federal financial regulators need, from time to time, more information about holdings of very large amounts of Treasury securities.

A. Events Giving Rise to Large Position Reporting Authority

The occurrence of short squeezes in the government securities market in 1991 is discussed in some detail in the Joint Report on the Government Securities Market (Joint Report).[2] While yields of Treasury securities of similar maturity vary constantly, there were two instances during the Spring of 1991 in which particular securities traded well below the corresponding yields for similar securities for an extended period of time. In the first case, a short squeeze developed in the two-year note auctioned on April 24, 1991. When the squeeze first became evident in mid-May, the yield on the April two-year

[1] A short squeeze can occur when an event unanticipated by short sellers reduces the supply of securities available in the marketplace. It can also occur as a result of deliberate behavior by one or more market participants to restrict the supply of securities, thereby driving up prices.

[2] Department of the Treasury, Securities and Exchange Commission and Board of Governors of the Federal Reserve System *Joint Report on the Government Securities Market,* January 1992.

note had moved considerably out of line from surrounding market rates, and the notes were ''on special'' in the repurchase agreement (repo) market.[3]

The second incident involved the two-year Treasury note auctioned on May 22, 1991. In that auction, Salomon Brothers Inc. (Salomon), a major participant in the market, submitted large, aggressive bids for itself and two of its customers and was awarded a large portion of the amount sold. As a result of these awards and additional purchases in the market, there was a concentration of holdings of the May two-year notes and the prices of the notes in the cash and financing markets were distorted. At that time, a number of market participants contacted the Treasury and the Federal Reserve Bank of New York (FRBNY) expressing concern about a shortage in the May two-year note.[4]

The apparent short squeeze was serious enough that Treasury officials informed staff of the Securities and Exchange Commission (SEC) of possible problems and trading irregularities stemming from the auction and subsequent trading. Following that notification, the Treasury and the FRBNY actively monitored the market for the May two-year notes and the SEC and Justice began investigations. The government investigations, and Salomon's internal review that was conducted in response to these investigations, ultimately resulted in a series of disclosures by Salomon in August 1991 that it had submitted unauthorized customer bids in several auctions in 1990 and 1991.[5]

The events involving the bidding improprieties of Salomon and the squeezes of Treasury notes also focused attention on large investment entities (''hedge funds''[6] being one of the more prominent types) that play a major role in the government securities market. Many of these investment funds, however, are exempt from most types of U.S. regulatory oversight.

While large investment funds have regularly placed bids in Treasury auctions in the past, it was not until late 1990 that these funds began to be awarded large amounts of securities in Treasury auctions, suggesting that they had highly leveraged positions. Like most investors, they typically bid through major primary dealers. The combined awards of the investment fund and the dealer which submitted such bids would often represent a significant portion of the publicly offered amount of securities.

Regulators had little, if any, authority to gain access to information about the holdings of many major investors. Investment funds, other than those required to register under the Investment Company Act, e.g., mutual funds, are not generally subject to SEC oversight.[7] The SEC also has little authority to obtain regular information on the government securities activities of large investors. Treasury also has little access to information on their activities, other than auction-related information. The CFTC is the only regulatory agency with regular reporting contact with certain large investors. However, the CFTC's responsibilities extend primarily to the futures market.

B. Regulatory Agencies Responses to Market Problems

Beginning in September 1991, the Treasury, the SEC and the Federal Reserve conducted a thorough examination and review of the government securities market and published the *Joint Report* in January 1992. This report contained many legislative and regulatory recommendations for strengthening oversight of the market.[8] One recommendation, which is the focus of this advance notice of proposed rulemaking, involved clarifying and expanding Treasury's authority under the Government Securities Act of 1986 (GSA) to require reporting by all holders of large positions in Treasury securities. The Treasury's authority to prescribe recordkeeping and reporting rules under the GSA, prior to the amendments of 1993, permitted a large position reporting system designed to monitor concentrations of positions at government securities brokers and dealers.

The Treasury also took administrative and regulatory actions to strengthen oversight and surveillance of the market and maintain a fully competitive auction process.[9] A few of the more significant reforms that are related to the issues addressed in this notice involved improved surveillance of the market and the establishment of an automated system of auctioning Treasury securities. A new surveillance working group (comprised of Treasury, FRBNY, SEC, Federal Reserve Board, and CFTC officials) was formed to improve surveillance and strengthen regulatory coordination. FRBNY, acting as Treasury's fiscal agent, as well as to support their monetary policy operations, has enhanced and expanded its market oversight efforts for collecting and analyzing information needed for surveillance purposes. In addition, the Treasury increased the maximum amount from $1 million to $5 million for noncompetitive tenders; published a thoroughly revised, comprehensive Uniform Offering Circular for Treasury securities to codify and clarify Treasury auction rules; and in August of 1992, began auctioning 2- and 5-year notes using a single price auction (or so-called ''Dutch auction'') experiment.

C. Congressional Response to Market Problems—Government Securities Act Amendments of 1993

The short squeezes of the Spring of 1991 and the revelations in August 1991 of wrongdoing by Salomon in the purchase and sale of Treasury securities occurred during a period when Congress was considering government securities legislation to, among other things, reauthorize Treasury's rulemaking authority under the GSA, which was set to expire on October 1, 1991.[10] These events in the government securities market sparked an extensive review of the operations of the market and the need for additional reforms to strengthen its regulation. Numerous Congressional committee hearings and legislative mark-up sessions were held in both the Senate and House of Representatives from May 1991 through the Fall of 1993.

Although, as noted, the Treasury instituted several reforms in response to the Salomon violations and short squeezes, the Treasury also requested expanded and strengthened regulatory power over the government securities market which was realized in the Government Securities Act Amendments of 1993 (GSAA), which

[3] A security is said the be ''on special'' when, due to its scarcity, a holder can enter into a repo involving that specific security at a lower rate of interest, and thus a lower financing cost, than the prevailing or general repo rate.

[4] Information about primary dealers' positions in Treasury securities is collected routinely by the Federal Reserve Bank of New York.

[5] See Salomon Press Releases dated August 9 and 14, 1991.

[6] For a detailed discussion of hedge funds, see the Joint Report, at B–64.

[7] Most investment interests in investment partnerships are not registered pursuant to the Securities Act of 1933; hedge fund structures are such that they claim an exemption from registering as securities dealers under Section 15(a) of the Securities Exchange Act of 1934; and a hedge fund is usually structured so as not to be an investment company under the Investment Company Act of 1940. However, the anti-fraud provisions of the federal securities laws do apply to hedge funds whether or not they are registered with the SEC.

[8] *Joint Report* at xv-xvi and 6–34.

[9] *See Joint Report*, at xiii-xv, for a description of the administrative and regulatory actions taken by the regulatory agencies.

[10] Treasury's rulemaking authority did expire and it was without such authority from October 1, 1991, until December 17, 1993, when the Government Securities Act Amendments of 1993 (P.L. 103–202, 107 Stat. 2344 (1993)) was signed into law.

was signed into law by President Clinton on December 17, 1993. One of the major provisions of the GSAA authorizes the Treasury to write rules for large position reporting.[11] This provision is intended to improve the information available to regulators regarding very large positions of recently issued Treasury securities held by market participants and to assure that regulators have the tools necessary to monitor the Treasury securities market.

Section 104 of the GSAA, which amended Section 15C of the Securities Exchange Act of 1934, authorizes the Treasury to adopt rules requiring specified persons holding, maintaining, or controlling large positions in to-be-issued or recently issued Treasury securities to file reports regarding such positions.[12] As explained in a floor statement on this legislation, this grant of authority ''* * * rests on the belief that the Secretary of the Treasury is well positioned to determine whether large position reporting is necessary and appropriate in order to monitor the impact in the Treasury securities market of concentrations of positions and to assist the SEC in its enforcement of the Exchange Act. It is our expectation that substantial deference will be accorded to any determination that Treasury makes in this regard.'' [13]

Unless otherwise specified by the Treasury, the large position reports are to be filed with the FRBNY, acting as Treasury's agent. Such reports will in turn be provided to the SEC by the FRBNY. The legislation also authorizes Treasury to prescribe recordkeeping rules for holders of large positions to ensure that they can comply with the reporting requirements. It also permits the Treasury to exempt, consistent with the public interest and the protection of investors, any person or class of persons, or any transaction or class of transactions, from the large position reporting rules. The legislation grants Treasury flexibility and discretion in determining the key requirements and features to be addressed in the rules—defining which persons (individually or as a group) hold positions; the size and types of positions to be reported; the securities to be covered; the aggregation of positions and accounts; and the form, manner and timing of reporting.

To provide the reader with a sense of the Congressional intent and importance associated with large position reporting, the following are excerpts from House Report 103–255.[14]

> In order to monitor developments in the Treasury securities marketplace and better police against fraud or manipulation, the Committee believes that the government needs surveillance tools similar to those employed in other financial markets. One of the more useful tools that regulators in the commodities and equities market[s] currently have is the ability to obtain information regarding the trading activities of major market participants. In the government securities market, no similar statutory authority has existed which would authorize federal regulators to require all market participants to make information available regarding large positions being assumed in the marketplace, and currently government securities brokers and dealers only report such information on a voluntary basis.
>
> * * * The purpose of such reporting would be similar to the purpose of the position reporting that is done in the commodity futures market—it would enable government agencies to monitor market developments, particularly those associated with concentrated positions.
>
> * * * Large position reporting also would be useful in assuring that regulators can monitor the positions of major market participants other than government securities brokers and dealers under certain circumstances. In particular, it will provide assurance that the government can compel disclosure of position information when necessary from all large market participants, including a group of relatively unregulated entities called 'hedge funds'.
>
> * * * The Committee expects the Secretary to take into account the costs and burdens of the reporting requirement to the investor and its shareholders or beneficial owners as well as the impact on the efficiency and liquidity of the Treasury market. The Committee also expects that in prescribing such rules, the Secretary will consider the views of, and consult with, the Commission, the Federal Reserve Board, and the Federal Reserve Bank of New York.

The Treasury intends to prescribe large position reporting rules that meet the intent of Congress, are not overly burdensome or costly, do not impair the liquidity of the market and do not increase borrowing costs to the Federal government. Accordingly, the Treasury is soliciting input from market participants and other interested parties, and requesting answers to the specific questions set out below, as to how large position rules should be structured.

D. Large Position and Large Trader Reporting in Other Markets

Large position and/or large trader reporting rules are currently in place or being developed in several other U.S. markets (e.g., futures and equity markets). Readers may wish to familiarize themselves with these large trader and large position reporting requirements in order to better understand how such reporting systems operate and to assist the reader in commenting on this notice.

CFTC rules require position reporting by a variety of entities or groups—commodity brokers, contract markets and traders.[15] The CFTC regulations require reports when individuals or groups acquire specified levels of futures and options positions in the commodity markets. The levels are determined by the CFTC and there are different amounts for each targeted commodity area.

The Market Reform Act of 1990 [16] authorized the SEC to create a large trader recordkeeping and reporting system for publicly traded equities and options on equities. The SEC proposed a large trader reporting rule on August 22, 1991, and reproposed it on February 9, 1994.[17]

Under the proposed SEC rules, these large traders would be required to report certain information to the SEC and would be assigned large trader identification numbers to provide to each brokerage firm where the traders have accounts. The firms would then be required to maintain, and to report to the SEC on request, records of transactions by large traders.

Large position reporting rules are currently in place in the equity securities market. The SEC requires owners that, directly or indirectly, acquire beneficial control of more than five percent of a class of a corporation's equity securities to make a public disclosure of this information.[18] The

[11] In addition to large position reporting, some of the key provisions of the GSAA are: Permanent reauthorization of Treasury's rulemaking authority; authorization to prescribe sales practice rules for the government securities market; increased authority to the SEC to prevent fraudulent and manipulative acts and practices; prohibition on false and misleading statements in government securities offerings; and authority to the SEC to receive records of government securities transactions for trade reconstruction purposes.

[12] P.L. 103–202, Sec. 104; 15 U.S.C. 78o-5(f).

[13] Floor statement on S. 422, The Government Securities Act Amendments of 1993, representing the views of the Chairman and Ranking Minority Member of the House Committee on Energy and Commerce and the Chairman and Ranking Minority Member of the House Subcommittee on Telecommunications and Finance, *Congressional Record*, (November 22, 1993) at H. 10967. For other legislative history, see S. Rpt. 103–109 (July 27, 1993); *Congressional Record* (July 27, 1993) at S. 9863–9866; H. Rpt. 103–255 (September 23, 1993); and *Congressional Record* (October 5, 1993) at H. 7390–7405.

[14] House Committee on Energy and Commerce, Report to Accompany H.R. 618, H.R. Rep. No. 103–255, 103d Cong., 1st Sess. (September 23, 1993), at 24, 25 and 44.

[15] 17 CFR Parts 15.00–18.06.

[16] P.L. No. 101–432, 104 Stat. 963 (1990).

[17] Securities Exchange Act Release No. 29593 (August 22, 1991), 56 FR 42550 (August 28, 1991); and Securities Exchange Act Release No. 33608 (February 9, 1994), 59 FR 7917 (February 17, 1994).

[18] 15 U.S.C. 78m(d), SEC Rule 13D, 17 CFR 240.13d–1—240.13d–102.

beneficial owner must file its report within 10 business days with the SEC, the issuer and the exchange on which the securities are traded.

In addition, the FRBNY requires primary dealers in Treasury securities to submit several position reports on a regular basis. These include weekly reports of positions (with separate reporting for each when-issued and recently issued security), cumulative transactions, and financing transactions (repos, reverse repos, securities borrowed and lent, collateralized loans and matched-book transactions) and a daily report of when-issued transactions.

II. Purposes, Objectives and Features of Treasury Large Position Rules

The Treasury actively supported large position reporting during the legislative process that resulted in the passage of the GSAA and is committed to implementation of rules that make sense from both a regulatory and market efficiency perspective. As the agency of the Federal government most concerned with minimizing the interest cost on the public debt, Treasury believes that the U.S. is best served by an efficient and liquid market for Treasury securities that is not overburdened with regulation but, at the same time, is not viewed as being subject to manipulation.

Large position rulemaking is a complex and important task. For example, defining a ''reporting entity'' (i.e., persons holding, maintaining or controlling large positions) or determining what constitutes a position in a Treasury security will be very difficult given the many issues that need to be considered. Although everyone would likely agree that a position would include securities owned by and in the possession or control of the reporting entity, there are many views as to whether, and if so how, repos, reverse repos, when-issued trades, futures, forwards, options, bonds borrowed and fails should be included in a position. Determining how to treat repos and reverse repos is likely to be particularly complex, given the potential for duplicate reporting of the same security in both counterparties' positions, and the difficulty of defining control for different types of repo arrangements, such as tri-party repos.

Treasury plans to take a measured approach in exercising its large position reporting authority, including the related recordkeeping requirements, and to actively involve market participants in the rulemaking process. Treasury will take into consideration the costs to market participants, the potential impact on the efficiency and liquidity of the market for Treasury securities and any implications on the Federal government's cost of borrowing.

The principal purpose of large position reporting is to enable Treasury and the other regulators to better understand the possible reasons for apparent significant price distortions in to-be-issued and recently issued Treasury securities. This information would enable policymakers to make better decisions concerning any possible government actions that might be taken in response to apparent price anomalies. The ability to identify concentrations of ownership and to obtain information on large positions being held or controlled in to-be-issued or recently issued Treasury securities is important in enabling regulators responsible for market surveillance and enforcement to understand the causes of market shortages.

Another important goal of large position reporting is to assist securities regulators in conducting market surveillance. The enactment of this authority was largely based on a belief that the government needs surveillance tools, similar to those employed in other financial markets, in order to monitor developments in the Treasury securities market and to better police against fraud and manipulation. Information about large positions may be critical to the SEC in carrying out its enforcement duties under the federal securities laws. Large position reporting will also enable regulators to monitor the positions of major market participants other than government securities brokers and dealers (e.g., large investment funds that are largely unregulated, custodians, and foreign and domestic customers) under certain circumstances.

Large position records and reports could also provide regulatory agencies early warning of potential market problems. If a problem develops, such records and reports could assist regulators in, and reduce the cost of, any investigation.

It is important to recognize that large position reporting merely creates a requirement to maintain records and report information about such positions. Large positions are not inherently harmful and there is no presumption of manipulative or illegal intent solely because a position is large enough to be subject to reporting rules that may be prescribed by the Treasury. Additionally, there is no intention of establishing trading or position limits as part of any rulemaking. Nor is the Treasury planning to institute a recordkeeping and reporting system that would require the identification of large traders or the reporting of large trades.

The statutory provision regarding the minimum size of a position subject to reporting is meant to ensure that the minimum size will be large enough to require reports only of positions that could be used to significantly affect the market for a particular security. It is Treasury's current view that the size of a reportable position would most likely be in the billions of dollars and much larger than the reporting thresholds in the futures market. As a result, it is expected that very few entities would likely have to file large position reports.

The GSAA specifically provides that the Treasury shall not be compelled to disclose publicly any information required to be kept or reported for large position reporting. In particular, such information is exempt from disclosure pursuant to Exemption 3 of the Freedom of Information Act.[19]

The Treasury contemplates granting exemptions from the large position recordkeeping and reporting rules for foreign central bank, foreign government and official international financial institution holdings at the FRBNY.

III. Specific Considerations and Questions

The Treasury welcomes comments, reactions and suggestions on the above issues. Additionally, advice and recommendations regarding an approach and structure for a large position recordkeeping and reporting system that meet the purposes, objectives and features addressed above are invited from all interested persons. Specifically, in developing such recommendations, suggestions and advice, commenters are requested to consider the following questions.

A. Reporting Entities—Persons holding, maintaining or controlling large positions, as yet to be defined, are reporting entities. The questions in this section are directed toward determining which entities should be affected by the regulations. In particular, the questions focus on how affiliated entities are to be treated, what entities should be exempt and whether classes of entities may warrant special treatment.

1. How should we define a ''reporting entity''? Should it be similar to the definition of a bidder in Treasury's rules governing the sale and issue of Treasury bills, notes and bonds (i.e., Uniform Offering Circular at 31 CFR Part 356)?

2. What aggregation rules should apply for affiliated entities? Assuming there are aggregation rules, should there be an exception for affiliates that cannot or do not share information? For example, how should different funds

[19] 5 U.S.C. 552.

within a mutual fund family be treated? Should customer securities that are subject to a broker-dealer's investment discretion be included? Should any exception be the same as the exception provided for in Appendix A to the Uniform Offering Circular?

3. Should reporting entities that are foreign-based be treated differently than domestic entities given the potential enforcement difficulty and geographic separation? Are any exemptions needed for foreign-based entities regarding items such as affiliation rules, location of records, form of reporting, or reporting time frames? What would be the complications of requiring foreign-based entities to comply with such rules as if they were U.S. domestic entities?

4. What exemptions should be considered beyond any for foreign central banks, foreign governments and official international financial institutions holding at the FRBNY?

B. What constitutes ''control''? For the purposes of this ANPR, ''control'' includes the statutory terms ''holding'' and ''maintaining''. The following questions are designed to provide guidance on when these three statutory conditions may be met.

1. Is control evidenced by beneficial ownership, investment discretion, custody or any combination of the three? Is there the possibility of extensive double counting? If so, is it a problem?

2. Should custodial accounts for which the custodian has no investment discretion be the reporting responsibility of the custodian, the customer or both? If the custodian is responsible for reporting, should all custody holdings in a specific security be aggregated, or should the threshold amount established for reporting be applied individually to each customer?

C. What securities should be covered and what size is ''large''? The questions in this section seek guidance on the securities to which the rule should apply and how to determine the reporting threshold.

1. How long should a security be outstanding before it is no longer considered recently issued? Should the reopening date of notes and bonds that are reopened by the Treasury, be the date from which ''recent'' is measured?

2. Should any securities be excluded, e.g., Treasury bills, due to the cost/complexity of calculating a position in them versus the expected benefits of reporting?

3. How should the ''large'' threshold be determined—a percentage of the issue? A standard dollar amount? Should different classes of securities—notes vs. bonds, short-term notes vs. intermediate notes—have different definitions of ''large''? Should there be a different reporting threshold for pre- and post-issuance? Should there be a different reporting threshold for securities reopened by the Treasury?

D. What transactions should be included in a ''position''?

1. Should the definition of ''position'' developed for this rulemaking be consistent with the definition of ''net long position'' in the Uniform Offering Circular? If they are generally consistent, the following questions should be considered as possible exceptions.

2. How should when-issued positions in outstanding securities with the same CUSIP be treated (i.e., reopenings)?

3. How should financing transactions, such as repurchase and reverse repurchase agreements, dollar rolls and bonds borrowed, be treated in defining a position? Should more than one counterparty to the transaction be required to include the transaction in its position? Should contract terms, such as maturity, right to substitute, tri-party relationships and termination notice, be considered?

4. Should large short positions be included in ''position''? What amount of netting should be permitted or should gross long (short) positions be reported?

5. Should forward contracts, options, futures, and open fails be included? Should some of these items only be included under certain circumstances? For example, only include written (sold) options or only include fails to deliver but not fails to receive. If so, what might these circumstances be?

6. Should the various components of a large position, such as outright holdings, repos, forward contracts, etc., be separately identified in any required reports?

E. Recordkeeping.

1. What records should be kept by a reporting entity? Should the recordkeeping requirement be dependent on whether the reporting entity is regulated? Should the reporting entity keep copies only of any reports it has filed, or, in addition, documents and other records sufficient to reconstruct the size of its position?

2. Should there be a requirement to maintain a calculation/worksheet supporting the determination of a large position by detailing the elements comprising any large positions?

3. How long should large position calculations and supporting records be retained?

4. Should the records be kept in a standardized format? Would a requirement to maintain records in electronic form be feasible and practical?

5. Should unregulated entities be required to submit some form of independent verification that they have in place an appropriate record maintenance system, e.g., an accountant's letter?

F. Reporting.

1. Should the reporting requirement be automatic, whereby the reporting entity would file a report any time it has reached the threshold for a particular issue?

2. If reports are periodic at the request of the Treasury, what mechanism should be used to communicate a request to the market? How can it be assured that a potential ''reporting entity'' receives notice of the request for a report? How much lead time would be necessary to assure that everyone who needs to get the notice will receive it?

3. Would it be reasonable for a reporting entity to comply with a request for a large position report on the business day immediately following receipt of the request? If not, what would be a reasonable time period?

4. Should requests for reports follow a sequential process whereby dealers and custodians would be asked to report initially followed, where appropriate, by a more targeted follow-up as to specific customers? For example, an initial report indicates that custodian A has 75% of an issue. A subsequent request is made only to the custodian's customers to determine if any of them have large positions.

5. Is there a need for the reports to be filed using a standardized format? If so, should they be made in machine readable form?

6. Is there a reason for the Secretary to specify that reports would be submitted to parties other than the FRBNY?

7. Should a request for reports on a specific security be: (i) a one-time request (snapshot as of a given date); (ii) an initial report with a continuing obligation to report subsequent significant changes until further notice; or (iii) an individually specified request (i.e., report on any large positions in a specific security for the next 6 business days)?

8. Should there be a responsibility for a broker-dealer to report the name of any customer whose trading activity in the specified security may indicate that the customer could be a holder of a large position even if the customer does not hold such a position at the broker-dealer?

G. Implementation.

1. How much lead-time is necessary for market participants to be able to comply with such a new regulation?

Treasury staff consulted with staff of the SEC, Federal Reserve Board, FRBNY and CFTC in developing the questions that are contained in this ANPR. As the rulemaking process continues in the months ahead, we will continue to solicit the views of these agencies, share information with them and include them in the deliberative process.

The preliminary views expressed in this notice may change in light of comments received. In any case, the Treasury will publish proposed large position reporting rules for public comment after we have had an opportunity to review the comments that we receive in response to this ANPR.

List of Subjects

17 CFR Part 404

Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

17 CFR Part 405

Brokers, Government securities, Reporting and recordkeeping requirements.

Authority: Sec. 101, Pub.L. 99–571, 100 Stat. 3209; Sec. 4(b), Pub.L. 101–432, 104 Stat. 963; Sec. 102, Sec. 106, Pub.L. 103–202, 107 Stat. 2344 (15 U.S.C. 78o–5 (b)(1)(B), (b)(1)(C), (b)(4)).

Dated: January 17, 1995.

Frank N. Newman,

Deputy Secretary.

[FR Doc. 95–1682 Filed 1–23–95; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Regulatory Program

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions and additional explanatory information pertaining to a previously proposed amendment to the Utah regulatory program (hereinafter, the ''Utah program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revision and additional explanatory information for Utah's proposed rules pertain to the confidentiality of coal exploration information. The amendment is intended to revise the Utah program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., m.s.t., February 8, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue NW., Suite 1200, Albuquerque, New Mexico 87102

Utah Coal Regulatory Program, Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah 84180–1203, Telephone: (801) 538–5340.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated September 9, 1994, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–971). Utah submitted the proposed amendment in response to the required program amendment at 30 CFR 944.16(a). The provisions of the Utah Coal Mining Rules that Utah proposed to revise were at Utah Administrative Rule (Utah Admin. R.) 645–203–200, Confidentiality.

OSM announced receipt of the proposed amendment in the September 27, 1994, **Federal Register** (59 FR 49227), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT–976). Because no one requested a public hearing or meeting, none was held. The public comment period ended on October 27, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of Utah's rules at Utah Admin. R. 645–203–200 and 645–203–210, confidentiality of coal exploration information. OSM notified Utah of the concerns by letter dated November 15, 1994 (administrative record No. UT–991). Utah responded in a letter dated January 5, 1994, by submitting a revised amendment and additional explanatory information (administrative record No. UT–1003).

Utah proposes revisions to Utah Admin. R. 645–203–200, by deleting the phrase ''or that the information is confidential under the standards of the Federal Act.'' In addition, Utah provides additional explanatory information pertaining to Utah Admin. R. 645–203–210, by stating that there is some question as to the repetitious aspects of Utah Admin. R. 645–203–210. Utah states that Utah Admin. R. 654–203–210 requires the Division of Oil, Gas and Mining (Division) to ''keep'' information confidential while Utah Admin. R. 645–203–200 directs the Division to ''not make'' information available.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Utah program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

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

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 13, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–1708 Filed 1–23–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Corps of Engineers

33 CFR Part 334

Danger Zone and Restricted Area Regulations

AGENCY: Army Corps of Engineers, DoD.

ACTION: Proposed rule.

SUMMARY: The U.S. Army Corps of Engineers is proposing to amend the regulations in 33 CFR part 334 to add a clause that alerts mariners that potential navigation and charting errors may occur in the boundaries of some danger zones and restricted areas as a result of the updating and replacement of the North American Datum of 1927 with the North American Datum of 1983. The promulgation of these regulations will notify mariners that geographic coordinates establishing danger zone and restricted area boundaries, promulgated in 33 CFR part 334 are not to be used for plotting on maps and charts where NAD 83 is referenced unless the geographic coordinates in the regulations are expressly labeled ''NAD ''83''. Geographic coordinates without the NAD 83 reference may be plotted on charts or maps which are referenced to NAD 83 only after applying the correct formula that is published on the map or chart being used.

DATES: Comments must be submitted in writing on or before February 23, 1995.

ADDRESSES: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: A datum is a reference point, line or surface used as a reference in surveying and mapping. Through the use of satellites and other modern surveying techniques, it is now possible to establish global reference systems. The North American Datum of 1983 (NAD 83), a new adjustment of the U.S. network of horizontal control, has been adopted as a standard reference datum by the United States and Canada. In March 1988, the National Ocean Service, National Oceanic and Atmospheric Administration, commenced publishing charts in NAD 83. The parameters of the Ellipsoid of reference used with NAD 83 are very close to those used for the World Geodetic System of 1984 (WGS 84). The ellipsoid used for NAD 83, Geodetic Reference System 1980 (GRS 80), is earth-centered or geocentric as opposed to the nongeocentric ellipsoids previously employed. This means that the center of the ellipsoid coincides with the center of the mass of the earth. Any inquiries and requests for further information regarding NAD 83 and National Ocean Service nautical charts should be addressed to: Director, Coast Survey (NCG2), National Ocean Service, NOAA, 1315 East-West Highway, Station 6147, Silver Spring, Maryland 20910–3282.

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is proposing to amend the regulations in 33 CFR part 334 by inserting the following clause that alerts mariners to the potential for navigation and charting errors in consequence of the NAD 83.

''Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose reference horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used''.

Notes

1. The U.S. Army Corps of Engineers has determined that this proposed rule is not a major rule within the meaning of Executive Order 12866 and is in accordance with the exemption provided military functions.

2. This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small

entities, i.e., small businesses, small government jurisdictions. We do not believe that the establishment of these rules will have any negative impacts on small entities because the procedures codified here will only serve to eliminate errors and confusion about the applicability of the 1983 North American Datum. Finally, no reporting or record-keeping requirements are imposed on any small entity as the result of this amendment to the danger zone/restricted area regulations. Therefore, we have determined that this proposed rule, if and when finalized, will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not warranted.

List of Subjects in 33 CFR Part 334.

Navigation, Waterways, Transportation.

Accordingly, we are proposing to amend part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3)

2. Section 334.6 is added as follows:

§ 334.6 Datum.

(a) Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose reference horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

(b) For further information on NAD 83 and National Service nautical charts please contact: Director, Coast Survey (N/CG2), National Ocean Service, NOAA, 1315 East-West Highway, Station 6147, Silver Spring, MD 20910–3282.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–1661 Filed 1–23–95; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[SC01–FRL–5143–4]

Clean Air Act Proposed Full Approval of Operating Permits Program; State of South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: EPA proposes to grant full approval to the Operating Permits Program submitted by the State of South Carolina for the purpose of complying with Federal requirements for an approvable state program to issue operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by February 23, 1995.

ADDRESSES: Written comments on this action should be addressed to Carla E. Pierce, Regional Program Manager, Title V Program Development Team, Air Programs Branch, at the EPA Region 4 office listed.

Copies of the State's submittal and other supporting information used in developing the proposed full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, GA 30365. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Title V Program Development Team, Air Programs Branch, Air Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30365, (404) 347–3555 extension 4153.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act Amendments of 1990, (Clean Air Act (''Act'') sections 501–507), EPA has promulgated rules that define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal operating permits program.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

Pursuant to section 502(d) of the Act, the governor of each state must develop and submit to the Administrator an operating permits program under state or local law or under an interstate compact meeting the requirements of title V of the Act. The South Carolina Department of Health and Environmental Control (DHEC) requested, under the signature of Governor Carroll A. Campbell, Jr., approval of its operating permits program with full authority to administer the program submittal in all areas of the State of South Carolina, including the Catawba Indian Reservation.

The South Carolina submittal, provided as Section II–''Complete Program Description,'' addresses 40 CFR 70.4(b)(1) by describing how DHEC intends to carry out its responsibilities under the part 70 regulations. The program description has been deemed to be sufficient for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the Attorney General (or the attorney for the state air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of a title V operating permits program. The State of South Carolina submitted an Attorney General's Opinion demonstrating adequate legal authority as required by Federal law and regulation.

Section 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit application forms, permit forms and relevant guidance to assist in the State's implementation of its permit program. Appendix A of the DHEC submittal includes the permit application forms and permit forms, and it has been determined that the application forms and the permit forms meet the requirements of 40 CFR 70.5(c) and 40 CFR 70.6, respectively.

2. Regulations and Program Implementation

The State of South Carolina has submitted Chapter 61–62.70 ''Title V Operating Permit Program'' for implementing the State part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of its procedurally correct adoption is included in Appendix H of the submittal. Copies of all applicable State statutes and regulations that authorize the part 70 program, including those governing State administrative procedures, were submitted with the State's program.

The South Carolina operating permits regulations follow part 70 very closely. The following requirements, set out in EPA's part 70 operating permits program review, are addressed in Section II of the State's submittal:

(A) Applicability requirements, (40 CFR 70.3(a)): 61–62.70.3(a);

(B) Permit applications, (40 CFR 70.5): 61–62.70.5;

(C) Provisions for permit content, (40 CFR 70.6): 61–62.70.6; Standard permit requirements: (40 CFR 70.6(a)): 61–62.70.6(a); Permit duration: (40 CFR 70.6(a)(2)): 61–62.70.6(a)(2); Monitoring and related recordkeeping and reporting requirements: (40 CFR 70.6(a)(3)): 61–62.70.6(a)(3); Compliance requirements: (40 CFR 70.6(c)): 61–62.70.6(c);

(D) Operational flexibility provisions, (40 CFR 70.4(b)(12)): 61–62.70.7(e)(5);

(E) Provisions for permit issuance, renewals, reopenings and revisions, including public participation (40 CFR 70.7): 61–62.70.7; and

(F) Permit review by EPA and affected State (40 CFR 70.8): 61–62.70.8. The South Carolina Pollution Control Act, section 48–1–320, section 48–1–330, and section 48–1–50 satisfy the requirements of 40 CFR 70.11, for enforcement authority.

DHEC regulations contain a definition of the phrase ''title I modification'' which does not include changes which occur under the State's minor new source review regulations approved into the South Carolina State Implementation Plan (SIP). On August 29, 1994, EPA proposed revisions to the interim approval criteria in 40 CFR 70.4(d) to, among other things, allow State programs with a more narrow definition of ''title I modification'' to receive interim approval (59 FR 44572). The Agency also solicited public comment on the proper interpretation of ''title I modifications'' (59 FR 44573). The Agency stated that if, after considering the public comments, it continues to believe that the phrase ''title I modifications'' should be interpreted as including minor NSR changes, it would revise the interim approval criteria as needed to grant states that adopted a narrower definition interim approval. EPA intended to finalize its revisions to the interim approval criteria under 40 CFR 70.4(d) before taking final action on part 70 programs. However, this is no longer possible. Until the revision to the interim approval criteria is promulgated, EPA's choices are to either fully approve or disapprove the narrower ''title I modification'' definition in states such as South Carolina. For the reasons set forth below, EPA believes that proposing disapproval for such programs at this time solely because of this issue would be inappropriate.

First, EPA has not yet conclusively determined that a narrower definition of ''title I modification'' is incorrect and thus a basis for disapproval or interim approval. Second, EPA believes that the South Carolina program should not be considered for disapproval because EPA itself has not yet been able resolve this issue through rulemaking and is solely responsible for the confusion on what constitutes a ''title I modification'' for part 70 purposes. Moreover, proposing disapproval for programs from states such as South Carolina that submitted their programs to EPA on or before the November 15, 1993, statutory deadline could lead to the perverse result that these states would receive disapprovals, while states which were late in submitting programs could take advantage of revised interim approval criteria if and when these criteria become final. In effect, states would be severely penalized for having made timely program submissions to EPA. Finally, proposing disapproval of a State program for a potential problem that primarily affects permit revision procedures would delay the issuance of part 70 permits, hampering state/Federal efforts to improve environmental protection through the operating permits system. For further rationale on EPA's position on the determination of what constitutes a ''title I modification,'' see EPA's final interim approval of the State of Washington's part 70 operating permits program (59 FR 55813, November 9, 1994).

For the reasons mentioned above, EPA is proposing approval of the South Carolina program's use of a narrower definition of ''title I modification'' at this time. DHEC has issued a commitment to expeditiously revise the State's definition of ''title I modification'' if it is found at a later date to be inconsistent with EPA's revised definition in the rulemaking listed above.

DHEC established a process subject to EPA approval to determine insignificant activities and emissions levels in Regulation 61–62.70.5(c). Regulation 61–62.70.5(c) includes activities/emissions sources that are not required to be included in the permit application. Regulation 61–62.70.5(c) includes activities/emissions sources that must be listed in the permit application, but whose emissions do not have to be quantified. Notwithstanding Regulation 61–62.70.5(c), applicants are required to include all emission sources and quantify emissions if needed to determine major source compliance with an applicable requirement, or to collect any permit fee.

Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement under 40 CFR 70.6(a)(3)(iii)(A) which is a distinct reporting obligation. Where ''prompt'' is defined in the individual permit, but not in the program regulations, EPA may veto permits that do not require sufficiently prompt reporting of deviations. The State of South Carolina has not defined prompt in its program regulations with respect to reporting of

deviations. DHEC has committed to include the following standard permit condition in each title V permit which defines ''prompt'':

Deviations from limits or specific conditions contained in this permit, including those attributable to upset conditions, shall be reported promptly (within 24 hours) to the EQC District office. A written report, including the probable cause of such deviations and any corrective actions or preventive measures taken, shall be submitted within thirty days (30) to the Department.

South Carolina has the authority to issue a variance from requirements imposed by State law. Sections 48–1–50(5) and 48–1–100 of the Pollution Control Act allow the permitting board discretion to grant relief from compliance with State rules and regulations. EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently is proposing to take no action on this provision of State law. EPA has no authority to approve provisions of State law, such as the variance provision referred to, that are inconsistent with the Clean Air Act. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to comply with those terms in a manner inconsistent with part 70 procedures.

The complete DHEC program submittal and the Technical Support Document are available for review for more detailed information.

3. Permit Fee Demonstration

The DHEC has opted to charge the presumptive minimum fee ($25/ton + Consumer Price Index (CPI) from 1989). The fees will be based on a stationary source's actual emissions using actual operating hours, production rates, in-place control equipment, and types of material processed, stored, or combusted during the period of calculation. EPA has determined that South Carolina's fee demonstration is adequate and meets the requirements of 40 CFR 70.9.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or commitments for section 112 implementation. South Carolina has identified in its title V program submittal broad legal authority to incorporate into permits and enforce all applicable requirements; however, South Carolina has also indicated that additional regulatory authority may be necessary to carry out specific section 112 activities. South Carolina has therefore supplemented its broad legal authority with a commitment to ''expeditiously seek additional authority as necessary to incorporate into title V permits any future applicable requirements promulgated by EPA to enable title III implementation through permit issuance.'' EPA has determined that this commitment, in conjunction with South Carolina's broad statutory and regulatory authority, adequately assures compliance with all section 112 requirements. EPA regards this commitment as an acknowledgement by South Carolina of its obligation to obtain further regulatory authority as needed to issue permits that assure compliance with section 112 applicable requirements. This commitment does not substitute for compliance with part 70 requirements that must be met at the time of program approval.

EPA interprets the above legal authority and commitment to mean that South Carolina is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this proposed full approval and the April 13, 1993, guidance memorandum titled ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz.

b. Implementation of section 112(g) upon program approval. As a condition of approval of the part 70 program, South Carolina is required to implement section 112(g) of the Act from the effective date of the part 70 program. Imposition of case-by-case determinations of maximum achievable control technology (MACT) or offsets under section 112(g) will require the use of a mechanism for establishing federally enforceable restrictions on a source-specific basis. EPA is proposing to approve South Carolina's preconstruction permitting program found in Regulation 62.1, Section II of the South Carolina State Implementation Plan (SIP) under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. EPA believes this approval is necessary so that South Carolina has a mechanism in place to establish federally enforceable restrictions for section 112(g) purposes from the date of part 70 approval. The scope of this approval is narrowly limited to section 112(g), and does not confer or imply approval for purposes of any other provision under the Act. If South Carolina does not wish to implement section 112(g) through its preconstruction permit program and can demonstrate that an alternative means of implementing section 112(g) exists, the EPA may, in the final action approving South Carolina's part 70 program, approve the alternative instead. Overall, section 112(l) provides the authority for approval for the use of State air programs to implement 112(g), and title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and title V.

This use of the preconstruction program for this approval only extends until such time as the State is able to adopt regulations consistent with any regulations promulgated by EPA to implement section 112(g). Accordingly, EPA is proposing to limit the duration of this approval to a reasonable time following promulgation of section 112(g) regulations so that South Carolina, acting expeditiously, will be able to adopt regulations consistent with the section 112(g) regulations. EPA proposes here to limit the duration of this approval to 12 months following promulgation by EPA of section 112(g) regulations.

c. Program for straight delegation of section 112 standards as promulgated. Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 General Provisions Subpart A and standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 to South Carolina for its program mechanism for receiving delegation of all existing and future section 112(d) standards for both part 70 and non-part 70 sources, and section 112 infrastructure programs such as those programs authorized under sections 112(i)(5), 112(g), 112(j), and 112(r). The proposed approval of South Carolina's delegation mechanism extends to those standards and infrastructure programs that are unchanged from Federal rules as promulgated. In addition, EPA is proposing delegation of all existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and

non-part 70 sources.[1] South Carolina has informed EPA that it intends to accept the delegation of section 112 standards on an automatic basis. The details of this delegation mechanism are set forth in an addendum to the South Carolina title V program submittal.

d. Commitment to implement title IV of the Act. DHEC has committed to take action, following promulgation by EPA of regulations implementing sections 407 and 410 of the Act, or revisions to either part 72 or the regulations implementing sections 407 or 410, to either incorporate the revised provisions by reference or submit, for EPA approval, DHEC regulations implementing these provisions. DHEC committed to adopt and submit to EPA the above referenced regulations no later than January 1, 1995.

B. Proposed Actions

1. Full Approval

EPA proposes to fully approve the operating permits program submitted to EPA from the State of South Carolina on November 15, 1993.

2. Program for Straight Delegation of Section 112 Standards

As discussed above in section II.A. 4.c., EPA is proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 to South Carolina for its program mechanism for receiving delegation of all existing and future section 112(d) standards for both part 70 and non-part 70 sources, and infrastructure programs under section 112 that are unchanged from Federal rules as promulgated. In addition, EPA proposes to delegate existing standards under 40 CFR parts 61 and 63 for both part 70 sources and non-part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

EPA requests comments on all aspects of this proposed full approval. Copies of the State's submittal and other information relied upon for the proposal are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposal. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and

(2) To serve as the record in case of judicial review. EPA will consider any comments received by February 23, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from executive order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 9, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–1738 Filed 1–23–95; 8:45 am]

BILLING CODE 6560–50–F

[1] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

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40 CFR Part 281

[FRL–5142–9]

The State of Texas; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of texas for final approval, public hearing and public comment period.

SUMMARY: The Texas Natural Resource Conservation Commission (TNRCC, Texas or the State) has applied for final approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Texas' application and has made the tentative decision that its underground storage tank program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA intends to grant final approval to the State to operate its program in lieu of the Federal program. Texas' application for final approval is available for public review and comment, and a public hearing will be scheduled to solicit comments on the application, if requested.

DATES: A public hearing will be scheduled. Interested parties may call the US EPA, Region 6, Office of Underground Storage Tanks, at (214) 665–6756 between the hours of 8:00 a.m. and 4:00 p.m. Central Standard Time, from February 23, 1995 through February 28, 1995 to learn the date and time of the scheduled public hearing. If it is held, Texas will participate in the public hearing scheduled by EPA on this subject. All comments on Texas' final approval application and all requests to present oral testimony must be received by the close of business on February 23, 1995. EPA reserves the right to cancel the scheduled hearing should there be no significant public interest. Those informing EPA of their intention to testify will be notified of the cancellation.

ADDRESSES: Copies of Texas' final approval application are available for inspection and copying, 9:00 a.m.–4:00 p.m., at the following addresses: Texas Natural Resource Conservation Commission Records and Copy Center, Park 35 Building ''D'', Room 190, 12118 North IH–35, Austin, Texas 78753, Phone: (512) 239–2920; US EPA Headquarters, Office of Underground Storage Tanks Docket Clerk, 401 M Street, SW, Room 2616, Washington, DC 20460, Phone: (202) 260–9720; and US EPA, Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202, Phone: (214) 665–6424. The location for the scheduled hearing can be obtained by calling the US EPA, Region 6, Office of Underground Storage Tanks, Phone: (214) 665–6756, between 8:00 a.m. and 4:00 p.m. Central Standard Time from February 23, 1995 through February 28, 1995. Written comments and requests to present oral testimony should be sent to Joe Womack, Texas Program Officer, Office of Underground Storage Tanks, US EPA, Region 6, Mailcode: 6H-A, 1445 Ross Avenue, Dallas, Texas 75202, Phone: (214) 665–6586.

FOR FURTHER INFORMATION CONTACT: Texas Program Officer, Underground Storage Tank Program, Attention: Joe Womack, US EPA, Region 6, Mailcode: 6H–A, 1445 Ross Avenue, Dallas, Texas 75202, Phone: (214) 665–6586.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of RCRA enables EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. Program approval is granted by EPA if the Agency finds that the State program: (1) Is ''no less stringent'' than the Federal program in the following seven elements: Corrective action; financial responsibility; new tank standards; release detection; release detection recordkeeping; reporting of releases (section 9004(b)(2), 42 U.S.C. 6991(c)(b)(2); and notification requirements of section 9004(a)(8), 42 U.S.C. 6991(c)(a)(8); and (2) provides for adequate enforcement of compliance with UST standards (section 9004(a), 42 U.S.C. 6991(c)(a).

B. Texas

On April 28, 1994, Texas submitted an official application for final approval. Prior to its submission, Texas provided an opportunity for public notice and comment in the development of its underground storage tank program. This is required under 40 CFR 281.50(b). EPA reviewed Texas' application, and determined that there were apparent differences between Texas' regulations and the Federal regulations. The differences were in various sections of the Texas UST regulations and involved minor aspects of corrosion protection, exceptions, and discretionary powers of the Executive Director of the TNRCC.

EPA and the State of Texas have discussed these differences and the State agreed, pursuant to a Memorandum of Agreement (MOA), to amend its current regulations to address each instance of the differences noted above. The revised regulations were submitted to the Texas Register as proposed rule amendments July 1, 1994, and became effective on January 3, 1995. The specific differences and Texas' proposed regulatory changes are documented in the MOA. The MOA is available for review as a part of the State Program Approval Application.

EPA proposes that Texas' program substantially meets all of the requirements necessary to qualify for final approval. Therefore, following mutual agreement on the terms and provisions of the MOA and the completion of the revisions to the Texas UST regulations, EPA proposes to grant final approval to the State of Texas to operate its program in lieu of the Federal program.

In accordance with section 9004 of RCRA, 42 U.S.C. 6991(c), and 40 CFR 281.50(e), the Agency will schedule a public hearing on its proposal. Interested parties can learn the date, time, and place of the scheduled hearing by calling the US EPA, Region 6, Office of Underground Storage Tanks, at (214)665–6756 between 8:00 a.m. and 4:00 p.m. Central Standard Time from February 23, 1995 through February 28, 1995. The public may also submit written comments on EPA's proposal until February 23, 1995. Copies of Texas' application are available at the **ADDRESSES** indicated in this notice.

EPA will consider all public comments on its proposal received at the hearing, if held, or during the public comment period. Issues raised by those comments may be the basis for a decision to deny final approval to Texas. EPA expects to make a final decision regarding approval of Texas' program by April 24, 1995 and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for final determination and a response to all major comments.

The State of Texas is not authorized to operate the UST program on Indian lands and this authority will remain with EPA.

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.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hearby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval effectively suspends the applicability of certain Federal regulations in favor of Texas' program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This Notice is issued under the authority of section 9004 of RCRA, 42 U.S.C. 6991(c).

Dated: January 13, 1995.

Barbara J. Goetz,

Acting Regional Administrator.

[FR Doc. 95–1667 Filed 1–23–95; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 60, No. 15
Tuesday, January 24, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–092–2]

Availability of Determination of Nonregulated Status for Genetically Engineered Tomato Line

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that a DNA Plant Technology Corporation delayed-ripening tomato line, designated as line 1345–4, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. The determination is based on our analysis of a petition submitted by DNA Plant Technology Corporation for a determination of nonregulated status, and our review of scientific data and comments received from the public in response to a previous notice announcing receipt of the DNA Plant Technology Corporation's petition. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: January 17, 1995.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and all written comments received regarding the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT:

Dr. Ved Malik, Biotechnologist, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. The telephone number for the agency will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February. Telephone: (301) 436–7612 (Hyattsville); (301) 734–7612 (Riverdale). To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 436–7601 (Hyattsville); (301) 734–7601 (Riverdale).

SUPPLEMENTARY INFORMATION:

Background

On August 16, 1994, the Animal and Plant Health Inspection Service (APHIS) received a petition from DNA Plant Technology Corporation (DNAP) of Oakland, CA, seeking a determination that its delayed-ripening tomato line 1345–4 (tomato line 1345–4) and any progeny derived from hybrid crosses between that line and other non-transformed tomato varieties do not present a plant pest risk and, therefore, are not regulated articles under APHIS' regulations in 7 CFR part 340.

On September 26, 1994, APHIS published a notice in the **Federal Register** (59 FR 49055–49056, Docket No. 94–092–1) announcing receipt of the DNAP petition and stating that the petition was available for public review. The notice also discussed the role of APHIS and the Food and Drug Administration in regulating tomato line 1345–4 and food products derived from it. In the notice, APHIS solicited written comments from the public as to whether tomato line 1345–4 posed a plant pest risk. The comments were to have been received by APHIS on or before November 25, 1994.

APHIS received seven comments on the DNAP petition submitted by universities, State officials, and a tomato grower. One comment concerned the information provided in the notice of receipt of the petition; the remainder of the comments were in favor of the petition. APHIS has provided a summary of the comments in the determination document, which is available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Analysis

Tomato line 1345–4, as described by its developer, DNAP, contains a gene that delays ripening. Using Transwitch™ gene suppression technology, DNAP introduced a truncated version of the tomato aminocyclopropane carboxylate (ACC) synthase gene into the tomato genome in the ''sense'' or normal orientation, resulting in tomato plants that exhibit significantly reduced levels of ACC synthase. ACC synthase is the rate-limiting enzyme that coverts s-adenosylmethionine to 1-aminocyclopropane-1-carboxylic acid, the immediate precursor to ethylene. Tomato line 1345-4 contains a gene which is derived from the tomato ACC synthase gene, but which does not encode a functional ACC synthase enzyme. Though the fruit of these plants exhibits delayed-ripening, they ripen as usual when exogenous ethylene is applied. Tomato line 1345–4 has also been transformed with the nptII gene from E. coli that encodes the enzyme neomycin phosphotransferase II and serves as a selectable marker enabling identification of the transformed plant cells. This gene is fused to a nos promoter sequence and octopine synthase termination sequence from A. tumefaciens, a known plant pest.

Tomato line 1345–4 has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because the line has been engineered using noncoding regulatory sequences derived from the plant pathogens A. tumefaciens and cauliflower mosaic virus. However, field tests of tomato line 1345–4 have been conducted at tomato growing regions in the United States since 1992 under permits issued by APHIS, and the field reports from those tests indicate that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of this testing.

Determination

Based on its analysis of data submitted by DNAP, a review of other scientific data and comments received from the public, APHIS has determined that tomato line 1345–4: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than the nonengineered parental variety; (3) is unlikely to increase the weediness potential of any other cultivated plant or

native wild species with which the organism can interbreed; (4) is unlikely to harm other organisms, such as bees, that are beneficial to agriculture; and (5) will not cause damage to processed agricultural commodities. APHIS has also concluded that there is a reasonable certainty that new progeny varieties bred from tomato line 1345–4 will not exhibit new plant pest properties, i.e., properties substantially different from any observed in the field-tested tomato line, or those observed in traditional tomato breeding programs.

The effect of this determination is that tomato line 1345–4 and all other lines bred from this line by sexual or asexual reproduction involving Mendelian inheritance, are no longer considered regulated articles under APHIS' regulations in 7 CFR part 340. Therefore, the permit and notification requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject tomato line or its progeny. However, the importation of the tomato line and any nursery stock or seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that the tomato line designated as 1345–4 and other lines bred from the line by sexual or asexual reproduction involving Mendelian inheritance, are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 17th day of January 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–1622 Filed 1–23–95; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1995 Census Test – Integrated Coverage Measurement (Outmover Tracing Questionnaire).

Form Number(s): DG–1340, DG–1378(L).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 523 hours.

Number of Respondents: 1,569.

Avg Hours Per Response: 20 minutes.

Needs and Uses: The Census Bureau has developed an Integrated Coverage Measurement (ICM) approach to be tested during the 1995 Census Test. ICM will utilize a separately sampled group of blocks within the 1995 Census Test sites which will be independently listed before the census test is conducted. After the census test, an ICM Person Interview will be conducted at the same housing units that were previously independently listed to develop an independent roster. For households where the Census Day (March 4) residents have moved out, Census will attempt to obtain roster and location information for the previous residents by proxy. Census will administer the Outmover Tracing Questionnaire to those ≥outmovers≥ we are able to contact at their current address in person or by telephone. If they cannot conduct an interview with outmovers, they will use the proxy information obtained earlier. Census will then reconcile differences between the independent roster obtained during the person and outmover tracing interviews and the census test results. This reconciliation will allow Census to measure their coverage of persons in missed housing units and coverage of persons missed within housing units enumerated in the census test.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: January 18, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–1757 Filed 1–23–95; 8:45 am]

BILLING CODE 3510–07–F

Foreign-Trade Zones Board

[DOCKET 1–95]

Foreign-Trade Zone 124, Gramercy, Louisiana; Application for Subzone Status Marathon Oil Company (Oil Refinery) Garyville, LA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Louisiana Port Commission, grantee of FTZ 124, requesting special-purpose subzone status for the oil refinery of Marathon Oil Company (Marathon) (subsidiary of USX Corporation), located in Garyville, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 9, 1995.

The refinery (1,370 acres) is located at Marathon Ave., between U.S. 61 and the Mississippi River in Garyville, St. John the Baptist Parish, Louisiana, some 35 miles northwest of New Orleans. A Marathon pipeline (included in the subzone request) connects the refinery to the St. James, Louisiana, crude oil storage terminal of the LOOP/LOCAP Pipeline System.

The refinery (255,000 barrels per day; 480 employees) is used to produce fuels and petrochemical feedstocks. Fuels produced include gasoline, diesel fuel, jet fuel, and fuel oil. Petrochemical feedstocks include isobutane, propane and propylene. Refinery by-products include sulfur, petroleum coke and asphalt. All of the crude oil (some 75 percent of inputs) and some feedstocks and motor fuel blendstocks used by the refinery are sourced from abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate (nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery by-products (duty-free). The duty on crude oil ranges from 5.25¢ to 10.5¢/barrel. Marathon indicates that some of the NPF finished products might be used as fuel in the refining process. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 27, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 10, 1995).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Hale Boggs Federal Building, 501 Magazine Street, Room 1043, New Orleans, LA 70130,

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716 U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: January 17, 1995

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–1758 Filed 1–23–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–814]

Polyethylene Terephthalate Film, Sheet, and Strip from Japan; Preliminary Results and Termination, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and termination, in part, of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from one respondent and one U.S. producer, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from Japan. The review covers two manufacturers/exporters of this merchandise to the United States, Toray Industries, Inc. (Toray), and Teijin, Ltd. (Teijin), and the period June 1, 1992 through May 31, 1993. We are now terminating this review, in part, with respect to a third company, Diafoil Co., Ltd. (Diafoil).

We have preliminarily determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 24, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–6312/3814.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1993, the Department published a notice of ''Opportunity to Request an Administrative Review'' (58 FR 31941) of the antidumping duty order on PET film (56 FR 25660, June 5, 1991). On June 30, 1993, one respondent, Toray, requested an administrative review and one U.S. producer, Toray Plastics America (TPA), requested an administrative review for two other Japanese manufacturers/exporters of PET film, Teijin and Diafoil. We initiated the review, covering June 1, 1992, through May 31, 1993, on July 21, 1993 (58 FR 39007).

Termination in Part

On February 4, 1994, TPA withdrew its request for review and requested that the Department terminate this review, in part, with respect to Diafoil. Section 19 CFR 353.22(a)(5) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. This regulation also provides that the Secretary may extend the time limit for withdrawal of a request if it is reasonable to do so. Because no other interested party has requested an administrative review of Diafoil for this period, we are waiving the 90-day requirement in section 19 CFR 353.22(a)(5) and terminating this review, in part, with respect to Diafoil. The Department has now conducted the review of the two remaining companies in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by the review are shipments of all gauges of raw, pretreated, or primed PET film, sheet, and strip, whether extruded or co-extruded. The films excluded from the scope of this order are metallized films and other finished films that have had at least one of their surfaces modified by the application of performance-enhancing resin or inorganic layer more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for Customs purposes. The written description remains dispositive.

The review covers two Japanese manufacturers/exporters of this merchandise to the United States and the period June 1, 1992, through May 31, 1993.

United States Price (USP)

We calculated the USP based on purchase price, for both Toray and Teijin as all U.S. sales were made to unrelated parties prior to importation into the United States, in accordance with section 772(b) of the Act.

For both Toray and Teijin, we calculated purchase price based on f.o.b. Japanese port or delivered U.S. customer prices. We also made deductions, where appropriate, for price adjustments (rebates) for the costs of foreign inland freight and insurance, bank charges, containerization, warehousing, commissions, credit insurance, inventory carrying charges, other expenses, compensation for credit expense, foreign brokerage and handling, ocean freight, marine insurance, U.S. duty, harbor and U.S.

Customs user fees, U.S. brokerage and handling, and U.S. inland freight and insurance in accordance with section 772(d)(2) of the Act.

In addition, we adjusted USP for taxes in accordance with our practice outlined in *Siliconmagnanese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value, 59 FR 31204, June 17, 1994.*

No other adjustments were claimed or allowed.

Foreign Market Value

In order to determine whether there were sufficient sales of PET film in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of PET film to the volume of third country sales of PET film, in accordance with section 773(a)(1) of the Act. Each respondent had a viable home market with respect to sales of PET film made during the period of review (POR).

For both Toray and Teijin, we utilized annual weight-averaged FMVs for purposes of comparison. For Toray, we calculated annual FMV's based on delivered prices to unrelated customers in the home market. In accordance with 19 CFR 353.45(a) we did not use related party sales because the prices to related parties were determined not to be at arm's length. We made deductions, where appropriate, for rebates, and post-sale inland freight. We deducted home market packing cost and added U.S. packing costs.

For Teijin, we calculated annual FMV's based on delivered prices to unrelated and related customers in the home market.

These related party sales were determined to be at arm's length, in accordance with section 353.45(a) of our regulations. We made deductions, where appropriate, for rebates and post-sale inland freight and insurance. We deducted home market packing cost and added U.S. packing costs.

For both Teijin and Toray we made a difference-in-merchandise adjustments, where appropriate, based on differences in the variable cost of manufacture. For both Toray and Teijin, pursuant to 19 CFR 353.56, we also made circumstance-of-sale adjustments, where appropriate, for differences in claim compensation expenses, post-sale warehousing expenses, credit expenses and credit interest revenue. Finally, we adjusted for Japanese consumption taxes in accordance with our decision in *Siliconmagnanese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value, 59 FR 31204, June 17, 1994.*

No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margins exist for the period June 1, 1992, through May 31, 1993:

Manufacturer/producer/exporter	Margin percent
Toray	0.33
Teijin	7.18

De minimis.

Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication of this notice.

Within 10 days of the date of publication of this notice, interested parties to this proceeding may request a disclosure and/or a hearing. The hearing, if requested, will take place not later than 44 days after publication of this notice. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

The Department will subsequently publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective upon publication of our final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after that publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act:

(1) The cash deposit rate for the reviewed companies will be those rates established in the final results of this review, except for rates which are less than 0.50 percent and, therefore, *de minimis,* the cash deposit will be zero;

(2) The cash deposit rate for subject merchandise exported by manufacturers or exporters not covered in this review, but covered in previous reviews or in the original LTFV investigation, will be based upon the most recently published rate in a final result or determination for which the manufacturer or exporter received a company-specific rate;

(3) The cash deposit rate for subject merchandise exported by an exporter not covered in this review, a prior review, or the original investigation, but where the manufacturer of the merchandise has been covered by this or a prior final results or determination, will be based upon the most recently published company-specific rate for that manufacturer; and

(4) The cash deposit rate for merchandise exported by all other manufacturers and exporters, who are not covered by these or any previous administrative review conducted by the Department, will be the ''all others'' rate established in the less than fair value investigation.

On May 25, 1993, the Court of International Trade (CIT), in *Floral Trade Council* v. *United States,* 822 F.Supp 766, and *Federal-Mogul Corporation* v. *United States,* 839 F.Supp 864, decided that once an ''all others'' rate is established for a company, it can only be changed through an administrative review. The Department has determined that, in order to implement these decisions, it is appropriate to reinstate the original ''all others'' rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in the proceeding governed by antidumping duty orders.

Because this proceeding is governed by an antidumping duty order, the ''all others'' rate will be 6.32 percent, the ''all others'' rate established in the LTFV investigation (56 FR 25660, June 5, 1991).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review, termination in part, and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 353.22.

Dated: January 12, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–1759 Filed 1–23–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–428–817]

Certain Cut-to-Length Carbon Steel Plate from Germany; Termination of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of termination of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is terminating the administrative review of the countervailing duty order covering certain cut-to-length carbon steel plate from Germany initiated on September 8, 1994.

EFFECTIVE DATE: January 24, 1995.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Richard Herring, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1994, AG der Dillinger Huttenwerke (Dillinger), a German manufacturer and exporter of cut-to-length carbon steel plate, and its parent company, DHS-Dillinger Hutte Saarstahl AG (DHS), requested an administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Germany for the period December 7, 1992, through December 31, 1993. No other interested party requested a review. On September 8, 1994, the Department published a notice initiating the administrative review for that period (59 FR 46391). On November 15, 1994, Dillinger and DHS submitted a timely withdrawal of their request for review. As a result, pursuant to 19 CFR § 355.22(a)(3), the Department is terminating the review.

This notice is published in accordance with 19 CFR § 355.22(a)(3).

Dated: January 11, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–1760 Filed 1–23–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–533–063]

Certain Iron-Metal Castings From India Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1990 through December 31, 1990. We preliminarily determine the net subsidy to be 10.16 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings, except for certain firms which have significantly different aggregate benefits. A complete listing of the net subsidies for these firms can be found in the ''Preliminary Results of Review'' section of this notice. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 24, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Lorenza Olivas, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1991, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' (56 FR 49878) of the countervailing duty order on certain iron-metal castings from India (45 FR 68650; October 16, 1980). On October 23, 1991, the Municipal Castings Fair Trade Council and individually-named members, all of which are interested parties, requested an administrative review of the order. In addition, various respondent companies submitted timely requests for review. We initiated the review, covering the period January 1, 1990 through December 31, 1990, on November 22, 1991 (56 FR 58878). The Department is now conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930 (the Act).

Scope of Review

Imports covered by this review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 7325.10.0010 and 7325.10.0050. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review period is January 1, 1990 through December 31, 1990. This review involves 14 producers/exporters and 14 programs.

Calculation Methodology for Assessment and Deposit Purposes

Pursuant to *Ceramica Regiomontana, S.A.* v. *United States,* 853 F. Supp. 431 (CIT 1994), Commerce is required to calculate a country-wide CVD rate, *i.e.,* the all-other rate, by ''weight averaging the benefits received by all companies by their proportion of exports to the United States, inclusive of zero rate firms and *de minimis* firms.'' Therefore, we first calculated a subsidy rate for each company subject to the administrative review. We then weight-averaged the rate received by each company using as the weight its share of total Indian exports to the United States of subject merchandise. We then summed the individual companies' weight-averaged rates to determine the subsidy rate from all programs benefitting exports of subject merchandise to the United States.

Since the country-wide rate calculated using this methodology was above *de minimis,* as defined by 19 CFR § 355.7 (1993), we proceeded to the next step and examined the net subsidy rate calculated for each company to determine whether individual company rates differed significantly from the weighted-average country-wide rate, pursuant to 19 CFR § 355.22(d)(3). Three companies received significantly different net subsidy rates during the review period pursuant to 19 CFR § 355.22(d)(3). These companies are treated separately for assessment and cash deposit purposes. All other companies are assigned the country-wide rate.

Analysis of Programs

1. Pre-Shipment Export Financing

The Reserve Bank of India, through commercial banks, provides pre-shipment financing, or ''packing credit,'' to exporters. With these pre-shipment loans, exporters may purchase raw materials and packing materials based on presentation of a confirmed order or

letter of credit. In addition, exporters may establish pre-shipment credit lines under this program with limits contingent upon the value of exports. In prior administrative reviews of this order, this program was determined to be countervailable because receipt of the loans under this program is contingent upon export performance and the interest rates were preferential. (*See, e.g., Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India* (56 FR 41658; August 22, 1991) (1987 *Indian Castings Final Results*); *Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India* (56 FR 52515; October 21, 1991) (1988 *Indian Castings Final Results*); and *Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India* (56 FR 52521; October 21, 1991) (1989 *Indian Castings Final Results*).) There has been no new information or evidence of changed circumstances in this review to warrant reconsideration of this program's countervailability.

During the review period, there were two types of pre-shipment export financing arrangements. For pre-shipment loans with periods of 180 days or less, the interest rate was 7.5 percent per annum. For loans with periods exceeding 180 days, the interest rate was 9.5 percent per annum. In either case, a ''penalty'' interest rate of 15.5 percent was charged on an unpaid balance from the end of the loan period forward.

In the case of a short-term loan provided by a government, the Department will use as a benchmark the average interest rate for an alternative source of short-term financing in the country in question. In determining this benchmark, the Department will normally rely upon the predominant source of short-term financing in the country in question. (*See Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments,* section 355.44(b)(3)(i) (*Proposed Rules*) (54 FR 23380; May 31, 1989).

The Government of India classifies the manufacturers and exporters subject to this review as small-scale industries. Since the interest rates on loans to small-scale industries were set by the Reserve Bank of India, we used the small-scale industry short-term interest rates published in the Reserve Bank of India periodicals ''Report on Trend and Progress in India: 1989–90'' and ''Reserve Bank of India Bulletin October 1989 (Supplement)'' to calculate a benchmark interest rate of 15.08 percent. Because the Reserve Bank of India devised different interest rates for the latter months of the review period, this 15.08 percent benchmark is a weighted-average of the highest rate for small-scale industry loans between 200,000 and 2,500,000 rupees for the period January 1 through September 21, 1990, and the rate for small-scale industry loans over 50,000 rupees for the period September 22 through December 31, 1990. We compared this benchmark to the interest rate charged on pre-shipment loans and found that the interest rate charged under this program was lower than the benchmark. The use of this benchmark rate is consistent with prior reviews of this order. (*See* 1988 and 1989 *Indian Castings Final Results*).

During the review period, 12 of the 14 respondent companies made payments on pre-shipment export loans for shipments of subject castings to the United States. While all 12 of these companies provided specific loan information as requested in our questionnaires, the submission containing the pre-shipment loan information for Super Castings (India) Private Ltd. was untimely and therefore returned. (*See* the April 21, 1994 memorandum titled Removal of Information from the Administrative Record for the 1990 Administrative Review of the Countervailing Duty Order on Certain Iron-metal Castings from India, on file in the public file of the Central Records Unit, Room B–099.) To calculate the benefit from these loans to the other 11 companies, we compared the actual interest each company paid during the review period with the interest that would have been paid on these loans using the benchmark rate of 15.08 percent. The difference is the benefit. We divided the benefit by either total exports or total exports of subject merchandise to the United States, depending on how the pre-shipment financing was reported. That is, if a company was able to segregate pre-shipment loans applicable to subject merchandise exported to the United States, we divided the benefit derived from only those loans by total exports of subject merchandise to the United States. If a firm reported aggregate pre-shipment financing, we divided the benefit from all pre-shipment loans by total exports. For Super Castings (India) Private Ltd., we used the highest individual company benefit rate from this program as best information available. On this basis, we preliminarily determine the net subsidy from this program to be 1.11 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidies for those firms are as follows:

Manufacturer/exporter	Net subsidy (percent)
Nandikeshwari Iron Foundary	0.00
Overseas Iron Foundry Pvt. Ltd	5.27
Sitaram Madhogarhia & Sons Pvt. Ltd	0.41

2. Post-Shipment Export Financing

The Reserve Bank of India, through commercial banks, provides post-shipment loans to exporters upon presentation of export documents. Post-shipment financing also includes bank discounting of foreign customer receivables. As with pre-shipment financing, exporters may establish post-shipment credit lines with their commercial banks. In general, post-shipment loans are granted for a period of up to 180 days. In prior administrative reviews of this order, this program was determined to be countervailable because receipt of the loans under this program is contingent upon export performance and the interest rates were preferential. (*See* 1988 and 1989 *Indian Castings Final Results.*) There has been no new information or evidence of changed circumstances in this review to warrant reconsideration of this program's countervailability. The interest rate for post-shipment financing was 8.65 percent during the review period. For reasons stated above for pre-shipment financing, we are using 15.08 percent as our short-term interest rate benchmark.

During the review period, 12 of the 14 respondent companies made payments on post-shipment export loans for shipments of subject castings to the United States. Only 11 of those 12 companies, however, provided specific loan information as requested in our questionnaires. Super Castings (India) Private Ltd. stated in its response to our original questionnaire that its information about its post-shipment loans was forthcoming; despite another request for the information in our supplemental questionnaire, the company never submitted it. To calculate the benefit from these loans to the other 11 companies, we followed the same short-term loan methodology discussed above for pre-shipment financing. We divided the benefit by either total exports or exports of subject merchandise to the United States, depending on whether the company was able to segregate the post-shipment

financing on the basis of destination of the exported good. For the company that did not submit specific loan information, we used the highest individual company benefit rate from this program as best information available. On this basis, we preliminarily determine the net subsidy from this program to be 1.49 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidies for those firms are as follows:

Manufacturer/exporter	Net subsidy (percent)
Nandikeshwari Iron Foundry	0.00
Overseas Iron Foundry Pvt. Ltd	2.83
Sitaram Madhogarhia & Sons Pvt. Ltd	1.85

3. Income Tax Deductions Under Section 80HHC

Under section 80HHC of the Income Tax Act, the Government of India allows exporters to deduct from taxable income profits derived from the export of goods and merchandise. In prior administrative reviews of this order, this program has been determined to be countervailable because receipt of benefits under this program is contingent upon export performance. (*See* 1988 and 1989 *Indian Castings Final Results.*) There has been no new information or evidence of changed circumstances in this review to warrant reconsideration of this program's countervailability.

To calculate the benefit to each company, we subtracted the total amount of income tax the company actually paid during the review period from the amount of tax the company would have paid during the review period had it not claimed any deductions under section 80HHC. We then divided this difference by the value of the company's total exports. On this basis, we preliminarily determine the net subsidy from this program to be 2.59 percent ad valorem for all manufacturers and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidies for those firms are as follows:

Manufacturer/exporter	Net subsidy (percent)
Nandikeshwari Iron Foundry	0.05
Overseas Iron Foundry Pvt. Ltd	6.18
Sitaram Madhogarhia & Sons Pvt. Ltd	15.82

4. Cash Compensatory Support (CCS) Program

In 1966, the Government of India established the CCS program which provides a cumulative tax rebate paid upon export and is calculated as percentage of the f.o.b. invoice price. We verified that the rebate rate for exports of castings was set at a maximum of five percent for the review period.

As stated in § 355.44(i)(4)(ii) of the *Proposed Rules* (54 FR 23382), the Department will find that the entire amount of any such rebate is countervailable unless the following conditions are met: (1) The program operates for the purpose of rebating prior stage cumulative indirect taxes and/or import charges; (2) the government accurately ascertained the level of the rebate; and (3) the government reexamines its schedules periodically to reflect the amount of actual indirect taxes and/or import charges paid. In prior administrative reviews of this order, the Department determined that these conditions have been met, and, as such, the entire amount of the rebate has not been countervailed (*see, e.g.,* the 1989 *Indian Castings Final Results*).

However, once a rebate program meets this threshold, the Department must still determine in each case whether there is an overrebate; that is, the Department must still analyze whether the rebate for the subject merchandise exceeds the total amount of indirect taxes and import duties borne by inputs that are physically incorporated into the exported product. If the rebate exceeds the amount of allowable indirect taxes and import duties, the Department will, pursuant to § 355.44(i)(4)(i) of the *Proposed Rules,* find a countervailable benefit equal to the difference between the rebate rate and the allowable rate determined by the Department (*i.e.,* the overrebate).

Since the last completed review of this order, the Indian manufacturers of castings have moved from domestic pig iron to imported pig iron as the basic raw material used in the production of exports destined for the U.S. market. In this review, the manufacturers presented a tax incidence calculation based on the Indian government's rebate system on castings. The companies also provided information on the taxes paid. Based on our examination of the indirect tax incidence on inputs of castings, we preliminarily determine that two items listed as taxes, the port tax and harbor tax (incurred with respect to imported pig iron), were charges for services rather than indirect taxes. At verification, the information we examined shows that the port tax included in the indirect tax incidence is a wharfage charge. The documentation submitted at verification on the harbor tax indicates that this item included berthage, port dues, pilotage, and towing charges. (*See* February 25, 1994 report titled *Verification of Information Submitted by RSI India Pvt. Ltd. for the 1990 Administrative Review of the Countervailing Duty Order on Certain Iron-Metal Castings from India* which is on file in the Central Records Unit (room B099 of the Main Commerce Building).)

Since the information we verified was at the company level, we afforded the Government of India the opportunity to provide information which demonstrates that the port and harbor collections discussed above were actually indirect taxes rather than charges for services and, if so, that they were accurately reflected in the rebate rate authorized for subject castings. We received a response from the Government of India on April 25, 1994. The information provided did not demonstrate that these charges, which were used in the calculation of tax incidence, are indirect taxes or fiscal charges. Therefore, we determine that the charges for wharfage, berthage, pilotage, and towage are service charges rather than import charges. For further discussion of this analysis, see the May 26, 1994 briefing paper titled Cash Compensatory Support (CCS) Program which is on file in the Central Records Unit (room B009 of the Main Commerce Building).

Because these claimed charges on the physically incorporated items are service charges rather than indirect taxes or import charges, we have preliminarily disallowed these items in the calculation of the indirect tax incidence. Therefore, we recalculated the indirect tax incidence incurred on the items physically incorporated in the manufacture of castings. We then compared that recalculated tax incidence rate to the rebates authorized on castings exports under the CCS program. Based on this comparison, we preliminarily determine that this program provides an overrebate of indirect taxes. The amount of the overrebate is a countervailable benefit provided to exporters of the subject

castings. On this basis, we preliminarily determine the net subsidy from this program to be 4.24 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings.

On February 1, 1991, manufacturers and exporters of castings agreed to stop applying for CCS rebates on exports of the subject castings to the United States. We also verified that the Government of India terminated the program effective July 3, 1991. However, exporters have two years in which to file applications for CCS rebates for exports made prior to July 3, 1991. To ascertain whether castings exporters received any residual benefits from this terminated program, we reviewed the companies' accounting ledgers through September 1993 (the time of our verification). We found no evidence of any application for or receipt of residual benefits under this program as of that date, which exceeded the two year period following the termination of the program during which castings exporters could file CCS applications. Therefore, we plan not to include the subsidy conferred by this program in the cash deposit rate to be established in the final results of this review. (*See* section 355.50(a) of the *Proposed Rules.*)

5. The Sale of Import Licenses

The GOI allows companies to transfer certain types of import licenses to other companies in India. During the review period, castings manufacturers/exporters sold additional licenses and replenishment licenses. Because the companies received these licenses based on their status as exporters, we preliminarily determine that the sale of these licenses is countervailable. See the 1988 and 1989 *Indian Castings Final Results.* There has been no new information or evidence of changed circumstances in this review to warrant reconsideration of this program's countervailability.

A company receives an additional license based on its total export earnings from the previous year. Therefore, we calculated the subsidy by dividing the total amount of proceeds a company received from sales of additional licenses by the total value of its exports of all products to all markets.

A company receives replenishment licenses based on individual export shipments. Therefore, we calculated the subsidy by dividing the amount of proceeds a company received from sales of replenishment licenses that was attributable to shipments of subject castings to the United States by the total value of the company's exports of subject castings to the United States.

We preliminarily determine the net subsidy from sales of import licenses to be 0.45 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidies for those firms are as follows:

Manufacturer/exporter	Net subsidy (percent)
Nandikeshwari Iron Foundry	0.00
Overseas Iron Foundry Pvt. Ltd	0.00
Sitaram Madhogarhia & Sons Pvt. Ltd	0.00

6. Advance Licenses

Generally, a company can receive an advance license if it has received a foreign purchase order or if it has an established history of exporting. Products imported under an advance license enter the country duty-free, and companies importing under advance licenses are obligated to export the products made using the duty-free imports. A product imported under an advance license does not necessarily have to be physically incorporated into the exported product. The amount of imports allowed under an advance license is closely linked to the amount of exports to be produced.

During the review period, eight of the respondent castings manufacturers/exporters used advance licenses to import pig iron, an input which is physically incorporated into the subject iron-metal castings exported to the United States. We consider the use of advance licenses in this case to be the equivalent of a duty drawback program: customs duties were not paid on imported products that were physically incorporated in the subject castings which were exported to the United States. *See* the 1988 and 1989 *Indian Castings Final Results,* and the *Final Affirmative Countervailing Duty Determination: Steel Wire Rope from India (Steel Wire Rope),* (56 FR 46293, September 11, 1991). Therefore, we preliminarily determine that the use of advance licenses for the importation of pig iron is not countervailable.

Other Programs

We also examined the following programs and preliminarily determine that exporters of certain iron-metal castings did not apply for or receive benefits under these programs with respect to exports of the subject merchandise to the United States during the review period: (1) Market Development Assistance; (2) International Price Reimbursement Scheme; (3) Free Trade Zones; (4) Preferential Freight Rates; (5) 100 Percent Export-Oriented Units Program; (6) Exim Scrip; and (7) Income Tax Deductions under sections 80GGA, 80HH, 80HHA, and 80I of the Income Tax Act. Moreover, we verified that the exporters did not purchase diesel fuel at a discount, and that a program designed to provide preferentially priced oil for running generators was never funded. This program was abolished on April 1, 1993, and we did not find any evidence of residual benefits.

Preliminary Results of Review

We preliminarily determine that the following net subsidies exist for the period January 1, 1990 through December 31, 1990:

Manufacturer/exporter	Net subsidy (percent)
Nandikeshwari Iron Foundry	4.29
Overseas Iron Foundry Pvt. Ltd	18.52
Sitaram Madhogarhia & Sons Pvt. Ltd	22.32
Country-wide All-other Rate	10.16

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the Customs Service to assess countervailing duties at the above percentages of the f.o.b. invoice price on shipments of the subject merchandise exported on or after January 1, 1990, and on or before December 31, 1990.

The Department also intends, as a result of the termination of benefits attributable to the CCS program, to instruct the Customs Service to collect cash deposits of estimated countervailing duties at the following rates:

Manufacturer/exporter	Net subsidy (percent)
Nandikeshwari Iron Foundry	0.05
Overseas Iron Foundry Pvt. Ltd	14.28
Sitaram Madhogarhia & Sons Pvt. Ltd	18.08
Country-wide All-other Cash Deposit Rate	5.92

The country-wide all-other cash deposit rate of 5.92 percent applies to all but the above-listed companies on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation

methodology and interested parties may request a hearing not later than 10 days after date of publication of this notice. In accordance with 19 CFR 355.38(c)(1)(ii), interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due under 19 CFR 355.38(c).

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: January 9, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–1761 Filed 1–23–95; 8:45 am]

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[C–533–063]

Certain Iron-Metal Castings From India: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1991 through December 31, 1991. We preliminarily determine the net subsidy to be 5.54 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings, except for certain firms which have significantly different aggregate benefits. A complete listing of the net subsidies for these firms can be found in the ''Preliminary Results of Review'' section of this notice. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 24, 1995.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Alexander Braier, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 8, 1992, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' (57 FR 46371) of the countervailing duty order on certain iron-metal castings from India (45 FR 68650; October 16, 1980). On October 27, 1992, the Municipal Castings Fair Trade Council and individually-named members, all of which are interested parties, requested an administrative review of the order. We initiated the review, covering the period January 1, 1991 through December 31, 1991, on November 27, 1992 (55 FR 56318). The Department is now conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930 (the Act).

Scope of Review

Imports covered by the review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 7325.10.0010 and 7325.10.0050. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review period is January 1, 1991 through December 31, 1991. This review involves 14 producers/exporters and 12 programs.

Calculation Methodology for Assessment and Deposit Purposes

Pursuant to *Ceramica Regiomontana, S.A.* v. *United States,* 853 F. Supp. 431 (CIT 1994), Commerce is required to calculate a country-wide CVD rate, *i.e.*, the all-other rate, by ''weight averaging the benefits received by all companies by their proportion of exports to the United States, inclusive of zero rate firms and *de minimis* firms.'' Therefore, we first calculated a subsidy rate for each company subject to the administrative review. We then weight-averaged the rate received by each company using as the weight its share of total Indian exports to the United States of subject merchandise. We then summed the individual companies' weight-averaged rates to determine the subsidy rate from all programs benefitting exports of subject merchandise to the United States.

Since the country-wide rate calculated using this methodology was above *de minimis,* as defined by 19 CFR 355.7 (1993), we proceeded to the next step and examined the net subsidy rate calculated for each company to determine whether individual company rates differed significantly from the weighted-average country-wide rate, pursuant to 19 CFR 355.22(d)(3). Three companies (Dinesh Brothers, Pvt. Ltd., Super Castings (India) Pvt. Ltd., and Kajaria Iron Castings Pvt. Ltd.) received significantly different net subsidy rates during the review period pursuant to 19 CFR 355.22(d)(3). These companies are treated separately for assessment and cash deposit purposes. All other companies are assigned the country-wide rate.

Analysis of Programs

1. Pre-Shipment Export Financing

The Reserve Bank of India, through commercial banks, provides pre-shipment financing, or ''packing credit,'' to exporters. With these pre-shipment loans, exporters may purchase raw materials and packing materials based on presentation of a confirmed order or letter of credit. In addition, exporters may establish pre-shipment credit lines under this program with limits contingent upon the value of exports. In general, the loans are granted for a period of up to 180 days. In prior administrative reviews of this order, this program was determined to be countervailable because receipt of the loans under this program is contingent upon export performance and the interest rates were preferential. (*See e.g., Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India* (56 FR 41658; (August 22, 1991) (1987 *Indian Castings Final Results*); *Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India* (56 FR 52515; October 21, 1991) (1988 *Indian Castings Final Results*); and *Final Results of*

Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India (56 FR 52521; October 21, 1991) (1989 *Indian Castings Final Results*).) There has been no new information or evidence of changed circumstances in this review to warrant reconsideration of this program's countervailability. During the review period, the rate of interest charged on pre-shipment export loans ranged from 7.50 to 17 percent, depending on the length and date of the loan.

In the case of a short-term loan provided by a government, the Department uses the average interest rate for an alternative source of short-term financing in the country in question as a benchmark. In determining this benchmark, the Department relies upon the predominant source of short-term financing in the country in question. (*See Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments,* § 355.44(b)(3)(i) (*Proposed Rules*) (54 FR 23380; May 31, 1989).

The Government of India (GOI) classifies the companies under review as small-scale industry companies. Therefore, we used the small-scale industry short-term interest rates published in the Reserve Bank of India periodicals *Reserve Bank of India Report on Trend and Progress of Banking in India: 1990–91 (Appendix II)* and *Reserve Bank of India Annual Report 1991–92* that were submitted by the GOI. These publications provided us with the actual short-term small-scale industry interest rate of 14 percent for loans through October 8, 1991. Since they provided only minimum interest rates for October 9, 1991 through December 31, 1991, we used the International Monetary Fund publication *International Financial Statistics* (IFS) for the remainder of the year. The IFS reported that the short-term interest rate in India for the period October 9, 1991 through December 31, 1991 was 20 percent. Therefore, we weight-averaged these two rates based on the number of months of the year each applied, and calculated a benchmark of 15.38 percent for this review.

During the review period, 11 of the 14 respondent companies made payments on pre-shipment export loans for shipments of subject castings to the United States. One of these 11 companies, Super Castings (India) Private Ltd. (Super Castings), provided aggregate pre-shipment loan and post-shipment loan information in its response to our original questionnaire. We were not able to distinguish which entries were pre-shipment loans based on the information submitted by the company. Super Castings did not respond to a second request for information on pre-shipment loans in our supplemental questionnaire. Therefore, in accordance with section 776(c) of the Act, we assumed as best information available (BIA) that all reported loans were pre-shipment loans.

To calculate the benefit from the pre-shipment loans to these eleven companies, we compared the actual interest paid on these loans during the review period with the interest that would have been paid using the benchmark interest rate of 15.38 percent. If the benchmark rate exceeded the program rate, the difference between those amounts is the benefit. We then divided the benefit by either total exports or by total exports of the subject merchandise to the United States, depending on how the pre-shipment financing was reported. That is, if a company was able to segregate pre-shipment financing applicable to subject merchandise exported to the United States, we divided the benefit derived from only those loans by total exports of subject merchandise to the United States. If a firm was unable to segregate pre-shipment financing, we divided the benefit from all pre-shipment loans by total exports. On this basis, we preliminarily determine the net subsidy from this program to be one percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidy for those firms is as follows:

Manufacturer/exporter	Net subsidy (percent)
Dinesh Brothers, Pvt. Ltd	0.00
Super Castings (India) Pvt. Ltd	23.00
Kajaria Iron Castings Pvt. Ltd ..	0.68

2. Post-Shipment Export Financing

The Reserve Bank of India, through commercial banks, provides post-shipment loans to exporters upon presentation of export documents. Post-shipment financing also includes bank discounting of foreign customer receivables. As with pre-shipment financing, exporters may establish post-shipment credit lines with their commercial banks. In general, post-shipment loans are granted for a period of up to 180 days. The interest rate for post-shipment financing was 8.65 percent during the review period.

In prior administrative reviews of this order, this program was determined to be countervailable because receipt of the loans under this program is contingent upon export performance and the interest rates were preferential. *(See* the 1988 and 1989 *Indian Castings Final Results.)* There has been no new information or evidence of changed circumstances in this review to warrant reconsideration of this program's countervailability. For reasons stated above for pre-shipment financing, we are using 15.38 percent as our short-term interest rate benchmark.

During the review period, 12 of the 14 respondent companies made payments on post-shipment export loans for shipments of subject castings to the United States. One of these 12 companies, Super Castings, provided aggregate post-shipment loan and pre-shipment loan information in its response to our original questionnaire. Our treatment of Super Castings is described under our analysis of pre-shipment financing. To calculate the benefit from these loans to the other 11 companies, we followed the same short-term loan methodology discussed above for pre-shipment financing. We divided the benefit by either total exports or exports of the subject merchandise to the United States, depending on whether the company was able to segregate the post-shipment financing on the basis of destination of the exported good. On this basis, we preliminarily determine the net subsidy from this program to be 0.42 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidy for those firms is as follows:

Manufacturer/exporter	Net subsidy (percent)
Dinesh Brothers, Pvt. Ltd	0.00
Super Castings (India) Pvt. Ltd	0.00
Kajaria Iron Castings Pvt. Ltd ..	0.00

3. Income Tax Deductions Under Section 80HHC

Under section 80HHC of the Income Tax Act, the GOI allows exporters to deduct profits derived from the export of goods and merchandise from taxable income. In prior administrative reviews of this order, this program has been determined to be countervailable because receipt of benefits under this program is contingent upon export performance. (*See* the 1988 and 1989 *Indian Castings Final Results.*) There has been no new information or evidence of changed circumstances in this review to warrant reconsideration of this program's countervailability.

To calculate the benefit to each company, we subtracted the total amount of income tax the company actually paid during the review period from the amount of tax the company would have paid during the review period had it not claimed any deductions under section 80HHC. We then divided this difference by the value of the company's total exports. On this basis, we preliminarily determine the net subsidy from this program to be 1.47 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidy for those firms is as follows:

Manufacturer/exporter	Net subsidy (percent)
Dinesh Brothers, Pvt. Ltd	0.00
Super Castings (India) Pvt. Ltd	18.75
Kajaria Iron Castings Pvt. Ltd ..	15.46

4. Cash Compensatory Support (CCS) Program

In 1966, the GOI established the CCS program which provides a cumulative tax rebate paid upon export and is calculated as a percentage of the f.o.b. invoice price. We verified that the rebate rate for exports of castings was set at a maximum of five percent for the review period.

As stated in § 355.44(i)(4)(ii) of the *Proposed Rules* (54 FR 23382), the Department will find that the entire amount of any such rebate is countervailable unless the following conditions are met: (1) The program operates for the purpose of rebating prior stage cumulative indirect taxes and/or import charges; (2) the government accurately ascertained the level of the rebate; and (3) the government reexamines its schedules periodically to reflect the amount of actual indirect taxes and/or import charges paid. In prior administrative reviews of this order, the Department determined that these conditions have been met, and, as such, the entire amount of the rebate has not been countervailed (*see, e.g.*, the 1989 *Indian Castings Final Results*).

However, even if a rebate program meets one of these conditions, the Department must still determine in each case whether there is an over-rebate; that is, the Department must still analyze whether the rebate for the subject merchandise exceeds the total amount of indirect taxes and import duties borne by inputs that are physically incorporated into the exported product. If the rebate exceeds the amount of allowable indirect taxes and import duties, the Department will, pursuant to § 355.44(i)(4)(i) of the *Proposed Rules*, find a countervailable benefit equal to the difference between the rebate rate and the allowable rate determined by the Department (i.e., the over-rebate).

During this review period, the Indian manufacturers of castings have replaced domestic pig iron with imported pig iron as the basic raw material used in the production of exports destined for the U.S. market. Therefore, the manufacturers presented a tax incidence calculation based on the Indian government's rebate system on castings. The companies also provided information on the taxes paid. Based on our examination of the indirect tax incidence on inputs of castings, we preliminarily determine that two items listed as taxes, the port tax and harbor tax (incurred with respect to imported pig iron), were charges for services rather than indirect taxes. During the verification of the 1990 administrative review, the information we examined showed that the port tax included in the indirect tax incidence is a wharfage charge. The documentation submitted at the 1990 verification on the harbor tax indicated that this item included berthage, port dues, pilotage, and towing charges. (See February 25, 1994 report titled Verification of Information Submitted by RSI India Pvt. Ltd. for the 1990 Administrative Review of the Countervailing Duty Order on Certain Iron-Metal Castings from India (public version), which is on file in the Central Records Unit (room B099 of the Main Commerce Building).)

We afforded the GOI the opportunity to provide information to demonstrate that the port and harbor collections discussed above were actually indirect taxes rather than charges for services and, if so, that they were accurately reflected in the rebate rate authorized for subject castings. We received a response from the GOI on April 26, 1994. The information provided did not demonstrate that the port tax and the harbor tax, which were used in the calculation of tax incidence, are indirect taxes. Therefore, we determine that the port dues and the charges for wharfage, berthage, pilotage, and towage are service charges rather than import charges. For further discussion of this analysis, see the May 26, 1994 briefing paper titled Cash Compensatory Support (CCS) Program which is on file in the Central Records Unit (room B099 of the Main Commerce Building).

Because these two claimed charges on the physically incorporated items are service charges rather than indirect taxes or import charges, we have preliminarily disallowed these items in the calculation of the indirect tax incidence. Therefore, we recalculated the indirect tax incidence incurred on the items physically incorporated in the manufacture of castings. We then compared that recalculated tax incidence rate to the rebates authorized on castings exports under the CCS program. Based on this comparison, we preliminarily determine that this program provides an over-rebate of indirect taxes. The amount of the over-rebate is a countervailable benefit provided to exporters of the subject castings.

We verified that on February 1, 1991, manufacturers and exporters of castings stopped applying for CCS rebates on exports of subject castings to the United States. Thus, to calculate the ad valorem benefit to each company which applied for CCS rebates, we multiplied the over-rebate rate by each company's exports of subject castings to the United States during the month of January, 1991. We then divided this amount by each company's total exports of subject castings to the United States during the period of review. On this basis, we preliminarily determine the net subsidy from this program to be 0.41 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidies for those firms are as follows:

Manufacturer/exporter	Net subsidy (percent)
Dinesh Brothers, Pvt. Ltd	0.00
Super Castings (India) Pvt. Ltd	0.00
Kajaria Iron Castings Pvt. Ltd ..	0.50

During the 1990 review, we verified that the GOI terminated the CCS program effective July 3, 1991. (*See* the Verification of the Government of India (GOI) Questionnaire Responses for the 1990 Administrative Review of the Countervailing Duty Order on Certain Iron-Metal Castings from India (public version).) However, exporters have two years in which to file applications for CCS rebates for exports made prior to July 3, 1991. To ascertain whether castings exporters received any residual benefits from this terminated program, we reviewed the companies' accounting ledgers through September 1993 (the time of our 1990 verification) (see verification report, *Id*). We found no evidence of any applications for or receipts of residual benefits under this program as of that date, which exceeded the two year period following the

termination of the program, during which castings exporters could file CCS applications. Therefore, we plan not to include the subsidy conferred by this program in the cash deposit rate to be established in the final results of this review. (See § 355.50(a) of the *Proposed Rules.*)

5. The Sale of Import Licenses

The GOI allows companies to transfer certain types of import licenses to other companies in India. During the review period, castings manufacturers/exporters sold additional licenses and replenishment licenses. Because the companies received these licenses based on their status as exporters, we preliminarily determine that the sale of these licenses is countervailable. See the 1988 and 1989 *Indian Castings Final Results.* There has been no new information or evidence of changed circumstances in this review to warrant reconsideration of this program's countervailability.

A company receives an additional license based on its total export earnings from the previous year. Therefore, we calculated the subsidy by dividing the total amount of proceeds a company received from sales of additional licenses by the total value of its exports of all products to all markets.

A company receives replenishment licenses based on individual export shipments. Therefore, we calculated the subsidy by dividing the amount of proceeds a company received from sales of replenishment licenses that was attributable to shipments of subject castings to the United States by the total value of the company's exports of subject castings to the United States.

We preliminarily determine the net subsidy from the sale of all import licenses to be 0.18 percent *ad valorem* for all manufactures and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidies for those firms are as follows:

Manufacturer/exporter	Net subsidy (percent)
Dinesh Brothers, Pvt. Ltd	0.00
Super Castings (India) Pvt. Ltd	0.00
Kajaria Iron Castings Pvt. Ltd ..	0.00

6. Advance Licenses

Generally, a company can receive an advance license if it has received a foreign purchase order or if it has an established history of exporting. Products imported under an advance license enter the country duty-free, and companies importing under advance licenses are obligated to export the products made using the duty-free imports. A product imported under an advance license does not necessarily have to be physically incorporated into the exported product. The amount of imports allowed under an advance license is closely linked to the amount of exports to be produced.

During the review period, eight of the respondent castings manufacturers/exporters used advance licenses to import pig iron, an input which is physically incorporated into the subject iron-metal castings exported to the United States. We consider the use of advance licenses in this case to be the equivalent of a duty drawback program: Customs duties were not paid on imported products that were physically incorporated in the subject castings which were exported to the United States. *See* the 1988 and 1989 *Indian Castings Final Results,* and the *Final Affirmative Countervailing Duty Determination: Steel Wire Rope from India* (*Steel Wire Rope*),(56 FR 46293, September 11, 1991). Therefore, we preliminarily determine that the use of advance licenses for the importation of pig iron is not countervailable.

Other Programs

We also examined the following programs and preliminarily determine that exporters of certain iron-metal castings did not apply for or receive benefits under these programs with respect to exports of the subject merchandise to the United States during the review period: (1) Market Development Assistance; (2) the International Price Reimbursement Scheme; (3) Free Trade Zones; (4) Preferential Freight Rates; (5) a Preferential Diesel Fuel Program; and (6) the 100 Percent Export-Oriented Units Program.

We also determined that exporters did not apply for or receive benefits from a seventh program, called Exim Script. This program was introduced on July 4, 1991 to replace the replenishment license. The Exim Scrip program was terminated on March 1, 1992.

Preliminary Results of Review

We preliminarily determine that the following net subsidies exist for the period January 1, 1991 through December 31, 1991:

Manufacturer/exporter	Net subsidy (percent)
Dinesh Brothers, Pvt. Ltd	0.00
Super Castings (India) Pvt. Ltd	41.75
Kajaria Iron Castings Pvt. Ltd ..	16.14
All Others	5.54

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the Customs Service to assess countervailing duties at the above percentages of the f.o.b. invoice price on shipments of the subject merchandise exported on or after January 1, 1991, and on or before December 31, 1991. Because the total net subsidy for Dinesh Brothers Pvt., Ltd. is determined to be zero, we intend to instruct the Customs Service not to assess countervailing duties on shipments of the subject merchandise with respect to that company.

The Department also intends, as a result of the termination of benefits attributable to the CCS program, to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 5.13 percent for all firms except Dinesh Brothers, Pvt. Ltd., Super Castings (India) Pvt. Ltd., and Kajaria Iron Castings Pvt. Ltd, on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. Because Super Castings and Kajaria did not use the CCS program, the cash deposit rates for those companies will equal the calculated net subsidies of 41.75 percent and 16.14 percent, respectively. Because the net subsidy for Dinesh Brothers Pvt., Ltd. is zero, the Department intends to instruct the Customs Service not to collect cash deposits on shipments of this merchandise from this company entered or withdrawn for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than ten days after date of publication of this notice. In accordance with 19 CFR 355.38(c)(1)(ii), interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than ten days after the representative's

client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due under 19 CFR 355.38(c).

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: January 9, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–1762 Filed 1–23–95; 8:45 am]

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C–433–806

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Oil Country Tubular Goods (''OCTG'') From Austria

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 24, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Daniel Lessard, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0189.

Preliminary Determination

The Department preliminarily determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (''the Act''), are being provided to manufacturers, producers, or exporters of OCTG in Austria. For information on the estimated net subsidies, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the notice of initiation in the **Federal Register** (59 FR 37028, July 20, 1994), the following events have occurred.

On August 1, 1994, we issued a countervailing duty questionnaire to the Government of Austria (''GOA'') in Washington, DC, concerning petitioners' allegations. On August 16, 1994, the GOA responded to the first section of our questionnaire informing us that Voest-Alpine Stahlrohr Kindberg (''Kindberg''), an Austrian OCTG producer, accounted for 100 percent of Austrian exports of the subject merchandise to the United States during the POI.

The Department initiated this investigation based in part on an allegation that Kindberg was benefitting from subsidies given to a related party from whom Kindberg purchased inputs for OCTG production (''upstream subsidy allegation''). On August 22, 1994, the GOA and Kindberg submitted information pertaining to the upstream subsidy allegation. On August 29 and 30, 1994, we conducted a verification relating solely to this information. A report was issued concerning this verification on October 13, 1994.

On September 15, 1994, the GOA and Kindberg submitted questionnaire responses. On November 23, 1994, we issued a deficiency questionnaire to Kindberg and the GOA. We received their responses on December 16, 1994. On January 6, 1995, we requested that respondents submit the proprietary versions of certain exhibits from *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217 (July 9, 1993) (''*Certain Steel*''). We received this information on January 9, 1995.

On August 24, 1994, we postponed the preliminary determination in this investigation until November 23, 1994, pursuant to section 703(c)(1) of the Act, on the grounds that the case was extraordinarily complicated (59 FR 43554, August 24, 1994). The preliminary determination was again extended until January 17, 1995, pursuant to section 703(g)(1) of the Act (59 FR 60774, November 28, 1994).

On December 5, 1994, we received a request from petitioner to postpone the final determination in this investigation until the date of the final antidumping determination in the companion antidumping investigation of OCTG from Austria, in accordance with 19 CFR 355.20(c)(1).

Scope of Investigation

The products covered by this investigation are OCTG, which are hollow steel products of circular cross-section. These products include oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether or not conforming to American Petroleum Institute (''API'') or non-API specifications, whether finished or unfinished (including green tubes). These investigations do not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to these investigations are currently classified in the Harmonized Tariff Schedule (''HTS'') under these item numbers:

7304.20.10.00	7304.20.40.10	7304.20.10.20
7304.20.30.80	7304.20.10.30	7304.20.10.40
7304.20.10.50	7304.20.10.60	7304.20.10.80
7304.20.20.00	7304.20.20.10	7304.20.20.20
7304.20.20.30	7304.20.20.40	7304.20.20.50
7304.20.20.60	7304.20.20.80	7304.20.30.00
7304.20.30.10	7304.20.30.20	7304.20.30.30
7304.20.30.40	7304.20.30.50	7304.20.30.60
7304.20.30.80	7304.20.40.00	7304.20.40.10
7304.20.40.20	7304.20.40.30	7304.20.40.40
7304.20.40.50	7304.20.40.60	7304.20.40.80
7304.20.50.10	7304.20.50.15	7304.20.50.30
7304.20.50.45	7304.20.50.50	7304.20.50.60
7304.20.50.75	7304.20.60.10	7304.20.60.15
7304.20.60.30	7304.20.60.45	7304.20.60.50
7304.20.60.60	7304.20.60.75	7304.20.70.00
7304.20.80.00	7304.20.80.30	7304.20.80.45
7304.20.80.60	7305.20.20.00	7305.20.40.00
7305.20.60.00	7305.20.80.00	7306.20.10.30
7306.20.10.90	7306.20.20.00	7306.20.30.00
7306.20.40.00	7306.20.60.10	7306.20.60.50
7306.20.80.10	7306.20.80.50	

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, our written description of the scope of this proceeding is dispositive.

Injury Test

Because Austria is a ''country under the Agreement'' within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (''ITC'') is required to determine whether imports of OCTG from Austria materially injure, or threaten material injury to, a U.S. industry. On August 24, 1994, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Austria of the subject merchandise (59 FR 43591, August 24, 1994).

Petitioners

The petitioners are Koppel Steel Corporation; U.S. Steel Group, a unit of USX Corporation; and USS/Kobe Steel. Co-petitioners in this investigation are IPSCO Steel, Inc.; Maverick Tube Corporation; and North Star Steel Company.

Corporate History of Respondent Kindberg

Prior to 1987, the subject merchandise was produced in the steel division of VAAG, a large conglomerate which also had engineering and finished products divisions. In 1987, VAAG underwent a major restructuring and several new companies were formed from the three major divisions of VAAG. The steel division was incorporated as Voest-Alpine Stahl GmbH, Linz (''VA Linz''). The production facilities at Kindberg and Voest-Alpine Stahl Donawitz GmbH (''Donawitz'') were separately incorporated, with Kindberg and Donawitz becoming subsidiaries of VA Linz. VAAG became a holding company for these new companies.

In 1988, VAAG transferred its ownership interest in VA Linz to Voest-Alpine Stahl AG (''VAS''). At the same time, Kindberg became a subsidiary of Donawitz. Donawitz and other companies were owned by VAS, which in turn was owned by VAAG.

In 1989, VAS and all other subholdings of VAAG were transferred to Industrie und Beteiligungsverwaltung GmbH (''IBVG''). In 1990, IBVG, in turn, was renamed Austrian Industries AG (''AI''). VAAG remained in existence, but separate from IBVG and AI, holding only residual liabilities and non-steel assets.

In 1991, as part of the reorganization of the long products operations, Donawitz was split into two companies. The rail division remained with the existing company (*i.e.*, Donawitz), however, the name of the company was changed to Voest-Alpine Schienen GmbH (''Schienen''). In addition to producing rails, Schienen also became the holding company for Kindberg and the other Donawitz subsidiaries. The metallurgical division of the former Donawitz was incorporated as a new company and was named Voest-Alpine Stahl Donawitz (''Donawitz II'').

Equityworthiness

As discussed below, we have determined that the GOA provided equity infusions, through Österreichische Industrieholding-Aktiengesellschaft (''ÖIAG''), to VAAG in the years 1983, 1984, and 1986, and to Kindberg in 1987. In order for the Department to find an equity infusion countervailable, it must be determined that the infusion is provided on terms inconsistent with commercial considerations. Petitioners have alleged that VAAG and Kindberg were unequityworthy in the years in which they received equity infusions and that the equity infusions were, therefore, inconsistent with commercial considerations. According to § 355.44(e)(2) of the Department's proposed regulations, for a company to be equityworthy, it must show the ability to generate a reasonable rate of return within a reasonable period of time. A detailed equityworthiness analysis can be found in Appendix I of the Concurrence Memorandum dated January 17, 1995. A summary of that analysis follows.

In *Certain Steel*, the Department determined VAAG to be unequityworthy for the years 1978–84 and 1986. Respondents have not questioned this determination and no additional information concerning that period has come to light. Therefore, we preliminarily determine VAAG to be unequityworthy during the period 1978–84, and for 1986.

With respect to the equityworthiness of Kindberg in 1987, the Department would normally analyze financial statements of the company in question for three years prior to the infusion and also consider any outside studies. In this case, however, since Kindberg was incorporated effective 1987, its performance before that year is included in the financial statements of VAAG. An in-depth analysis of VAAG's financial ratios in the three years prior to the restructuring was undertaken in *Certain Steel*. In that case, the Department concluded that VAAG's financial statements showed poor results during the relevant period (*see* the Department's Final Concurrence Memorandum in *Certain Steel*, at Appendix 2).

Respondents have submitted information pertaining to the expected results of the 1987 restructuring to be considered in making our equityworthiness determination for Kindberg in 1987. Specifically, they have provided a one page excerpt from a study titled ''VA Neu'' and a profit and loss forecast. However, the VA Neu study is not translated, and neither document contains any narrative description or analysis of the figures contained within it. Moreover, it is not clear from the responses when these plans were developed or what conclusions they contain. Absent this information, we are unable to conclude that a reasonable private investor would be able to properly analyze the significance of these figures. Therefore, the information contained in these documents has not been considered in the Department's analysis.

Because we are not able to take this information into account, we are basing our preliminary equityworthy finding for Kindberg on VAAG's financial history. While we recognize that VAAG's financial data includes companies other than Kindberg, without any additional information we are compelled to rely on the unequityworthiness of VAAG alone. This is consistent with the analysis in *Certain Steel*, where the 1987 equityworthiness determination for another VAAG subsidiary was based on the past performance of VAAG. Therefore, we preliminarily determine Kindberg to be unequityworthy in 1987.

Allocation of Non-Recurring Benefits

As discussed below, we found that countervailable equity infusions and grants have benefited the production of the subject merchandise. Moreover, we found these benefits to be non-recurring because the benefits are exceptional and the recipient could not expect to receive them on an ongoing basis (*see, GIA*, at 37226).

The *Proposed Regulations* require us to allocate non-recurring grants and equity infusions over a period equal to the average useful life of assets in the

industry, unless the sum of grants and equity infusions provided under a program in a particular year is less than 0.50 percent of a firm's total sales in that year. If the sum of grants and equity infusions is less than 0.50 percent, the benefit is expensed in the year of receipt. See § 355.49(a) of the *Proposed Regulations* and the *General Issues Appendix* to the *Final Countervailing Duty Determination: Certain Steel Products from Austria* (''*GIA*''), 58 FR 37225, 37217 (July 9, 1993).

For those grants and equity infusions which must be allocated over time, the *Proposed Regulations* require the Department to use as a discount rate a company-specific cost of long-term, fixed-rate debt or, absent such a rate, the average cost of long-term, fixed-rate debt in the country in question (*see* § 355.49(b)(2) of *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366 (May 31, 1989) (''*Proposed Regulations*''). Because a company-specific rate was not available, we have used the bond rate designated as being for ''Industry and other Austrian Issuers'' by the Austrian National Bank Annual Report. In *Certain Steel,* the Department determined that these bond rates provide an accurate measure of what it would cost a large company to raise capital in a given year. The discount rate provided by respondents was determined in *Certain Steel* to be dominated by GOA bonds. Because governments often do not borrow at the same rate as private companies, we prefer to use a rate which is reflective of commercial, rather than government, borrowing (*see, Certain Steel,* at 37223). Therefore, for purposes of this preliminary determination, we have used the discount rates applied in *Certain Steel.*

I. Analysis of Direct Subsidies

Calculation Methodology

For purposes of this preliminary determination, the period for which we are measuring subsidies (the POI) is calendar year 1993. In determining the benefits received under the various programs described below, we used the following calculation methodology. We first calculated the benefit attributable to the POI for each countervailable program, using the methodologies described in each program section below. For each program, we then divided the benefit attributable to Kindberg in the POI by Kindberg's total sales revenue, as none of the programs was limited to either certain subsidiaries or certain products of Kindberg. Next, we added the benefits for all programs to arrive at Kindberg's total subsidy rate. Because Kindberg is the only respondent company in this investigation, this rate is also the country-wide rate.

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

A. *Programs Preliminarily Determined To Be Countervailable*

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Austria of OCTG products under the following programs:

1. *Equity Infusions to Voest-Alpine AG (VAAG): 1983, 1984 and 1986.* The GOA provided equity infusions through ÖIAG to VAAG in 1983, 1984 and 1986, while VAAG owned the facilities which became Kindberg, the producer of the subject merchandise. The 1983 and 1984 infusions were given by ÖIAG pursuant to Law 589/1983. The 1986 equity infusion was given as an advance payment for funds to be provided under Law 298/1987 (the ÖIAG Financing Act). Law 589/1983 and Law 298/1987 provide authority for disbursement of funds solely to companies of ÖIAG, of which VAAG is one.

In *Certain Steel,* the Department determined these equity infusions to be *de jure* specific. Respondents did not provide any information disputing these findings in this proceeding. Moreover, since we have determined that VAAG was unequityworthy in these years, we preliminarily determine that these infusions were provided to VAAG on terms inconsistent with commercial considerations.

We have also preliminarily determined that the subsidies provided to VAAG prior to the 1987 restructuring continue to benefit Kindberg's production of OCTG, in accordance with the restructuring methodology discussed in the *GIA,* at 37265–8. We have applied the following methodology:

We divided Kindberg's asset value on January 1, 1987, by VAAG's total asset value on December 31, 1986 (*i.e.*, pre-restructuring). This ratio best reflects the proportion of VAAG's total 1986 assets that became Kindberg in 1987.

We applied this ratio to VAAG's subsidy amount to calculate the portion of these infusions allocable to Kindberg. To calculate the benefit for the POI, we treated each of the equity amounts as a grant and allocated the benefits over a 15 year period (our treatment of equity as grants and our choice of allocation period is discussed in the *GIA,* at 37239 and 37225, respectively). We then divided the benefit by total sales of Kindberg during the POI. On this basis, we determine the net subsidies for these equity infusions to be 1.37 percent *ad valorem*.

2. *Grants Provided to VAAG: 1981–86.*

The GOA provided grants to VAAG through ÖIAG pursuant to Law 602/1981, Law 589/1983, and Law 298/1987. In *Certain Steel,* the Department found grants disbursed under Law 602/1981, Law 589/1983 and Law 298/1987 to be provided specifically to the steel industry and, hence, countervailable (58 FR 37221). Respondents have not challenged the countervailability of these grants in this proceeding.

In accordance with the *Allocation of Non-recurring Benefits* section, above, we have expensed the grant received in 1981 in that year. To calculate the benefit from the other grants, we used the methodology described in *Equity Infusions to VAAG: 1983–84, 1986* section, above. On this basis, we determine the net subsidies for this program to be 3.68 percent *ad valorem*.

3. *Assumption of Losses at Restructuring by VAAG on Behalf of Kindberg.* In *Certain Steel,* we determined that, in connection with the 1987 restructuring, VAAG retained all the losses carried forward on its balance sheet and that no losses were assigned to its newly created subsidiaries. VAAG later received funds from the GOA under Law 298/1987 to offset these losses. We found that VAAG's subsidiaries benefitted because a portion of the losses should have been allocated to them. In the present investigation, petitioners allege that this assumption of losses provided a countervailable subsidy to Kindberg, a subsidiary of VAAG.

Respondents argue that, had the losses been allocated, Kindberg could have used them to offset income taxes from future profits. Under those circumstances, the allocation of the losses would provide a countervailable

benefit to Kindberg. Therefore, the assumption of losses by VAAG did not provide a benefit to Kindberg.

While respondents may be correct that in certain circumstances losses have value, we concluded in *Certain Steel* that, ''if VAAG had assigned these losses to its new companies, then each of the new companies would have been in a * * * precarious financial position'' (*Certain Steel,* 37221). Respondents' claim does not refute this; it merely posits that losses could be used to offset future tax liabilities (if any) of the VAAG subsidiaries. While we will review this argument further for the final determination, respondents' assertion is not sufficient to reverse the decision we reached in *Certain Steel.* Therefore, we have preliminarily determined that Kindberg benefitted by not assuming any losses.

We calculated the benefit by treating the losses not distributed to Kindberg as a grant in 1987. Kindberg's share of the losses was determined by reference to its asset value relative to total VAAG assets.

To allocate the benefit, we used the methodology described in *Equity Infusions to VAAG: 1983–84, 1986* section, above. On this basis, we determine the net subsidies for this program to be 1.26 percent *ad valorem*.

4. *Equity Infusion to Kindberg: 1987.* A direct equity infusion from ÖIAG to Kindberg was made on January 1, 1987, pursuant to Law 298/1987. As under Law 589/1983, funds under Law 298/1987 were provided solely to the steel industry. Therefore, we preliminarily find this infusion to be specific. Moreover, since we have preliminarily determined that Kindberg was unequityworthy in 1987, these infusions were made on terms inconsistent with commercial considerations. Thus, we preliminarily determine this infusion to be countervailable.

To calculate the benefit for the POI, we treated the equity amount as a grant and allocated the benefit over 15 years (our treatment of equity as grants and our choice of allocation period is discussed in the *GIA,* at 37239 and 37225, respectively). Because the equity investment was made directly in Kindberg, and because Kindberg was separately incorporated as of that year, the entire benefit has been attributed to Kindberg. The portion allocated to the POI was divided by total sales of Kindberg during the POI to determine the *ad valorem* benefit. On this basis, we determine the net subsidies for this program to be 5.13 percent *ad valorem*.

B. *Programs Preliminarily Determined Not To Benefit the Subject Merchandise*

We initiated an investigation of subsidies provided after 1987 to VA Linz, VAAG and VAS based on petitioners' allegation that subsidies to these companies benefitted Kindberg. Based on information provided in the responses, we preliminarily determine that the following programs did not bestow a benefit on Kindberg. (*See* January 17, 1995, Concurrence Memorandum for a further discussion of this issue.)

1. 1987 Equity Infusion to VA Linz
2. Post-Restructuring Equity Infusions to VAAG
3. Post-Restructuring Grants to VAAG
4. Post-Restructuring Grants to VAS

II. Analysis of Upstream Subsidies

The petitioners have alleged that Kindberg receives benefits in the form of upstream subsidies through its purchase of steel blooms from Donawitz II.[1] Section 771A(a) of the Tariff Act of 1930, as amended (the Act), defines upstream subsidies as follows:

The term ''upstream subsidy'' means any subsidy * * * by the government of a country that:

(1) Is paid or bestowed by that government with respect to a product (hereinafter referred to as an ''input product'') that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;

(2) In the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) Has a significant effect on the cost of manufacturing or producing the merchandise.

Each of the three elements listed above must be satisfied in order for the Department to find that an upstream subsidy exists. The absence of any one element precludes the finding of an upstream subsidy. As discussed below, respondents have been able to show that a competitive benefit does not exist. Therefore, we have not addressed the first and third criteria.

Competitive Benefit

In determining whether subsidies to the upstream supplier(s) confer a competitive benefit within the meaning of section 771A(a)(2) on the producer of the subject merchandise, section 771A(b) directs that:

* * * a competitive benefit has been bestowed when the price for the input product * * * is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

The Department's proposed regulations (*Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comment,* 54 FR 23366 (May 31, 1989)) offer the following hierarchy of benchmarks for determining whether a competitive benefit exists:

* * * In evaluating whether a competitive benefit exists pursuant to paragraph (a)(2) of this section, the Secretary will determine whether the price for the input product is lower than:

(1) The price which the producer of the merchandise otherwise would pay for the input product, produced in the same country, in obtaining it from another unsubsidized seller in an arm's length transaction; or

(2) a world market price for the input product.

In this instance, Donawitz II is the sole supplier in Austria of the input product, steel blooms. However, Kindberg does purchase the input product from an unrelated foreign supplier. Therefore, we have used the prices charged to Kindberg by the foreign supplier as the benchmark world market price.

Because the foreign supplier's prices are delivered, we made an upward adjustment to the domestic supplier's ex-factory prices to account for the cost of freight between Kindberg and that supplier. Based on our comparison of these delivered prices for identical grades of steel blooms, we found no competitive benefit was bestowed on Kindberg during the POI. Therefore, we preliminarily determine that Kindberg did not receive an upstream subsidy.

Verification

In accordance with section 776(b) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of OCTG from Austria, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. This suspension will remain in effect until further notice.

[1] Petitioners originally alleged that the corporate interaction between Kindberg and Donawitz II is such that subsidies received by either company would benefit the production of the subject merchandise. Based on this analysis, petitioners continue to argue that these companies should be treated as a single entity. Both approaches are discussed in our January 17, 1995, Concurrence Memorandum.

OCTG

Country-Wide *Ad Valorem* Rate—11.44 percent

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Alignment With Companion Antidumping Investigation

Pursuant to petitioners' request for an alignment with the companion antidumping investigation, in accordance with 19 CFR 355.20(c)(1), we are postponing the final countervailing duty determination in this investigation until April 11, 1995, the date of the final antidumping duty determination in the companion antidumping investigation of OCTG from Austria.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing will be held on March 31, 1995, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC. 20230. Individuals who wish to request a hearing must submit a written request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than March 23, 1995. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than March 29, 1995. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with § 355.38 of the Commerce Department's regulations and will be considered if received within the time limits specified above.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: January 17, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–1763 Filed 1–23–95; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Application for Designation as a Contract Market in Hybrid Mexican Peso Futures and Options on Those Futures

AGENCY: Commodity Futures Trading Commission

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts

SUMMARY: The Chicago Mercantile Exchange (CME) has applied for designation as a contract market in hybrid (cash settled) Mexican peso futures and options on those futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before February 23, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME hybrid Mexican peso futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Steve Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K street NW., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the CME in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 18, 1995.

Blake Imel,

Acting Director.

[FR Doc. 95–1728 Filed 1–23–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB control number: Tender of Service—Mobile Homes: OMB Control Number 0704–0056.

Type of request: Reinstatement.

Number of respondents: 12.

Responses per respondent: 125.

Annual responses: 1,500.

Average burden per response: 1.22 hours.

Annual burden hours: 1,830.

Needs and uses: The information collected hereby, serves as a bid for contract to transport mobile homes for the Department of Defense (DoD). The carrier must provide this information in order to become a DoD approved carrier. Since mobile homes move at Government expense, this data is needed to choose the best service at the least cost. The carrier offering the best service for the least cost is awarded the contract.

Affected public: Businesses or other for-profit; Small businesses or organizations.

Frequency: On occasion.

Respondent's obligation: Required to obtain or retain a benefit.

OMB Desk officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD clearance officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 19, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–1722 Filed 1–23–95; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: DoD FAR Supplement, Part 210, ''Specifications, Standards, and Other Purchase Descriptions,'' and Part 252, ''Solicitation Provisions and Contract Clauses''

Type of request: New collection.

Number of respondents: 2,873.

Responses per respondent: 1.

Annual responses: 2,873.

Average burden per response: 8 hours.

Annual burden hours: 22,984.

Needs and uses: The Department of Defense is committed to minimizing the use of military and federal specifications and standards; and seeking to use performance specifications and non-Government standards to the maximum extent practicable to satisfy its requirements. The solicitation provisions at DFARS 252.210–7005, Alternatives to Specifications and Standards, and the contract clause at 252.210–7006, Alternatives and Updates to Specifications and Standards, encourage offerors and contractors to identify and propose alternatives to specifications and standards cited in DoD solicitations and contracts valued at $100,000 or more. The information collected hereby, will be used by DoD in its efforts to decrease reliance on military and federal specifications and standards.

Affected public: Businesses or other for-profit, small businesses or organizations.

Frequency: On occasion.

Respondent's obligation: Voluntary.

OMB desk officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD clearance officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 19, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–1724 Filed 1–23–95; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; applicable form; and OMB control number: DoD FAR Supplement, Part 230, ''Cost Accounting Standards,'' DD Form 1861; OMB Control Number 0704–0267.

Type of request: Extension.

Number of respondents: 75.

Responses per respondent: 1.

Annual responses: 75.

Average burden per response: 10 hours.

Annual burden hours: 750.

Needs and uses: The information collected hereby, is used to distribute contractor facilities capital assets, by type, for the purpose of developing profit objectives on defense contracts.

Affected public: Business or other for-profit; Small businesses or organizations.

Frequency: On occasion.

Respondent's obligation: Required to obtain or retain a benefit.

OMB desk officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD clearance officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 19, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–1723 Filed 1–23–95; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Defense Policy Board Advisory Committee

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 6–7 February 1995 from 0800 until 1700 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified

discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1982), an that accordingly this meeting will be closed to the public.

Dated: January 19, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–1725 Filed 1–23–95; 8:45 am]

BILLING CODE 5000–04–M

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on February 7, 1995; February 14, 1995; February 21, 1995; and February 28, 1995, at 10:00 a.m. in Room 800, Hoffman Building #1, Alexandria, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committtee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: January 19, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–1726 Filed 1–23–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

USAF Scientific Advisory Board Meeting

The Basic Research Panel of the USAF Scientific Advisory Board will meet on February 20–24, 1995 at Bolling AFB, Washington DC, from 8 a.m. to 5 p.m.

The purpose of the meeting will be to provide science and technology assessments on basic research related issues.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–1658 Filed 1–23–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: February 8 and 9, 1995.

Time of Meeting: 0800–1700 respectively.

Place: SSDC and USAMICOM, Huntsville, AL.

Agenda: The Army Science Board's Ad Hoc Study on ''ASB Space and Missile Defense Organization'' will have its 3rd meeting at the SSDC and USAMICOM on 8 and 9 February 1995. This meeting will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matter to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–1734 Filed 1–23–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 8 and 9 February 1995.

Time of Meeting: 1030–1730, 8 February 1995. 0830–1400, 9 February 1995.

Place: BDM Federal, 4001 North Fairfax Drive, Suite 750, Arlington, VA 22203.

Agenda: The Army Science Board (ASB) Independent Assessment Group on ''Fire Suppression Alternatives for Armored Combat Vehicles'' will meet to continue the assessment of alternatives. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–1900 Filed 1–23–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 7 February 1995.

Time of Meeting: 1000–1600.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board Acquisition Reform Issue Group will meet to discuss the data collection efforts to date regarding ''Management and Control Costs associated with Acquisition Programs.'' Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–1902 Filed 1–23–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Planning and Steering Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Planning and Steering Advisory Committee will meet February 8, 1995, from 9:00 a.m. to 3:30 p.m., at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria Virginia. This session will be closed to the public.

The purpose of the meeting is to discuss topics relevant to SSBN security. The entire agenda will consist of classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public

because they concern matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: LCDR, R. F. Brese, Pentagon, Room 4D534, Washington, DC 20350, Telephone: (703) 693-7258.

Dated: January 11, 1995.

L. R. McNees,

LCDR, JAGC, USN, Federal Regsister Liaison Officer.

[FR Doc. 95–1731 Filed 1–23–95; 8:45 am]

BILLING CODE 3810–FF–F

Intent To Grant Partially Exclusive Patent License; Dexcil Corp.

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant partially exclusive patent license; Dexcil Corporation.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Dexcil Corporation, a revocable, nonassignable, partially exclusive license in the United States and certain foreign countries to practice the Government-owned invention described in U.S. Patent No. 5,183,740 ''Flow Immunosensor Method and Apparatus'' issued February 2, 1993 in field of Polychlorinated Biphenyl (PCB) analysis in water, soil, air and mixed waste.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: January 12, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–1662 Filed 1–23–95; 8:45 am]

BILLING CODE 3810–AE–M

Intent To Grant Partially Exclusive Patent License; Electronic Data Systems Corp.

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant partially exclusive patent license; Electronic Data Systems Corporation.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Electronic Data Systems Corporation, a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned invention described in U.S. Patent Application Serial No. 08/243,650 ''Selective Polygon Map Display Method'' filed May 12, 1994.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: January 12, 1995.

L.R. McNess,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–1663 Filed 1–23–95; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

National Education Goals Panel Meeting

AGENCY: National Education Goals Panel, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel This notice also describes the functions of the Panel.

DATES: January 28, 1995 from 9:00 a.m.–12:00 p.m..

ADDRESSES: J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW, Salon I, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ruth Chacon, Associate Director of Communications, 1850 M Street NW, Suite 270, Washington, DC 20036. Telephone: (202) 632–0952.

SUPPLEMENTARY INFORMATION: The National Education Goals Panel, a bipartisan panel of governors, members of the Administration, members of Congress and state legislators was created to monitor and report annually to the President, Governors and Congress on the progress of the nation toward meeting the National Education Goals adopted by the President and Governors in 1989.

The meeting of the Panel is open to the pubic. The agenda includes a discussion of the evolving role and impact of national academic standards and the role of the Goals Panel in promoting their use. Advisory papers for discussion will be presented by Shirley M. Malcom, of the American Association for the Advancement of Science and chair of the Panel's 1993 Advisory Group on Standards; Gordon M. Ambach, Executive Director of the Council of Chief State School Officers; Roberts T. Jones, Executive Vice President of the National Alliance of Business and member of the Business Task Force on Student Standards; and P. Michael Timpane, retired President of Teachers College, Columbia University and chair of the NEGP Higher Education Advisory Group on Standards.

Dated: January 19, 1995.

Noemí Friedlander,

Deputy Director, National Education Goals Panel.

[FR Doc. 95–1765 Filed 1–23–95; 8:45 am]

BILLING CODE 4000–52–M

DEPARTMENT OF ENERGY

Environmental Restoration and Waste Management; Programmatic Environmental Impact Statement

AGENCY: U.S. Department of Energy.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Department of Energy is giving the public the opportunity to comment on proposed modifications to the title and scope of the Environmental Restoration and Waste Management Programmatic Environmental Impact Statement. The Department proposes to modify the scope and name of the Environmental Restoration and Waste Management Programmatic Environmental Impact Statement (PEIS). The proposed action would focus primarily on the evaluation and analysis of waste management issues confronting the Department and would be renamed the Waste Management Programmatic Environmental Impact Statement.

DATES: To ensure that the public's concerns and views are fully considered, DOE is providing a 45-day written comment period that will extend until March 10, 1995, to comment on the proposed modification to the Programmatic Environmental Impact Statement.

ADDRESSES AND FURTHER INFORMATION: Written comments and requests for further information on the Environmental Restoration and Waste Management Programmatic Environmental Impact Statement should be directed to: James A. Turi, Office of Waste Management (EM–33), U.S.

Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0002, (301) 903–7147. For information on the Department's National Environmental Policy Act process, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: On October 22, 1990, the Department of Energy issued a Notice of Intent to prepare the Environmental Restoration and Waste Management Programmatic Environmental Impact Statement (PEIS) (55 FR 42633). In the Notice of Intent and in an Implementation Plan issued in January 1994, the Department identified the proposed action as follows: ''to formulate and implement an integrated environmental restoration and waste management program in a safe and environmentally sound manner and in compliance with applicable laws, regulations and standards.'' The Notice of Intent and the Implementation Plan identified two separate sets of alternatives to be evaluated, for environmental restoration and for waste management.

The Department attempted to meaningfully analyze the environmental restoration alternatives that it originally defined as part of the ''proposed action.'' After considerable effort, the Department has concluded that it would not be appropriate to make programmatic decisions regarding cleanup strategies that would be applicable to all of the Department's sites. The fundamental reasoning behind the Department's conclusion is that cleanup decisions should reflect site-specific conditions, and, in any event, can only be reached with the approval of state and federal regulators and the involvement of the public. It would be inconsistent with the site-specific nature of cleanup decisions, therefore, to make these decisions under this PEIS that would be implemented nationwide.

Accordingly, the Department proposes to eliminate the analysis of environmental restoration alternatives and to modify the proposed action. As modified, the PEIS would consider how to manage the subject wastes and analyze alternative sites at which the wastes could be managed in the future. The PEIS would focus its programmatic evaluations on waste management facilities, and would henceforth be known as the ''Waste Management Programmatic Environmental Impact Statement.'' As previously set forth in the Implementation Plan, the PEIS would evaluate decentralized, regional, and centralized approaches for storage of high-level waste; treatment and storage of transuranic waste; treatment and disposal of low-level and low level mixed waste; and treatment of hazardous waste. Waste generated by restoration activities in the future that must be managed as part of the Department's program to manage all of its wastes would be considered in the PEIS's projected waste inventories. The draft PEIS is currently scheduled for publication in late spring of 1995.

In the October 22, 1990, Notice of Intent in the **Federal Register**, the Department of Energy discussed the preparation of a Programmatic Environmental Impact Statement based on formulating and implementing an integrated environmental restoration and waste management program in a safe and environmentally sound manner and in compliance with applicable requirements. The Notice of Intent stated that the purpose of the integrated environmental restoration and waste management program was to provide a broad, systematic approach to addressing site cleanup and waste management. Although the proposed action was defined in terms of integrating environmental restoration and waste management, the description of the alternatives in the Implementation Plan set forth separate sets of alternatives for environmental restoration and waste management.

When the Department published the Notice of Intent in 1990, there were important national issues regarding the direction of its environmental restoration program that could be meaningfully evaluated in the PEIS. These issues focused primarily on the level and extent of cleanup of the Department's facilities. The Department continues to believe that cleanup of its sites involves important issues such as land use, public health, worker risks, and cleanup standards. The Department has concluded, however, that programmatic decisions regarding environmental restoration cannot be made because these decisions should reflect the particular conditions at each site, and require the approval of state regulators and the involvement of stakeholders. The Department believes that the proposed action originally considered in the PEIS should be modified by eliminating the analysis of environmental restoration alternatives. In view of this modification the PEIS would be renamed the ''Waste Management Programmatic Environmental Impact Statement.''

The modified proposed action would focus on the evaluation and analysis of waste management issues confronting the Department and would incorporate potential impacts of environmental restoration on the management of wastes. The Department believes the proposed action as modified will identify and analyze waste management issues and activities for which the Department is responsible. A summary of the comments received in response to this notice will be contained in an appendix to the draft Waste Management Programmatic Environmental Impact Statement. Comments previously received during the public comment process on the scope of the PEIS that are still relevant in light of the proposed modification to the PEIS, and the issues raised by such comments, would be evaluated as discussed in the Implementation Plan. Comments on the scope of the PEIS that are relevant to other analyses being conducted in connection with site-specific environmental restoration at DOE's sites will be considered in the preparation of those analyses.

Issued in Washington, D.C., on January 18, 1995.

Thomas P. Grumbly,

Assistant Secretary for Environmental Management.

[FR Doc. 95–1754 Filed 1–23–95; 8:45 am]

BILLING CODE 6450–01–P

Research, Development and Demonstration of New and Advanced Technology for the Glass Industry; Financial Assistance

AGENCY: Department of Energy, Idaho Operations Office.

ACTION: Solicitation for Financial Assistance: Research, Development and Demonstration of New and Advanced Technology for the Glass Industry.

SUMMARY: Notice is hereby given pursuant to Public Law 93–577, the Federal Non-nuclear Energy Research and Development Act of 1974, that the U.S. Department of Energy (DOE) Idaho Operations Office (ID), is seeking cost-shared applications for research, development and demonstration of new and advanced technologies to assist the glass industry to remain competitive, reduce energy consumption, and reduce negative environmental impacts. A minimum 20% non-DOE cost-share for research and development phases and a minimum 50% non-DOE cost-share for the demonstration phase is required.

This is a complete solicitation document.

DATES: The deadline for receipt of applications is 4:00 p.m. MDT, March 22, 1995.

ADDRESSES: Applications shall be submitted to: B. G. Bauer, Contracting Officer; Procurement Services Division; U. S. Department of Energy; Idaho Operations Office; 850 Energy Drive, MS 1221; Idaho Falls, Idaho 83401–1563. [NUMBER DE-PS07–95ID13346]

FOR FURTHER INFORMATION CONTACT: Dallas Hoffer, Contract Specialist, Telephone (208) 526–0014, Facsimile (208) 526–5548.

SUPPLEMENTARY INFORMATION:

A. Background

Projects sponsored by the DOE Office of Industrial Technologies (OIT) are based on the needs and concerns of industry. The program advances technology to the point of commercialization. Historically, activities have focused on industrial competitiveness, the development of energy efficient, environmentally benign technology and equipment. As part of this program, this solicitation for DOE financial assistance applications is being issued.

B. Project Description

DOE anticipates awarding one or more Cooperative Agreements in accordance with DOE Financial Assistance regulations appearing at Title 10 of the Code of Federal Regulations, Chapter II Subchapter H, Part 600 as a result of this solicitation, and funds are available. Federal funds appropriated for this solicitation are approximately $2,000,000 and are to be used to fund the entire research effort. The Catalog of Federal Domestic Assistance Number for this program is 81.078. All projects shall be cost shared by DOE and the participant. Applicants should be aware that any awardee shall be required to have a cost share of not less than 20% of the total cost of the program for the research and development phases and 50% of the total cost of the program for the demonstration phase. For the purpose of cost share determination, Phase I and Phase II tasks are considered to be research and development while Phase III tasks are demonstration. **NO FEE OR PROFIT WILL BE PAID TO THE AWARD RECIPIENTS.** Under Cooperative Agreements it is anticipated there will be substantial involvement by DOE.

DOE suggests, but does not require, a multi-phase approach and projects may be initiated at the bench scale (Phase I), laboratory/pilot scale (Phase II), or demonstration (Phase III), levels. Individual project duration will not exceed 3 years. Project(s) with durations of less than 3 years and in any phase of development are eligible, if conclusive evidence is presented that previous phase(s) have been completed successfully. All applications with project periods of 3 years or less will be given equal consideration. The period of performance for the first phase is anticipated to be 12 months. At the end of Phase I, provided satisfactory progress has been made and funds are available, DOE may award a continuation of work to undertake further development if the participant demonstrates a continuing need for federal assistance, shows sufficient progress in the research effort, has completed the work in compliance with a mutually agreed management plan, and identifies the new research planned.

The objective of this solicitation is research, development and demonstration of new and advanced technologies to assist the glass industry to remain competitive, reduce energy consumption, and reduce negative environmental impacts. Utilizing the recommendations of the flat, fiber, container and specialty glass industry sectors the below listed priority research subject areas have been identified. Proposals for research in areas not included in the list below will not be considered. Proposals shall have applications that cut across two or more of the flat, fiber, container or specialty glass industry sectors. Applications must identify the priority area being addressed, explain why industry is not already performing the proposed research, and why DOE funding is appropriate.

C. Glass Industry Research Priorities

This solicitation is to be focused on the following glass industry research priorities identified by the industry.

1. Materials

a. Develop improved, cost effective refractories that have greater service capabilities, do not contain materials that are classified as hazardous, or that are well suited for applications of oxy-fuel and gas reburn.

2. Equipment

a. Develop equipment that will improve energy recovery from the melter (for example: preheating of glass cullet and batch raw materials, generation of electricity, or drive processes).

b. Improve recycling equipment (i.e. recycled material sorting, separation, size reduction, processing).

c. Develop equipment to recycle facility waste products and remove or render harmless hazardous material.

d. Develop improved, cost effective air emissions systems or optimized furnace designs to meet the more stringent regulations of the future (i.e. removal of NO_X, SO_X and particulate emissions). Integrated process improvements are preferred over add on devices.

e. Improve process water treatment and control.

3. Computer Modeling

a. Develop models to improve basic understanding of the glass chemistry. This includes chemical kinetics of pre-melting, solid state reactions, batch melting and reactions in glass, chemical equilibria and solubility data, and chemical kinetics during (re)fining.

b. Study effect of gas bubbles on the physical and transport properties of the glass melt.

c. Develop models with ability to correlate furnace design and operation with glass quality, or elimination of defects.

d. Develop furnace models that can calculate transient thermal and chemical behavior and can be used to develop methods to optimize energy use and reduce air emissions.

e. Develop models to optimize fuel combustion and heat release, heat transfer models to calculate glass melting and temperature conditioning, or improved combustion models for prediction of pollutant production.

4. Instrumentation and Control

a. Advanced instrumentation to measure glass chemical and physical properties required for optimizing production (cost effective non-contact or direct contact types).

b. Develop non-contact stress analyzers and surface property analyzers.

c. Develop low cost direct contact sensors that can be used in molten glass so that relatively large arrays can be used to provide information to improve process control.

d. Develop improved monitoring and process control systems to reduce air emissions.

e. Instrumentation to measure refractory thickness (condition/serviceability).

f. Develop methods to correlate numerical data and operating parameters and use them for development of control systems (i.e. expert, fuzzy logic, or neural networks)

including systems for melting, processing, or emissions control to improve glass quality and yield.

g. Develop instrumentation for recycled glass streams.

D. Proposal Requirements

Each proposal must contain the following:

1. Identify the priority area being addressed, explain why industry is not already performing the proposed research, and why DOE funding is appropriate;

2. Demonstrated support of the glass industry by describing:

a. how industry has participated in deciding what research activities will be undertaken;

b. how industry will participate in the evaluation of the applicant's progress in research and development activities;

c. the extent of industry involvement in conducting trials at their facilities to accomplish or validate the research; and

d. the extent to which industry funds are committed to the applicant's proposal;

3. Demonstrated commitment for cost sharing funds from non-federal sources, which shall consist of:

a. cash, and/or

b. as determined by DOE, the fair market value of equipment, services, materials, appropriate technology transfer activities, and other assets directly related to the proposed project;

4. Provide a management plan that outlines how the research, development, and technology transfer activities will be carried out and administered. The management plan shall:

a. outline the research, development, and technology transfer activities by Task expected to be performed;

b. include a detailed statement of work of technical work to be performed;

c. outline who will conduct those research activities and their qualifications;

d. establish the time frame over which the research activities will take place; and

e. define the overall program management and direction by:

1. identifying managerial, organizational and administrative procedures and responsibilities;

2. outlining how the coordination of work between the individuals and organizations involved will be achieved;

3. demonstrating how implementation and monitoring of the progress of the research project after receipt of funding from DOE will be achieved;

4. demonstrating how recommendations and implementations on modifications to the plan, if any, will be achieved; and

5. providing sufficient rationale to support the project costs.

5. State the annual cost of the proposal and a breakdown of those costs for each task and a break down of the percentage of time devoted for each key individual performing the work;

6. Provide a critical review of existing and emerging technologies, relevant patents, on-going research, and practices, and a description of the hurdles that must be overcome to ensure commercial viability and commercialization of the proposed technologies;

7. Justify the project with an initial economic evaluation indicating the potential for a significant reduction in manufacturing cost and/or a significant improvement in product value resulting from the proposed research;

8. Identify the technical hurdles for commercialization and how they will be addressed; and

9. Provide evidence of having the facilities and equipment or industrial partner(s) capable of conducting laboratory scale and demonstration testing.

10. All proposals shall include a demonstration phase.

11. Proposals shall have applications that cut across two or more of the flat, fiber, container or specialty glass industry sectors.

Note: Underlying assumptions along with detailed calculations to support the claimed economic and energy efficiency benefits must be included in the application.

E. Qualified Applicants

Government-owned laboratories, private research organizations, nonprofit institutions, or private firms.

F. Proposal Evaluation

a. Application Deadline

The deadline for receipt of applications is 4:00 p.m. MST, March 22, 1995. Late applications will be handled in accordance with 10 CFR 600.13.

b. Selection of Proposals

Only those proposals which meet all of the requirements of this solicitation will be considered for selection. Selections will be made in accordance with the following selection criteria and programmatic considerations:

Criterion 1—The research proposal demonstrates a thorough knowledge of the glass industry by highlighting its technology needs, barriers to their development and commercialization, and provides a credible management plan to achieve, and evidence to support the benefits identified in the proposed research.

Criterion 2—The research proposal contains evidence of strong support by the glass industry by identifying significant industry involvement in preparation of the proposal and in performing the research activities.

Criterion 3—The research proposal identifies a viable mechanism to facilitate the transfer of the technology to the glass industry at the earliest practicable time; Proposals that include conducting trials at multiple plants to accomplish or validate work are preferred.

Criterion 4—The research proposal offers technology which is new and advanced and is based upon sound scientific, environmental, and engineering principles, are technically feasible and cost effective, have practical industrial application, and will provide the greatest benefits per dollar invested in the U.S. glass industry.

c. Weighting of Criteria

Criterion 1, 2, 3, and 4 are each weighted 25% of the total score.

d. Programmatic Selection Considerations

In conjunction with the evaluation results and rankings of individual proposals, the Government will make selections for negotiations and planned awards from among the highest ranking proposals utilizing the following programmatic considerations:

(1) The proposed cost of the project will not be point scored. Applicants are advised, however, that notwithstanding the lower relative importance of the cost considerations, the evaluated cost may be the basis for selection. In making the selection decision, the apparent advantages of individual technical and business applications will be weighed against the probable cost to the government to determine whether the application approaches (excluding cost considerations) are worth the probable cost differences.

(2) It is desirable to implement each research and development project as a continuing collaborative effort in which the participants represent both the scientific/engineering research disciplines as well as members of the glass industry engaged in its practical, daily operations and experienced in the application of glass industry processes.

(3) Proposals that have the potential to save significant energy, reduce negative environmental impacts and provide significant cost benefits are preferred.

e. Merit Reviews

All Applications will be evaluated under the procedure for ''Objective

Merit Review of Discretionary Financial Assistance Applications'' which was published in the **Federal Register** on May 31, 1990 (Vol. 55, No. 105). Selections for negotiations are expected to be made May 10, 1995, and financial assistance awards are expected to be made beginning July 21, 1995.

SECTION III—GENERAL CONDITIONS

The applications will be evaluated in accordance with the Office of Energy Efficiency and Renewable Energy Merit Review Procedure, and the criteria and programmatic considerations set forth in this solicitation. In conducting this evaluation, the Government may utilize assistance and advice from non-Government personnel. Applicants are therefore requested to state on the cover sheet of the applications if they do not consent to an evaluation by such non-Government personnel. The applicants are further advised that DOE may be unable to give full consideration to an application submitted without such consent. DOE reserves the right to support or not to support any, all, or any part of any application. All applicants will be notified in writing of the action taken on their applications in approximately 90 days after the closing date for this solicitation, provided no follow-up clarifications are needed. Status of any application during the evaluation and selection process will not be discussed with the applicants. Unsuccessful applications will not be returned.

A. Instructions for Preparation of Applications

Each application in response to this solicitation should be prepared in one volume. One original and nine copies of each application are required. Proposals shall be a maximum of 30 pages excluding costing information and, assurance and certification forms provided in the DOE Application Instruction package. The application facesheet is the Standard Form 424. The application is to be prepared for the complete project period.

a. Proprietary Proposal Information

Applications submitted in response to this solicitation may contain trade secrets and/or privileged or confidential commercial or financial information which the applicant does not want used or disclosed for any purpose other than evaluation of the application. The use and disclosure of such data may be restricted provided the applicant marks the cover sheet of the application with the following legend, specifying the pages of the application which are to be restricted in accordance with the conditions of the legend:

> The data contained in pages ____ of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data herein to the extent provided in the award. This restriction does not limit the government's right to use or disclose data obtained without restriction from any source, including the applicant.

Further, to protect such data, each page containing such data shall be specifically identified and marked, including each line or paragraph containing the data to be protected with a legend similar to the following:

> Use or disclosure of the data set forth above is subject to the restriction on the cover page of this application.

It should be noted, however, that data bearing the aforementioned legend may be subject to release under the provisions of the Freedom of Information Act (FOIA), if DOE or a court determines that the material so marked is not exempt under the FOIA. The Government assumes no liability for disclosure or use of unmarked data and may use or disclose such data for any purpose. Applicants are hereby notified that DOE intends to make all applications submitted available to non-Government personnel for the sole purpose of assisting the DOE in its evaluation of the applications. These individuals will be required to protect the confidentiality of any specifically identified information obtained as a result of their participation in the evaluation.

b. Budget

A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes. Project period means the total approved period of time that DOE will provide support contingent upon satisfactory progress and availability of funds. The project period may be divided into several budget periods. The project period shall not exceed three years. Each application must contain Standard Forms 424 and 424A. The budget summary page only needs to be completed for the first budget period; all other periods of support requested should be shown on the total costs page. The proposal should contain full details of the costs regarding the labor, overhead, material, travel, subcontracts, consultants, and other support costs broken down by task and by year. Every cost item should be justifiable and further details of the costs may be required if the proposal is selected for the award. It is essential that requested details be submitted in a timely manner for the actual award. Items of needed equipment should be individually listed by description and estimated cost, inclusive of tax, and adequately justified. The destination and purpose of budgeted travel and its relation to the research, should be specified. Anticipated consultant services should be justified and information furnished on each individual's expertise, primary organizational affiliation, daily compensation rate and number of days of expected service. Consultant's travel costs should be listed separately under travel in the budget.

c. Cost Proposal

In the event there are multiple projects proposed in a submittal, a separate cost proposal should be included for each project proposed for funding. The cost proposal should have sufficient detail that an independent evaluation of the labor, materials, equipment and other costs as well as a verification of the proposed cost share can be performed.

B. Notices to Applicants

a. False Statements: Applications must set forth full, accurate, and complete information as required by this solicitation. The penalty for making false statements is prescribed in 18 U.S.C. 1001.

b. Application Clarification: DOE reserves the right to require applications to be clarified or supplemented to the extent considered necessary either through additional written submissions or oral presentations.

c. Amendments: All amendments to this solicitation will be mailed to recipients who submit a written request for the DOE Application Instruction package.

d. Applicant's Past Performance: DOE reserves the right to solicit from available sources relevant information concerning an applicant's past performance and may consider such information in its evaluation.

e. Commitment of Public Funds: The Contracting Officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with the proposed award. Any other commitment, either explicit or implied, is invalid.

f. Effective Period of Application: All applications should remain in effect for at least 180 days from the closing date.

g. Availability of Funds: The actual amount of funds to be obligated in each fiscal year will be subject to availability of funds appropriated by Congress.

h. Assurances and Certifications: DOE requires the submission of preaward assurances of compliance and certifications which are mandated by law. Prospective applicants intending to submit an application in response to this solicitation should request a DOE Application Instruction package, which includes standard forms, assurances and certifications, by notifying the DOE Contract Specialist. It is advised that prospective applicants submit their requests in writing no later than February 21, 1995.

i. Questions & Answers: Questions regarding this solicitation should be submitted in writing to the DOE Contract Specialist no later than February 15, 1995. Questions and answers will be issued in writing as an amendment to this solicitation.

j. Preaward Costs: The government is not liable for any costs incurred in preparation of an application. Awardees may incur preaward costs up to ninety (90) days prior to the effective date of award. Should the awardee take such action, it is done so at the awardee's risk and does not impose any obligation on the DOE to issue an award (10 CFR 600.103)

k. Patents, Data, and Copyrights: Applicants are advised that patents, data, and copyrights will be treated in accordance with 10 CFR 600.33.

l. Environmental impact: An applicant environmental checklist will be provided in the DOE Application Instruction package. Award will not be made until all environmental requirements are completed.

m. EPACT: Applicants shall be required to comply with Section 2306 of the Energy Policy Act of 1992 (EPACT) [42 U.S.C. 13525], in the event EPACT applies to financial assistance instruments issued as a result of this solicitation. A copy of Section 2306 will be included in the DOE Application Instruction package.

Dated: February 12, 1995.

Brad Bauer,

Director, Procurement Services Division.

[FR Doc. 95–1755 Filed 1–23–95; 8:45 am]

BILLING CODE 6450–01–P

Certification of the Radiological Condition of the Seymour Specialty Wire Site, Seymour, Connecticut, 1992–1993

AGENCY: Office of Environmental Management, Department of Energy (DOE).

ACTION: Notice of certification.

SUMMARY: DOE has completed remedial action to decontaminate the process building at the Seymour Specialty Wire Site in Seymour, Connecticut. The property was found to contain quantities of radioactive material from work performed for the Atomic Energy Commission. Post-remedial action radiological surveys show that the site now meets current guidelines for use without radiological restrictions. This notice announces the availability of the certification docket for remedial action taken at the site.

ADDRESSES: Copies of the docket may be inspected at:

Public Reading Room, Room 1E–190, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585;

Public Document Room, Oak Ridge Operations Office, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, Tennessee 37831.

FOR FURTHER INFORMATION CONTACT: James W. Wagoner II, Director, Off-Site/Savannah River Program Division, Office of Eastern Area Programs (EM–421), Office of Environmental Restoration, U.S. Department of Energy, Washington, D.C. 20585, (301) 427–1721 Fax: (301) 427–1907.

SUPPLEMENTARY INFORMATION: DOE (Office of Environmental Restoration, Office of Eastern Area Programs, Off-Site/Savannah River Program Division) has implemented remedial action at the Seymour Specialty Wire Site in Seymour, Connecticut, (Town of Seymour, Volume 135, pages 430–437) as part of the Formerly Utilized Sites Remedial Action Program (FUSRAP). The objective of the program is to identify and clean up or otherwise control sites where residual radioactive contamination remains from activities carried out under contract to the Manhattan Engineer District and the Atomic Energy Commission (AEC) during the early years of the nation's atomic energy program. In December 1985, the Seymour site was formally designated by DOE for cleanup under FUSRAP.

The Bridgeport Brass Company, later known as the Seymour Specialty Wire Company, performed operations under contract to AEC from 1962 to 1964. The contract was for the development of a process for the extrusion of natural uranium metal. The portion of the Seymour Facility where the AEC work was conducted, the Rufert Building, is currently leased by the Electric Cable Company as an industrial manufacturing plant.

In 1964, AEC conducted a radiological survey of the 1.9-ha (4.8-acre) parcel of the Seymour site that included the Rufert Building. The survey was conducted after the Bridgeport Brass Company terminated all of the AEC-related work at the Seymour site to consolidate the AEC contract work at the Bridgeport Brass facility in Ashtabula, Ohio. Although there were no AEC standards for surface contamination with which to compare the survey data at that time, the survey report completed at the time states that the radionuclide concentrations observed were ''* * * quite low and certainly are insignificant with respect to any mode of exposure that can be hypothesized.''

After FUSRAP was established, review of former AEC records indicated that the Seymour site should be resurveyed because of the lack of satisfactory release criteria at the time of the first survey. At the request of DOE, the Oak Ridge National Laboratory (ORNL) Health and Safety Research Division conducted a preliminary radiological survey of the facility on January 26, 1977. This survey consisted of gamma exposure measurements at 1 m (3.3 ft) from the floor surface, beta-gamma exposure rate measurements at 1 cm (0.4 in.) above the floor surface, and direct alpha radiation measurements taken on contact with the floor.

Because of gamma radiation measurements observed during the preliminary survey, ORNL conducted a follow-up survey at the site on August 26, 1980. The purpose of the follow-up survey was to determine whether the site exceeded current DOE guidelines for residual contamination on structural surfaces. Therefore, this survey was limited to those areas of the building where the former AEC contract work was known to have been carried out. In addition to the same types of measurements that were taken during the 1977 survey, smear samples were taken to determine the extent of transferable contamination. Smear samples taken from the bowls and traps of several floor drains yielded transferable contamination concentrations of 70 to 150 dpm/cm^2. Because of these readings and visual inspection of the drains, samples of the residue from the three drains were also collected for analysis. These samples contained uranium concentrations ranging from 2,860 to 15,600 pCi/g (the 1980 report does not indicate whether this was total uranium or uranium-238).

Both the 1977 and 1980 surveys indicated that radioactive contamination was present in the Rufert Building, primarily in the Dynapack

(extrusion) area, which exceeded current DOE guidelines for residual contamination on structural surfaces. As a result of these surveys, the site was designated for remediation under FUSRAP in December 1985.

ORNL conducted more extensive characterization surveys in May and June 1992 to more precisely define the locations and delineate the boundaries of the radioactive contamination identified during the initial designation surveys. The characterization surveys confirmed that the primary contaminants in the areas of the Rufert Building used to perform AEC work were uranium-238 and its decay products. The contamination extended throughout a much greater portion of the first floor of the building than originally thought. In addition, near-surface walkover gamma radiation surveys were conducted on exterior areas. Two small isolated areas were contaminated with radioactive material.

Based on data collected and evaluated during the characterization activities, an expedited removal action was conducted at the Seymour site in 1992 and 1993. Post-remedial action surveys have demonstrated that the site now meets applicable requirements for use without radiological restrictions. DOE has certified that any residual contamination which remains on site falls within guidelines for use without radiological restrictions and that reasonably foreseeable future use of the property will result in no radiological exposure above these radiological guidelines established to protect members of the general public as well as site occupants. These findings are supported by the DOE *Certification Docket for the Remedial Action Performed at the Seymour Site in Seymour, Connecticut,* 1992–1993. Accordingly, this property is released from FUSRAP.

The certification docket will be available for review between 9:00 a.m. and 4:00 p.m., Monday through Friday (except Federal holidays) in the U.S. Department of Energy Public Reading Room located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue S.W., Washington, D.C. Copies of the certification docket will also be available in the DOE Public Document Room, U.S. Department of Energy, Oak Ridge Operations Office, Oak Ridge, Tennessee. DOE, through the Oak Ridge Operations Office, Former Sites Restoration Division, has issued the following statement:

Statement of Certification: Seymour Specialty Wire Site, Former AEC Operations

DOE, Oak Ridge Operations Office, Former Sites Restoration Division, has reviewed and analyzed the radiological data obtained following remedial action at the Seymour Specialty Wire site (Town of Seymour, Volume 135, pages 430–437). Post-remedial action radiological surveys show that the site now meets current guidelines for use without radiological restrictions. Based on analysis of all data collected, DOE certifies that any residual contamination which remains on site falls within current guidelines for use without radiological restrictions. This certification of compliance also provides assurance that reasonably foreseeable future use of the property will result in no radiological exposure above current radiological guidelines established to protect members of the general public as well as occupants of the site.

Property owned by Seymour Specialty Wire Company: 15 Franklin Street, Seymour, Connecticut 06482.

Issued in Washington, D.C., on January 19, 1995.

John E. Baublitz,

Acting Deputy Assistant Secretary for Environmental Restoration.

[FR Doc. 95–1753 Filed 1–23–95; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Forms EIA–871A–F, ''1995 Commercial Buildings Energy Consumption Survey''

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of Proposed Revision of Forms EIA–871A-F, ''1995 Commercial Buildings Energy Consumption Survey (CBECS),'' and Solicitation of Comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed revision to the Forms EIA–871A–F, ''1995 Commercial Buildings Energy Consumption Survey.''

DATES: Written comments must be submitted within 30 days of the publication of this notice. 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 of your intention to do so as soon as possible.

ADDRESSES: Send comments to Martha Johnson, Project Manager, EI–631, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585, (202) 586–1135, Facsimile (202) 586–0018. Internet: mjohnsoneia.doe.gov.

FOR FURTHER INFORMATION: Requests for additional information or copies of the forms and instructions should be directed to Martha Johnson at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The CBECS is a triennial survey that provides basic statistical information on consumption of and expenditures for energy in commercial buildings, and on the energy-related characteristics of these buildings. (Previous surveys were conducted in 1979, 1983, and 1986 under the name of the Nonresidential Buildings Energy Consumption Survey. The 1989 and 1992 surveys were collected using the new title, CBECS. To obtain this information, personal interviews are conducted for a sample of commercial buildings in the 50 states and the District of Columbia. For buildings in the survey, data are collected on structural characteristics, activities conducted inside the buildings, building ownership and

occupancy, energy conservation measures, energy-using equipment, and both the types and uses of energy consumed. Energy consumption data for the building are obtained from the suppliers of electricity, natural gas, fuel oil and district heat to the building after receiving permission from the building owner, manager or tenant. The energy suppliers survey is a mail interview.

The data obtained from this survey are published primarily in EIA reports titled Commercial Buildings Characteristics (date of survey) and Commercial Buildings Energy Consumption and Expenditures (date of survey). Selected data from the surveys are also published in the Monthly Energy Review and the Annual Energy Review. Data are available electronically through the EPUB and on diskettes for use with personal computers.

II. Current Actions

Anticipated changes for the 1995 CBECS include: Ten Primary Sampling Units that were dropped in 1989 will be reinstated; the section ''Construction Improvements and Maintenance and Repairs Supplement,'' conducted for the Bureau of Census will be deleted; (3) two types of buildings (parking garages and buildings on industrial sites) will not be included in the sample; (4) the Building Characteristics Questionnaire (Form EIA–871A) will be substantially reduced from the 1992 questionnaire so that it is similar to the 1989 questionnaire; (5) the building characteristics data will be collected using Computer Assisted Personal Interviewing techniques in order to provide data in a more timely fashion; and (6) the suppliers of district chilled water will not be surveyed. No major changes pertaining to the type of data collected on the Energy Suppliers Forms (EIA–871C–F) are anticipated. However, the format of the Energy Supplier Forms will be modified to provide data in a more timely fashion.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.''

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average 45 minutes per interview (Form EIA–871A) and about 30 minutes per energy supplier response (Forms EIA–871C–F). Note: There is no Form EIA–871B. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

E. For the most part, information is published by EIA in U.S. customary units, e.g., cubic feet of natural gas, short tons of coal, and barrels of oil. Would you prefer to see EIA publish more information in metric units, e.g., cubic meters, metric tons, and kilograms? If yes, please specify what information (e.g., coal production, natural gas consumption, and crude oil imports), the metric unit(s) of measurement preferred, and in which EIA publication(s) you would like to see such information.

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the CBECS.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form; they also will become a matter of public record.

Authority: Section 2(a) of the Paperwork Reduction Act of 1980, Public Law No. 96–511, which amended Chapter 35 of Title 44, United States Code, (see 44 U.S.C. 3506(a) and (c)(1)).

Issued in Washington, DC, January 17, 1995.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 95–1752 Filed 1–23–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

Appliance and Equipment Energy Efficiency and Water Standards: Recommendations for Establishing State and Local Incentive Programs for Voluntary Replacement of Plumbing Products by Consumers

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: The Energy Policy Act of 1992 requires the Department of Energy (DOE or Department) to issue recommendations to the States for establishing State and local incentive programs designed to encourage the acceleration of voluntary replacement, by consumers, of existing showerheads, faucets, water closets, and urinals with those products that meet the standards established in the legislation.

In order to consult with State and local government and industry representatives about the development of such recommendations, the Department will hold a public meeting in Santa Fe, New Mexico, to discuss programs that promote water conservation. All persons are hereby given notice of the opportunity to attend the public meeting.

DATES: The public meeting will be held on Friday, January 27, 1995.

ADDRESSES: The meeting will begin at 4:00 p.m. and will be held in the Santa Fe Room at the La Fonda Hotel, 100 E. Santa Fe Street, Santa Fe, New Mexico, in conjunction with the mid-winter meeting of the American Water Works Association's Water Conservation Committee.

FOR FURTHER INFORMATION CONTACT:

Barbara Twigg,U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Ave., SW, Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION:

1. Authority

Part B of Title III of the Energy Policy and Conservation Act, Public Law 94–163, created the Energy Conservation Program for Consumer Products other than Automobiles (Program). The most recent amendment, the Energy Policy Act of 1992 (EPACT), Public Law 102–486, identified several new categories of products and equipment for inclusion in various required and voluntary testing and information programs to promote energy efficiency and water conservation. Section 123 of EPACT established maximum water use standards for showerheads, faucets, water closets and urinals for equipment manufactured after January 1, 1994. In addition, Section 123 requires the Secretary of Energy to issue recommendations to the States for establishing State and local incentive programs designed to encourage the acceleration of voluntary replacement, by consumers, of existing showerheads, faucets, water closets, and urinals with those products that meet the new statutory standards. In developing the recommendations, the Secretary is required to consult with the heads of other Federal agencies, including the Administrator of the Environmental Protection Agency; State officials; manufacturers, suppliers, and installers of plumbing products; and other interested parties.

2. Background

On June 20, 1994, the Department of Energy held a meeting in New York City as part of the American Water Works Association's annual conference to receive suggestions on how it should proceed to elicit broad participation in the process for developing recommendations, with input on all pertinent issues regarding State and local incentive programs. Approximately 30 people attended, of whom 6 submitted written proposals suggesting various courses of action for the Department. Discussions continued at a meeting of the National Association of Plumbing-Heating-Cooling Contractors in Las Vegas on September 29, 1994. Ideas and suggestions have been consolidated into an outline which will form the basis for a resource guide being developed by the Department and its contractor, Lawrence Berkeley Laboratory.

3. Public Meeting Procedure

The purpose of the meeting is to discuss the outline and resource document developed thus far by the Department of Energy. Informal discussion will follow an introductory presentation by the Department.

Issued in Washington, DC, January 19, 1995.

Marvin E. Gunn, Jr.,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–1756 Filed 1–23–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

Energy Research Financial Assistance Program Notice 95–13: National Information Infrastructure

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Scientific Computing of the Office of Energy Research (ER), U.S. Department of Energy (DOE) hereby announces its interest in receiving research grant applications to support DOE's program in the President's National Information Infrastructure (NII) initiative. The DOE program is integral to and supportive of the multi-agency NII initiative through the High Performance Computing and Communications (HPCC) program which has been in place since 1992.

DOE supports NII's goals through the Information Infrastructure Technology and Applications (IITA) component of the HPCC program by (1) supporting research and development to solve important scientific and technical challenges; (2) reducing the uncertainties in industrial research and development through increased cooperation between government, industry, and universities and by continued use of government and government-funded facilities as a prototype user of early commercial NII products; and (3) supporting the underlying research, network, and computational infrastructures on which NII applications are based.

DATES: To permit timely consideration of awards in FY 1995, formal applications submitted in response to this notice must be received by March 15, 1995. Earlier submission is encouraged.

ADDRESSES: Formal applications referencing Program Notice 95–13 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, (GTN), Washington, DC 20585. Attn: Program Notice 95–13. The following address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand-carried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Mary Anne Scott, Program Manager, Office of Scientific Computing, Office of Energy Research, ER–30/GTN, U.S. Department of Energy, Washington, DC 20585. (301) 903–9958. E-mail to hpcc@er.doe.gov.

SUPPLEMENTARY INFORMATION: The NII program announced by Vice President Gore in 1993 encapsulates the promise of the Information Age to transform our society. Historically, communication and computing technology, i.e., leading edge information technology, has been a powerful instrument of change in our society. The National Information Infrastructure program seeks to enhance national competitiveness and improve the quality of life of the general populace. The principles and goals of the NII are: (1) Promote private sector investment; (2) extend the ''universal service'' concept to assure that information resources are available to all at affordable prices; (3) promote technological innovation and new applications; (4) promote seamless, interactive, user-driven operation of the NII; (5) ensure information security and network reliability; (6) improve management of the radio frequency spectrum; (7) protect intellectual property rights; (8) coordinate with other levels of government and with other nations; and (9) provide access to government information and improve government procurement.

The DOE program is to approach these goals by supporting the NII through the Information Infrastructure Technology and Applications (IITA) component of the HPCC program and requests applications for grants to support research in the following areas:

I. Wide Area and Distributed Network Based Technologies To Support Energy Demand and Supply Management

The management of energy demand is a serious concern for two reasons: there is the dependence on imported oil and gas, which affects the balance of payments, and there are environmental concerns with respect to the burning of fossil fuels. The utility companies use telecommunications to support their principal business of managing and providing energy to their customers. However, the evolving nature of the

corporate utility business requires the development of new distributed network technologies in areas such as interoperability, authentication, privacy control, and multicast data aggregation in order to enhance the existing capabilities of utilities for real-time energy demand and supply management. In addition, the technologies and infrastructures that support energy consumers and utility providers may be leveraged to accommodate other service providers by providing access to services and resources over the NII. Grant applications are sought for the development and implementation of both wide area based and distributed network tools, technologies, and protocols that enable energy utilities to improve efficiency, conservation, billing and customer service, and promotes end user interaction and control over their use of energy. These tools, technologies, and protocols must be scalable and operable over both the Internet and NII. Applicants are expected to be familiar with the current state of the art in these areas, especially in regard to issues dealing with how the consumer interfaces and connects to both the utility and the National Information Infrastructure. These technologies may include, but are not limited to:

—distributed computing technologies to integrate residential information and energy appliances in addition to computer-based energy monitoring and control systems; to enable energy management in commercial public buildings; and to provide end users an interactive interface to delivery systems and to the Internet and NII through these delivery systems;

—distributed data handling and analysis tools for the compilation, interpretation and intelligent use of energy production and usage statistics;

—security systems to ensure customer privacy and prevent unauthorized access;

—demonstration or prototype projects to evaluate energy demand management applications over the Internet and the NII.

II. Wide Area Network (WAN) Based Hierarchical, Distributed Database and Data Storage Technologies and Techniques

The advances in high performance computing and communications, combined with the sophisticated demands of both Grand and National Challenge applications, have accelerated the need for distributed, fast, interoperable and scaleable technologies and techniques for storing, manipulating, and querying large data sets to handle the increased amounts of information. As a result, query techniques that are independent of database structures have become more important. Grant applications are sought for the development and implementation of technologies and techniques for managing large datasets using WAN-based storage and database tools and protocols.

III. Wide Area Network (WAN) Based Collaboration Technology, Remote Facilities Usage, and Application Development

The need to efficiently share information and facilities remotely, in addition to the growing requirement for telepresence and telecommuting capabilities, requires enhanced collaborative technologies and techniques such as packetized video/audio streams and multimedia conferencing, shared whiteboards and concurrent editing/markup capabilities. Grant applications are sought for the development, implementation, and advanced uses of WAN-based technologies and techniques for providing real-time, interactive voice, video and data exchange across the Internet and other large distributed heterogeneous networks in addition to the demonstration of emerging technologies in an NII application context such as education, remote facility utilization, or environment applications.

IV. Wide Area Network Authentication and Security

The growth of networking, as evidenced by the increased usage of the Internet and the attention devoted to the National Information Infrastructure, will continue at its current rapid pace. The components of large interconnected networks, local networks, hosts, computers, information, data, applications and users, all require some level of security. As the number of individuals, businesses, schools and other entities using networks grows, so does the need for more sophisticated authentication and security tools. Conversely, as information technologies become ubiquitous via the NII, it is important to protect the privacy of the end users of the NII. Grant applications are sought for the development, implementation, or advanced integration of scalable, WAN-based security and privacy tools and protocols in the areas of application and user interfaces, information search and retrieval, and data storage and transmission that can operate across the Internet and other large distributed, heterogeneous networks.

V. Gigabit Technology Research

Energy demand and supply management, heterogenous distributed computing and virtual collaboratory environments will continue to drive high performance communications to meet both the aggregate and high end resource application requirements. Grant applications are sought for the development and/or demonstration of technologies to enable communications networks, such as the Energy Sciences network (ESnet), to support the aforementioned requirements for future information and data intensive network applications. These can include, but are not limited to: advanced collaboratory audio/visual tools; management and control of heterogeneous traffic across local, metropolitan, and wide area ATM networks; and network evolution and management tools (e.g., for IPv6, IP over ATM, IPv4, multicast, and ATM to ATM).

In all the above areas, tools, technologies, protocols, services, and demonstration projects proposed should be scalable and interoperable with the heterogenous NII and Internet technologies and services at both the hardware level and at the software gateway levels. For example, a multiprotocol router gateway to residences/industrial buildings should also work over a wide variety of access media. Applicants are also expected to be familiar with the current state of the art in the area of their application submission.

Collaborative research and innovative partnering among investigators at industrial firms, universities and National Laboratories are encouraged. It is expected that grants will be awarded in the range of $100,000 to $500,000 for periods of one to three years.

The FY 1995 Federal program is summarized in ''High Performance Computing and Communications'' Technology for the National Information Infrastructure—a Supplement to the President's Fiscal Year 1995 Budget. This report can be requested by calling (301) 903–9958. A report, ''The Information Infrastructure: Reaching Society's Goals—Report of the Information Infrastructure Task Force Committee on Applications and Technology,'' has been issued for public comment that addresses eight areas, including electrical power, in which NII applications can enhance the quality of life. This report is available by calling (301) 975–4529.

In evaluating the scientific merit of the applications submitted, the

following additional criteria will be considered: (1) use and integration of current Internet and NII services; (2) potential for impact on and advancement of NII applications, such as those called out by the Committee on Applications and Technology, especially Energy Demand and Supply Management; (3) potential for marketable and/or deployable technology and systems; and (4) innovative partnerships.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, D.C. on January 9, 1995.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 95–1751 Filed 1–23–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER95–185–000, et al.]

Baltimore Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

January 13, 1995.

Take notice that the following filings have been made with the Commission:

1. Baltimore Gas & Electric Company

[Docket Nos. ER95–185–000 and ER95–186–000]

Take notice that on January 4, 1994, Baltimore Gas & Electric Company tendered for filing an amendment in the above-referenced dockets.

Comment date: January 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. West Texas Utilities Company

[Docket No. ER95–245–000]

Take notice that on January 9, 1995, West Texas Utilities Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Maine Public Service Company

[Docket No. ER95–374–000]

Take notice that on December 30, 1994, Maine Public Service Company (Maine Public) tendered for filing new power sales agreements involving Eastern Maine Electric Cooperative, Inc. and Van Buren Light and Power District. Maine Public requests a January 1, 1995 effective date.

Comment date: January 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Tucson Electric Power Company

[Docket No. ER95–376–000]

Take notice that on December 30, 1994, Tucson Electric Power Company (Tucson) tendered for filing a Wholesale Power Supply Agreement between Tucson and the Navajo Tribal Utility Authority (NTUA). The Agreement provides for the sale by Tucson to NTUA of up to 12 MW of firm capacity and energy.

The parties request an effective date of January 1, 1994, and therefore request waiver of the Commission's regulations with respect to notice of filing.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: January 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Company

[Docket No. ER95–377–000]

Take notice that Northeast Utilities Service Company (NUSCO), on December 30, 1994, tendered for filing a Service Agreement with Connecticut Municipal Electric Energy Cooperative (CMEEC) under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to CMEEC.

NUSCO requests that the Service Agreement become effective on January 1, 1995.

Comment date: January 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp

[Docket No. ER95–380–000]

Take notice that on January 4, 1995, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, the Second Amendment to the Agreement for Mitigation of Major Loop Flow among PacifiCorp, Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE), PacifiCorp Rate Schedule FERC No. 298.

Copies of this filing were supplied to PG&E, SCE, the Public Utility Commission of Oregon, the Utah Public Service Commission and the Public Utilities Commission of the State of California.

Comment date: January 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Power Service Corporation on behalf of West Penn Power Company

[Docket No. ER95–381–000]

Take notice that on December 23, 1994, Allegheny Power Service Corporation on behalf of West Penn Power Company submitted Supplement No. 1 to the above-referenced docket to add a new delivery point for borderline service with Pennsylvania Power & Light Company.

Copies of the filing have been provided to the Pennsylvania Public Utility Commission and all parties of record.

Comment date: January 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Central Vermont Public Service Corporation

[Docket No. ER95–382–000]

Take notice that on December 27, 1994, Central Vermont Public Service Corporation (Central Vermont) tendered for filing an amendment to its FPC Rate Schedule 29, Supplement 1.

Central Vermont requests the Commission to waive its notice of filing requirement to permit the amendment to become effective according to its terms. In support of its requests Central Vermont states that allowing the Service Agreement to become effective as provided will enable the Company and its customers to achieve mutual benefits.

Comment date: January 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company

[Docket No. ER95–386–000]

Take notice that on January 5, 1995, Northern States Power Company (Minnesota) (NSP) tendered for filing the Construction Agreement between NSP and Cooperative Power Association (CPA), dated December 21, 1994. This agreement allows for Cooperative Power Association to replace the switch and switch structure at the Penelope connection, which is one of the original connections in the Integrated Transmission System established by the Integrated Transmission Agreement between NSP and CPA dated August 25, 1967.

NSP requests that the Commission accept for filing this agreement effective as of the date of execution, December 21, 1994, and requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date. NSP requests that the Agreement be accepted as a supplement to Rate Schedule No. 342,

the rate schedule for previously filed agreements related to the Integrated Transmission Agreement between NSP and CPA.

Comment date: January 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Northern States Power Company (Minnesota)

[Docket No. ER95–387–000]

Take notice that on January 5, 1995, Northern States Power Company (Minnesota) (NSP) tendered for filing the Connection No. 54 between NSP and Cooperative Power Association (CPA) dated November 30, 1994. This agreement allows for Cooperative Power Association to connect to NSP's Winthrop-Gaylord 69 Kv transmission line which is a portion of the Integrated Transmission System owned by NSP. The service is for an existing substation called Heartland.

NSP requests that the Commission accept for filing this agreement effective as of the date of in-service, November 3, 1994, and requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date. NSP requests that the Agreement be accepted as a supplement to Rate Schedule No. 342, the rate schedule for previously filed connection agreements between NSP and CPA.

Comment date: January 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Northern States Power Company (Minnesota)

[Docket No. ER95–388–000]

Take notice that on January 5, 1995, Northern States Power Company (Minnesota) (NSP) tendered for filing the Connection No. 55 between NSP and Cooperative Power Association (CPA) dated November 30, 1994. This agreement allows for Cooperative Power Association to connect to NSP's Douglas County-Glenwood 69 Kv transmission line which is a portion of the Integrated Transmission System owned by NSP. The service is for an existing substation called Ommen for Runestone Electric Co-op., a member of CPA.

NSP requests that the Commission accept for filing this agreement effective as of the date of execution, November 30, 1994, and requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date. NSP requests that the Agreement be accepted as a supplement to Rate Schedule No. 342, the rate schedule for previously filed connection agreements between NSP and CPA.

Comment date: January 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power Corporation

[Docket No. ER95–389–000]

Take notice that on January 5, 1995, Florida Power Corporation (FPC) tendered for filing a service agreement for transmission service resale with LG&E Power Marketing Inc. (LG&E), under Florida Power's existing T–1 Transmission Tariff. This involves transmission service to be provided to LG&E at all existing and future interconnections of FPC.

FPC requests a waiver of the Commission's 60-day notice requirement to allow FPC and LG&E's Agreement to become effective January 6, 1995.

Comment date: January 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Company

[Docket No. ER95–390–000]

Take notice that on January 5, 1995, Florida Power & Light Company (FPL) tendered for filing proposed Service Agreements with AES Power, Inc. for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on February 5, 1995, or as soon thereafter as practicable.

FPL states that this filing is in accordance with Part 35 of the Commission's regulations.

Comment date: January 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power & Light Company

[Docket No. ER95–391–000]

Take notice that on January 5, 1995, Florida Power & Light Company (FPL) filed a letter notice dated December 16, 1994, from Seminole Electric Cooperative Incorporated to FPL. This letter contains information provided pursuant to § 7.1.3(j) of the Aggregated Billing Partial Requirements Agreement between Florida Power & Light Company and Seminole Electric Cooperative Incorporated, dated May 16, 1984. FPL requests that the proposed notice be made effective March 5, 1995.

Comment date: January 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. James W. Wogsland

[Docket No. ID–2863–000]

Take notice that on December 30, 1994, James W. Wogsland (Applicant) tendered for filing application under Section 305(b) to hold the following positions:

Director—Central Illinois Public Service Company

Director—First of America Bank Corporation

Director—First of America Bank—Illinois, N.A.

Comment date: January 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Central Wayne Energy Recovery, Limited Partnership

[Docket No. QF95–220–000]

On January 10, 1995, Central Wayne Energy Recovery, Limited Partnership (Applicant), c/o CE Wayne I, Inc., 250 W. Pratt Street, 23rd Floor, Baltimore, MD 21201–2423, submitted for filing an application for certification of a facility as a small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the small power production facility will be located at Dearborn Heights, Michigan, and will consist of a solid waste incinerator, a heat recovery boiler and a steam turbine generator. The maximum net power production capacity of the facility will be 20 MW. The primary energy source will be biomass in the form of municipal solid waste.

Comment date: Thirty days after the date of publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

17. Southeastern Energy Resources, Inc.

[Docket No. ER95–385–000]

Take notice that on January 4, 1995, Southeastern Energy Resources, Inc. (Southeastern) tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective March 7, 1995.

Southeastern intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Southeastern sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Southeastern nor any of its affiliates are in the business of generating, transmitting, or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices, Rate Schedule No. 1 also

provides that no sales may be made to affiliates.

Comment date: January 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–1684 Filed 1–23–95; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5141–4]

Common Sense Initiative Oil Refining Sector; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Common Sense Initiative Oil Refining Sector Subcommittee; notice of meeting.

SUMMARY: The Environmental Protection Agency established the Common Sense Initiative—Oil Refining Sector (CSI-ORS) Subcommittee on October 17, 1994, to provide independent advice and counsel to EPA on policy issues associated with the oil refining industry. The charter for the CSI–ORS Subcommittee was authorized through October 17, 1996, under regulations established by the Federal Advisory Committee Act (FACA).

OPEN MEETING NOTICE: Notice is hereby given that the CSI–ORS Subcommittee will hold an open meeting on Thursday, February 9, 1995 from 8 a.m to 5:30 p.m. and Friday, February 10, 1995, from 8 a.m. to 3 p.m., at the Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, VA 22202. Seating will be available on a first come, first served basis.

The goals of the meeting include discussing Subcommittee operating principles, understanding the FACA process, identifying issues on which the subcommittee will initially focus, and forming working groups to address the issues.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the topics above will be publicly available at the meeting. Thereafter, these documents, together with the CSI–ORS meeting minutes, will be available for public inspection in room 2417M of EPA Headquarters, 401 M Street SW., Washington, DC.

FOR FURTHER INFORMATION: Anyone who would like further information should contact Carolyn Perroni, Environmental Management Support, Inc., 8601 Georgia Avenue, Silver Spring, MD 20910, Phone: (301) 589-5318 or FAX (301) 589-8487. Members of the public may submit written comments of any length prior to the meeting. One hour of meeting time will be set aside for oral presentations. Each individual or group making an oral presentation will be limited to a total of five minutes.

Dated: January 10, 1995.

Meg Kelly,

Designated Federal Official.

[FR Doc. 95–1735 Filed 1–23–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–66206; FRL 4925–8]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by April 24, 1995, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Rm 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 32 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000004–00211	Bonide Lawn and Garden Insect Control W/Diazinon 12 1/2	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000070–00247	Rigo Snail and Slug Bait-M	4-(Methylthio)-3,5-xylyl methylcarbamate
000275–00057	Pro-Shear	*N*-(Phenylmethyl)-1*H*-purin-6-amine
000352–00425	Dupont Hyvar L Citrus Herbicide	5-Bromo-3-sec-butyl-6-methyluracil, lithium salt
000538–00126	Stop Insecticide	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—CONTINUED

Registration No.	Product Name	Chemical Name
000655–00476	Prentox Diazinon 12.5% Emulsifiable Concentrate	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
001685–00089	State Brand Formula 324 Dz-125 Emulsifiable Concentrate	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
002393–00241	Hopkins Snail and Slug Pellets M-2	4-(Methylthio)-3,5-xylyl methylcarbamate
004816–00341	Residual Roach & Ant Spray Pressurized contains Malathi	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate (Butylcarbityl) (6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
004816–00370	Fairfield Residual-A	*o*-Isopropoxyphenyl methylcarbamate (Butylcarbityl) (6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
005481–00170	Kerb Granules 1	Propyzamide
010163 AZ–92–0011	Gowan Diazinon 50 WP	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
010370–00033	Foamspray Products 57% Malathion	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
010370–00068	57% Malathion	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
010370–00114	Staffel's 56% Malathion (premium Grade)	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
010370–00128	Fords 5% Malathion Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
010370–00273	Roberts Malathion 57% Premium Grade	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
010370–00279	Clean Crop Malathion 50 Lawn and Garden Spray	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
039335–00051	Lo-Vol 2D/2DP Turf Care Herbicide	Isooctyl (2-ethyl-4-methylpentyl) 2,4-dichlorophenoxyacetate Isooctyl 2-(2,4-dichlorophenoxy)propionate
042177–00047	Olympic Sav-Clor 3 '' Tablets	Trichloro-*s*-triazinetrione
042177–00048	Olympic Sav-Clor Cartridge	Trichloro-*s*-triazinetrione
042177–00050	Olympic Sav-Clor 1 '' Tablets	Trichloro-*s*-triazinetrione
042177–00052	Olympic Sav-Clor Skimmer Sticks	Trichloro-*s*-triazinetrione
043222–00006	Minwax Spray	Ethanol *o*-Phenylphenol
055947–00038	Banvel Herbicide (The Potassium Formulation)	Potassium 3,6-dichloro-*o*-anisate
055947–00139	Dicamba K	Potassium 3,6-dichloro-*o*-anisate
059639–00046	Dibrom Sevin 4-5 Dust	1,2-Dibromo-2,2-dichloroethyl dimethyl phosphate 1-Naphthyl-*N*-methylcarbamate
061718–00002	Apple Wrap	6-Ethoxy-1,2-dihydro-2,2,4-trimethyl quinoline
062719–00111	Spike 5G	*N*-(5-(1,1-Dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N,N'*-dimethylurea
062719–00115	Graslan 10 P	*N*-(5-(1,1-Dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N,N'*-dimethylurea
062719–00128	Spike Treflan 6G	Trifluralin (α,α,α,-trifluro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine) *N*-(5-(1,1-Dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N,N'*-dimethylurea
062719–00135	Spike Dry Flowable	*N*-(5-(1,1-Dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N,N'*-dimethylurea

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90–day period.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000004	Bonide Products Inc., 2 Wurz Ave., Yorkville, NY 13495.
000070	Wilbur-Ellis Co., Box 16458, Fresno, CA 93755.
000275	Abbott Laboratories, Chemical & Agricultural Products Div, 1401 Sheridan Rd., D-28R, Bldg A1, North Chicago, IL 60064.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000538	O.M. Scott & Sons Co, 14111 Scottslawn Rd., Marysville, OH 43041.
000655	Prentiss Inc., C. B. 2000, Floral Park, NY 11002.
001685	State Chemical Mfg. Co., 3100 Hamilton Ave, Cleveland, OH 44114.
002393	Haco, Inc., Box 7190, Madison, WI 53707.
004816	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
005481	AMVAC Chemical Corp., 4100 E. Washington Blvd, Los Angeles, CA 90023.
010163	Gowan Co, Box 5569, Yuma, AZ 85366.
010370	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
039335	Maxus Agri Chem'l, 717 N. Harwood St. #3300, Dallas, TX 75201.
042177	York Chemical Corp., 3309 E. John W. Carpenter Freeway, Irving, TX 75062.
043222	Minwax Co., Inc., 102 Chestnut Ridge Plaza, Montvale, NJ 07645.
055947	Sandoz Agro Inc., 1300 E. Touhy Ave, Des Plaines, IL 60018.
059639	Valent U.S.A. Corp., 1333 N. California Blvd, Ste 600, Walnut Creek, CA 94596.
061718	Wrap Pack, c/o Science Regulatory Services International, 1625 K St., NW, Suite 1000, Washington, DC 20006.
062719	DowElanco, 9330 Zionsville Rd 308/3E, Indianapolis, IN 46268.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before April 24, 1995. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1–year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: January 9, 1995.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

[FR Doc. 95–1675 Filed 1–23–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66205; FRL 4925–7]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by April 24, 1995, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson

Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 27 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000239–02257	Ortho Citrus Insect Spray	*O,O,O′*,O′-Tetraethyl *S,S′*-methylene bis(phosphorodithioate) Aliphatic petroleum hydrocarbons
000279 CA–78–0082	Thiodan 3 E.C.	6,7,8,9,10-Hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide Xylene range aromatic solvent
000432 AR–80–0011	Powdered Cube	Rotenone
000432 UT–80–0012	Penick's Cube Powder Fish Toxicant	Rotenone Cube Resins other than rotenone
000432 WA–81–0031	Penick's Cube Powder Fish Toxicant	Rotenone Cube Resins other than rotenone
000655–00790	Prentox Larva-Lur	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
000769–00626	Ethion-1 Chinch Bug Spray	*O,O,O′*,O′-Tetraethyl *S,S′*-methylene bis(phosphorodithioate)
000769–00661	X-Cel Azalea, Camellia & Gardenia Spray	*O,O,O′*,O′-Tetraethyl *S,S′*-methylene bis(phosphorodithioate)
000769–00946	Pratt 6E Oil Spray	*O,O,O′*,O′-Tetraethyl *S,S′*-methylene bis(phosphorodithioate) Aliphatic petroleum hydrocarbons
001022–00512	Ambrodan	6,7,8,9,10-Hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide
001022–00524	Chapman Termiban	6,7,8,9,10-Hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide
001677–00152	Pennsan Cip	Phosphoric acid
001769–00357	Drop Dead	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl *d*-trans-2,2-dimethyl- Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
003125 NJ–89–0008	Guthion 35% Wettable Powder Crop Insecticide	*O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate
007001–00283	Best Snail & Slug Bait-M	4-(Methylthio)-3,5-xylyl methylcarbamate
007401–00001	Ferti-Lome containing Ethion for Cntrl of Chinch Bugs	*O,O,O′*,O′-Tetraethyl *S,S′*-methylene bis(phosphorodithioate)
007401–00013	Ferti-Lome Chinch Bug Spray	*O,O,O′*,O′-Tetraethyl *S,S′*-methylene bis(phosphorodithioate)
007501 WA–91–0002	Tops 5 Potato Seed-Piece Treatment	Dimethyl ((1,2-phenylene)bis(iminocarbonothioyl))bis(carbamate)
008220–00055	Victory Formula Flea and Tick Pump Spray for Dogs	Pyrethrins Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
010370–00282	Clean Crop Weed Wrangler Ready-To-Use	Isopropylamine glyphosate (*N*-(phosphonomethyl)glycine)
010370–00283	Clean Crop Weed Wrangler 10%	Isopropylamine glyphosate (*N*-(phosphonomethyl)glycine)
011715–00221	Farnam Go-Fly	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins 2,2-Dichlorovinyl dimethyl phosphate
034704 NJ–89–0002	Captan 50-W Fungicide	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
051793–00153	Elite Flea & Tick Shampoo #9	Dipropyl isocinchomeronate *N*-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
051793–00155	Elite Flea & Tick Spray #9	Dipropyl isocinchomeronate *N*-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
060224 FL–88–0001	Cythion Insecticide the Premium Grade Malathion	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
065384–00003	Deet Insect Repellent Towelettes	Dipropyl isocinchomeronate *N*-Octyl bicycloheptene dicarboximide *N,N*-Diethyl-meta-toluamide and other isomers

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90–day period.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000239	Solaris Group, The A Div of The Agricultural Group of Monsa, Box 5006, San Ramon, CA 94583.
000279	FMC Corp., Agricultural Chemical Group, 1735 Market St, Philadelphia, PA 19103.
000432	Agrevo Environmental Health, 95 Chestnut Ridge Rd, Montvale, NJ 07645.
000655	Prentiss Inc., C. B. 2000, Floral Park, NY 11002.
000769	Sureco, Inc., c/o H.R. McLane, Inc., 7210 Red Rd., Suite 206, Miami, FL 33143.
001022	IBC Mfg. Co, c/o Sangeeta V. Khattar, 5966 Heisley Rd., Mentor, OH 44060.
001677	Ecolab Inc., 370 Wabasha St., Ecolab Center, St Paul, MN 55102.
001769	NCH Corp., 2727 Chemsearch Blvd., Irving, TX 75062.
003125	Miles Inc., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
007001	J.R. Simplot Co., Box 198, Lathrope, CA 95330.
007401	Voluntary Purchasing Group, Inc., P.O. Box 460, Bonham, TX 75418.
007501	Gustafson, Inc., Box 660065, Dallas, TX 75266.
008220	Carter-Wallace, Inc., Lambert Kay Division, Box 1418, Cranbury, NJ 08512.
010370	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
011715	Speer Products Inc., Box 18993, Memphis, TN 38181.
034704	Platte Chemical Co., Inc., c/o William M. Mahlburg, Box 667, Greeley, CO 80632.
051793	RSR Laboratories Inc., Box 8700, Bristol, TN 37621.
060224	Director, FL Dept of Agric & Cons Svcs, Div of Plant Industry, 1911 SW., 34th St., Gainesville, FL 32608.
065384	Solarcare Technologies Corp., 1745 Eaton Ave, Bethlehem, PA 18018.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before April 24, 1995. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1–year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s).

Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or

their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: January 9, 1995.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

[FR Doc. 95–1677 Filed 1–23–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–300373A; FRL–4932–8]

Oxyfluorfen; Request for Comment on Petition to Revoke Certain Food Additive Regulations; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending for 60 days the comment period on a petition filed by Rohm & Haas Co. for revocation of certain food additive regulations for oxyfluorfen.

DATES: Written comments, identified by the document control number, [OPP-300373A], must be received on or before March 13, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) 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 to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Niloufar Nazmi, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 32C5, Crystal Station #1, 2800 Crystal Drive, Arlington, VA, Telephone: 703-308-8028.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of December 14, 1994 (59 FR 64405), that announced the receipt of a petition submitted by Rohm and Haas Co. that requested the revocation of section 409 food additive regulations established under the Federal Food, Drug and Cosmetic Act (FFDCA) for oxyfluorfen in or on cottonseed oil, mint oil, and soybean oil. Rohm and Haas Co. has requested a 60-day extension of the original 30-day comment period, which was set to expire on January 13, 1995, to complete two processing studies. EPA is granting the 60-day extension of the comment period because the additional data may be useful to EPA in ruling on the petition.

It should also be noted that in the **Federal Register** of July 1, 1994, EPA issued a proposed rule to revoke the section 409 food additive regulation for oxyfluorfen in or on cottonseed oil, mint oil, and soybean oil because oxyfluorfen induces cancer in animals. Therefore, this food aditive regulation violates the Delaney clause in section 409 of the FFDCA.

Authority: 21 U.S.C. 346a and 348.

Dated: January 12, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 95–1676 Filed 1–23–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5143–2]

Proposed Settlement Under Section 106, 107, 122 of Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Administrative Settlement and Opportunity for Public Comment.

SUMMARY: In accordance with Section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the North Haledon Site which is located in North Haledon, Passaic County, New Jersey. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle certain claims for costs incurred by the United States.

The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (CERCLA), as amended. This settlement is intended to resolve liabilities of Hofer Machine and Tool Company for costs incurred by EPA at the North Haledon Site.

Under this agreement, Hofer Machine and Tool Company will pay a total of $625,000, plus interest until payment is received in full, for response costs incurred by EPA at the North Haledon Site. This administrative settlement will not be final until formal approval by the Assistant Attorney General and signature by the Regional Administrator.

DATES: Comments must be provided by February 23, 1995.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, Room 309, 26 Federal Plaza, New York, New York 10278 and should refer to: In the Matter of North Haledon Superfund Site, Index No. II-CERCLA–122–93–0101. A copy of the proposed administrative settlement agreement, as well as background information relating to the settlement, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, New Jersey Superfund Branch, Room 309, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, Room 309, 26 Federal Plaza, New York, New York 10278, (212) 264–2858, Attention: Damaris C. Urdaz, Esq.

Dated: December 21, 1994.

William J. Muszynski, P.E.,

Deputy Regional Administrator.

[FR Doc. 95–1668 Filed 1–23–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5142–5]

Proposed Revision of Initial List of Categories of Sources and Schedule for Standards Under Sections 112(c)(1), 112(c)(9), and 112(e) of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed delisting of the asbestos processing area source category from the initial list of categories and

schedule for major and area sources of hazardous air pollutants.

SUMMARY: This notice proposes a revision to the initial list of categories of sources of hazardous air pollutants (HAP), published on July 16, 1992, and the schedule for promulgation of emission standards, published on December 3, 1993. The Agency is obligated to, ''from time to time, but no less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources. . .''.

Today's proposal would, if made final, remove an area source category (asbestos processing) that was listed on July 16, 1992. The proposal to remove (delist) the asbestos processing source category is based on information obtained during the initial stage of standards development for this source category. These data conclusively show that asbestos emissions from specific plants that were the basis for the initial listing are significantly lower than previously estimated. As a result, the Agency believes that no source in the category emits asbestos in quantities which may cause a lifetime risk of cancer greater than one in one million in the individual most exposed to such emissions and that the previous determination that asbestos emissions from these plants pose a threat of adverse health effects appears to be no longer supportable.

Through this notice, EPA solicits comments on this proposed decision.

DATES: *Comments.* Written comments must be received on or before February 23, 1995.

ADDRESSES: Interested parties may submit written comments (in duplicate) to Public Docket No. A–94–69, at the following address: U. S. Environmental Protection Agency, Air Docket Section, Waterside Mall, Room 1500, 401 M Street, S.W., Washington, D.C., 20460. The Agency requests that a separate copy also be sent to the contact person listed below.

Docket. Docket No. A–94–69, containing supporting information used in developing this notice, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the Agency's Air Docket, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this proposal, contact Susan Fairchild-Zapata, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5167.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act Amendments of 1990 (Pub. L. 101–549) amended the Clean Air Act (the Act) to require, under section 112, that the Agency list and promulgate regulations requiring control of emissions of HAPs from categories of major and area sources. Section 112(c)(1) requires the Administrator to publish, and from time to time revise, if appropriate, in response to comments or new information, a list of all categories and subcategories of major and area sources of HAPs. Section 112(c)(3) requires that the Administrator list any area source category (one for which each source emits less than 10 tons/year of any one HAP and less than 25 tons per year of all HAPs) that the Administrator finds poses a threat of adverse health effects to human health. Pursuant to the various specific listing requirements in section 112(c), the Agency published on July 16, 1992 (57 FR 31590) a finding of adverse effects for the source category of asbestos processing and therefore included that source category on the list of source categories that would be thenceforth subject to emission standards. Following this listing, pursuant to requirements in section 112(e), the Agency on December 3, 1993 (58 FR 63941) published a schedule for the promulgation of emission standards for each of the 174 listed source categories. The reader is directed to these two notices for information related to development of the initial list and schedule.

Subsequent to publication of the initial list and schedule, several notices have revised the list and schedule in the context of actions related to individual source categories. For example, on November 12, 1993 (58 FR 60021), the Agency listed marine vessel loading operations as a category of major sources, with standards to be promulgated, pursuant to section 112(c)(5) by the year 2000. As another example, on September 8, 1994 (59 FR 46339), the Agency promulgated standards for HAP emissions for industrial process cooling towers. This latter action did not revise the list or schedule, *per se*, but specifically delineated rule applicability by defining the affected sources within the listed category. The Agency believes that defining rule applicability and affected sources as part of standard setting constitutes an important aspect of list clarification. As was stated in the original listing notice (57 FR 31576):

> The Agency recognizes that these descriptions [in the initial list], like the list itself, may be revised from time to time as better information becomes available. The Agency intends to revise these descriptions as part of the process of establishing standards for each category. Ultimately, a definition of each listed category, or subsequently listed subcategories, will be incorporated in each rule establishing a NESHAP for a category.

Various other Agency actions may trigger the need for revisions to the list or schedule. As one example, the Administrator may delete categories of sources pursuant to section 112 (c)(9), on her own motion or on petition, subject to criteria regarding cancer effects, non-cancer health effects and environmental effects. In addition, under section 112(c)(1), the Agency may revise the initial source category list if new information indicates that such action is appropriate.

Pursuant to section 112(c)(9), EPA today is proposing to delete a category of area sources, the asbestos processing source category, from the list on the Administrator's own motion. Further, EPA believes that the previous determination under section 112(c)(1) that asbestos emissions from these plants pose a threat of adverse health effects, and hence should be included on the list of area source categories, appears to no longer be supportable.

Prior to issuance of the initial source category list under section 112(c)(1), the EPA published a draft initial list for public comment, see 56 FR 28548 (June 21, 1991). Although EPA was not required to take public comment on the initial source category list, the Agency believed it was useful to solicit input on a number of issues related to the list. Indeed, in most instances, even where there is no statutory requirement to take comment, EPA solicits public comment on actions it is contemplating. The EPA has, therefore, decided that it is appropriate to solicit additional public comment on the revision proposed in today's notice.

II. Description of Proposed Revision

A. Deletion of a Source Category on the Administrator's Own Motion

In today's notice, the Agency is proposing to delete the asbestos processing area source category on the Administrator's own motion. The Agency has obtained new information which no longer supports the finding of a threat of adverse health effects on which the initial listing for this area source was based under section 112(c)(3).

The Agency is proposing to take this action under the authority of section 112(c)(9)(B) for deleting source categories and under section 112(c)(1) of the Act which allows the Agency to revise the list of source categories if such revision is appropriate in response to new information. Under section 112(c)(9)(B), the Agency may delete a category of major or area sources from the list, based on petition of any person or on the Administrator's own motion, upon a determination that: (1) In the case of sources that emit HAPs that may result in cancer, no source in the category (or group of sources in the case of area sources) emits HAPs in quantities that may cause lifetime cancer risk greater than one in one million to the most exposed individual; or, (2) in the case of sources that emit HAPs that may result in non-cancer adverse health effects or adverse environmental effects, emissions from no source in the category (or group of sources in the case of area sources) exceed a level adequate to protect public health with an ample margin of safety and no adverse environmental effects will result. As discussed below, the Agency has met the legal requirements of section 112(c)(9)(B) for this action.

Regarding section 112(c)(1) of the Act, EPA believes that the new information discussed below indicates that the asbestos processing source category was improperly listed based on incorrect data. New information indicates that the level of asbestos emissions from such sources was greatly overstated in the initial studies, and the new information indicates that no source in the category is emitting asbestos in quantities that may cause adverse health effects. Accordingly, EPA is proposing to revise the source category list by deleting the asbestos processing source category.

B. Asbestos Processing

The area source category of asbestos processing was included on the initial source category list, accompanied by a finding under section 112(c)(3) of a threat of adverse effects to human health. The Administrator made no such finding with regard to environmental effects and made no finding with regard to the non-carcinogenic effects of emissions. The reader is referred to the initial July 16, 1992 list (57 FR 31576) for a discussion of this finding. In 1991, the Agency gathered information from the ten highest emitters of asbestos from asbestos processing facilities in the Nation to estimate the threat to human health from these facilities. Asbestos processing includes asbestos milling, manufacturing and fabrication. Products that are manufactured or fabricated using asbestos include, but are not limited to, textiles, papers and felts, friction materials, cements, vinyl-asbestos floor tiles, gaskets and packings, shotgun shell wads, asphalt concrete, fireproofing and insulating materials, and chlorine. As cited in the area source finding, information on asbestos emissions was limited at that time by the lack of an appropriate measurement method. Therefore, engineering estimates of asbestos emissions were developed, which were based in part on the hypothesis that the concentration of asbestos in particulate matter emitted from fabric filtration (baghouse) control devices operated at these facilities was the same as the concentration of asbestos in the captured particulate matter.

After the asbestos processing source category was included in the initial list under section 112(c)(1) and section 112(c)(3), the Agency collected information under the authority of section 114 of the Act from all facilities that mill, manufacture, or fabricate asbestos or asbestos-containing products. This information was gathered for development of the maximum achievable control technology (MACT)/ generally available control technology (GACT) asbestos processing standard. From this information collection activity, new measurements of asbestos emissions were obtained. This new information was supplied by a company that operates two of the facilities that had been included in the 1991 study used to establish the area source finding for asbestos processing. Details on the new test information are discussed in the document entitled, ''Particulate and Asbestos Emission Study'', [Docket No. A–94–69]. The Agency reviewed the methods used to test this facility and concluded that the emission estimates supplied by the company are valid. As a result of this information, the Agency now believes that due to the morphology of asbestos, fibers are captured selectively by fabric filtration devices (baghouses) with much greater efficiency than was previously thought. In addition, those two facilities now process less asbestos than previously, which has resulted in lower asbestos emissions.

The new emissions data indicate that emissions of asbestos are approximately 150 times lower than initially estimated and that the risk to the most exposed individual for both sources is below one in one million. In addition, the other eight sources in the initial study have either ceased operations or no longer use asbestos in their operations. Therefore, the MIR for all ten sources that were the basis for the original listing are now below one in one million.

Moreover, EPA distributed information collection requests to over 250 other companies thought to be processing asbestos or asbestos-containing materials. The information provided by these other smaller potential sources of asbestos indicates that all potential asbestos processing sources are either no longer operating, not using asbestos, or using the emission control devices required under the current asbestos NESHAP, 40 CFR 61 § 61.140 *et. seq.* This information shows that the other sources in the asbestos processing source category also do not present a MIR of greater than one in one million.

Therefore, the Administrator has preliminarily determined that no source or group of sources in the category emits asbestos in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual most exposed to asbestos emissions. As discussed earlier, EPA based its initial listing of this source category on the risk to human health caused by the carcinogenic properties of asbestos emissions. EPA has no information regarding whether or not there are adverse environmental effects of these emissions or whether or not noncarcinogenic effects of such asbestos emissions are at a level that is adequate to protect human health with an ample margin of safety. However, as the original listing of this source category was based on the carcinogenic effects of asbestos, and as the new information substantially refutes the original data upon which EPA based its initial decision to list this source category, EPA believes that a delisting would be appropriate in these circumstances. If this finding is finally determined to be accurate, the Agency will delete the asbestos processing source category from the source category list pursuant to section 112(c)(9) of the Act.

The Administrator has also made a preliminary decision to delete the asbestos processing area source category under section 112(c)(1), based on new information not in EPA's possession at the time of listing. The Agency would not have listed this source category had this information been available at the time of listing. EPA has made a preliminary decision that this area source category does not present a threat of adverse effects to human health or the environment sufficient to warrant regulation under section 112(d) of the Act. Additional information on this decision is available in the docket. (Docket no. A–94–69)

EPA notes that the information collected in connection with this preliminary decision also shows that a subcategory of asbestos processing sources, the friction product manufacturing subcategory, has individual facilities which emit more than 10 tons/year of a single non-asbestos HAP or more than 25 tons per year of a collection of non-asbestos HAPs (methyl chloroform, methyl ethyl ketone, formaldehyde, phenol, and toluene). Therefore, EPA intends to add this subcategory to the source category list as a major source category in a general revision to the source category list that is currently being developed.

III. Administrative Requirements

A. Docket

The docket (Docket no. A–94–69) is an organized and complete file of all the information submitted to or otherwise considered by the Agency in the development of this proposed revision to the initial list of categories of sources. The principal purpose of this docket is to allow interested parties to identify and locate documents that serve as a record of the process engaged in by the Agency to publish today's proposed revision to the initial list and schedule.

B. Executive Order 12866

Under Executive Order (E.O.) 12866, the EPA must determine whether the proposed regulatory action is ''significant'' and therefore, subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to 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 in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has determined that this action is ''significant''. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

C. Paperwork Reduction Act

This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act, 55 U.S.C. 3501 *et seq.*

D. Regulatory Flexibility Act Compliance

Pursuant to 5 U.S.C. 605(6), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements.

Dated: January 13, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–1669 Filed 1–23–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5143–1]

Notice of Proposed Assessment of Clean Water Act Class II Administrative Penalty to the Simpson Paper Company and Opportunity To Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative penalty and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Pursuant to 33 U.S.C. Section 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. Section 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 C.F.R. Part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a Respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after publication of this notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of Simpson Paper Company, Humboldt Pulp Mill, Humboldt County, CA, Docket No. CWA–309–IX–FY95–01; filed on January 9, 1995 with Mr. Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1389; proposed penalty of $90,000, for discharges of pollutants in violation of an NPDES permit. EPA and the Simpson Paper Company have agreed to a proposed Consent Agreement in which the Simpson Paper Company shall pay a civil penalty of $32,500 and, in addition, fund approximately $60,000 worth of fisheries habitat restoration projects. The work on these projects will be performed by third parties.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon the proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: January 11, 1995.

Alexis Strauss,

Acting Director, Water Management Division.

[FR Doc. 95–1666 Filed 1–23–95; 8:45 am]

BILLING CODE 5650–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreements) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The

requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200918

Title: Port of New York & New Jersey/NSCSA (America) Inc. Container Incentive Agreement

Parties:

Port Authority of New York & New Jersey (''Port'') NSCSA (America) Inc. (''NSCSA'')

Synopsis: The Agreement provides for the Port to pay NSCSA an incentive of $15.00 for each import container and $25.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1995, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200919

Title: Port of New York & New Jersey/Solar International Shipping Agency Container Incentive Agreement

Parties:

Port Authority of New York & New Jersey (''Port'')

Solar International Shipping Agency (''Solar'')

Synopsis: The Agreement provides for the Port to pay Solar an incentive of $15.00 for each import container and $25.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1995, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200920

Title: Port of New York & New Jersey/Orient Overseas Container Line Container Incentive Agreement

Parties:

Port Authority of New York & New Jersey (''Port'') Orient Overseas Container Line (''OOCL'')

Synopsis: The Agreement provides for the Port to pay OOCL an incentive of $15.00 for each import container and $25.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1995, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200921

Title: Port of New York & New Jersey/Hapag-Lloyd America, Inc. Container Incentive Agreement

Parties:

Port Authority of New York & New Jersey (''Port'') Hapag-Lloyd America, Inc. (''H–L'')

Synopsis: The Agreement provides for the Port to pay H–L an incentive of $15.00 for each import container and $25.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1995, provided each container is shipped by rail to or from points more than 260 miles from the Port.

By Order of the Federal Maritime Commission.

Dated: January 18, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–1672 Filed 1–23–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Celebrity Cruises Inc. and Blue Sapphire Marine Inc., 5200 Blue Lagoon Drive, Miami, Florida 33126

Vessel: CENTURY

Dated: January 18, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–1696 Filed 1–23–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Country Bank Shares Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 7, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Country Bank Shares Corporation, Mt. Horeb, Wisconsin; to engage *de novo* in providing to others data processing and data transmission services, facilities, data bases, or access to such services, facilities, or data bases by any technological means, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 18, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–1700 Filed 1–23–95; 8:45 am]

BILLING CODE 6210–01–F

L.B.S. McMullan Limited Partnership, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are

considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 17, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. L.B.S. McMullan Limited Partnership, Shelbyville, Kentucky; to become a bank holding company by acquiring 37.53 percent of the voting shares of Citizens Union Bancorp of Shelbyville, Inc., Shelbyville, Kentucky, and thereby indirectly acquire Citizens Union Bank of Shelbyville, Shelbyville, Kentucky, and First Farmers Bank and Trust Company, Owenton, Kentucky.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Vectra Banking Corporation, Denver, Colorado; to merge with First Denver Corporation, Denver, Colorado, and thereby indirectly acquire The First National Bank of Denver, Denver, Colorado.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Westamerica Bancorporation, San Rafael, California; to acquire up to 100 percent of the voting shares of CapitolBank Sacramento, Sacramento, California.

Board of Governors of the Federal Reserve System, January 18, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–1701 Filed 1–23–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of Novel Heparin-Binding Peptides

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. 3710; Executive Order 12591 of April 10, 1987), The National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks a major pharmaceutical company which can effectively pursue the development of novel heparin-binding peptides for which a United States Patent has issued (5,357,041) and additional United States and foreign patent applications have been filed. NCI will enter into CRADA negotiations with the selected sponsor. It is the intention of NCI that the selected sponsor will be awarded a CRADA for the co-development of these peptides as inhibitors of angiogenesis and tumor growth. The CRADA would have an expected duration of three to five years.

ADDRESSES: Questions about this opportunity may be addressed to David R. Preston, Ph.D., Office of Technology Development, National Cancer Institute, Building 31, Room 4A51, National Institutes of Health, Bethesda, MD 20892. Phone (301) 496–0477, facsimile number (301) 402–2117. Further information may be obtained through a confidentiality agreement between the interested company and the NCI. This information will include forms necessary for examining, and applying for license to, existing relevant patents and patent applications. Under the Collaborative Research and Development Agreement (CRADA), the industrial collaborator may obtain an option to negotiate a license to government patent rights to inventions arising under the CRADA.

DATES: Interested parties should notify this office in writing no later than sixty (60) days from the date of this announcement in the **Federal Register**. Respondents will then be provided an additional, sixty (60) days for the filing of formal proposals.

SUPPLEMENTARY INFORMATION: ''Cooperative Research and Development Agreements'' or ''CRADA'' means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of October 10, 1987 to collaborate on the specific research project described below. The Division of Cancer Biology, Diagnosis and Centers (DCBDC) of NCI is seeking to develop a collaborative relationship with a major pharmaceutical company with the following aims:

(1) Optimizing peptide and peptidomimetic activity *in vitro* and *in vivo*;

(2) preclinical development of the synthetic peptides and mimetics; and

(3) clinical studies as warranted.

A family of related peptides have been synthesized based on the Type I repeats of human thrombospondin that bind to heparin or related sulfated glycoconjugates with high affinity. The peptides differ from previously described heparin-binding peptides in that they do not require basic amino acid residues for binding to heparin. The peptides are potent inhibitors of interactions of heparin, heparan sulfate proteoglycans, or related sulfated glycoconjugates with adhesion molecules, growth factors, cells and some heparin-dependent enzymes. The lack of charge should be advantageous in formulating pharmaceutical agents based on these peptides for efficient delivery to their sites of action. Stable analogs of the peptides have been synthesized with increased potency and specificity. The high potency of these peptidomimetics should allow much smaller amounts of the compound to be administered and thus may reduce risks of toxicity and generation of immune responses against the compounds.

The peptides and mimetics have several defined activities: (a) Inhibition of binding of several adhesive proteins and growth factors to heparin and heparan sulfate proteoglycans; (b) inhibition of adhesive protein binding to tumor and endothelial cells; (c) promotion of tumor and endothelial cell adhesion on peptide coated substrates; and (d) modulation of tumor and endothelial cell growth and chemotaxis in response to basic fibroblast growth factor and some other growth factors in vitro and tumor growth in vivo.

Preclinical studies are in progress to characterize the activities of these peptides in modulating tumor growth, metastasis, and invasion, and in inhibiting angiogenesis. Studies will also investigate potential use of the peptides to treat other diseases associated with angiogenic responses and as inhibitors of pathogen

interactions with sulfated glycoconjugates on host cells.

The role of the Division of Cancer Biology, Diagnosis and Centers (DCBDC) of the National Cancer Institute (NCI) under the CRADA will include the following:

1. The government will continue preclinical development of the peptides and mimetics as inhibitors of tumor growth and metastasis *in vitro* and *in vivo*. Data from these studies will be provided to the pharmaceutical company and evaluated jointly.

2. The government will provide available data and expertise in structure-function relationships and conformational analysis of the active peptides and peptidomimetics. These data will be evaluated jointly in order to assess an efficient research path.

3. As appropriate, the government will initiate collaborative clinical trials under its extramural clinical trials network, thus ensuring the clinical evaluation of the compounds.

4. Relevant Patent rights are available for licensing through the Office of Technology Transfer, NIH. For further information contact: Ms. Carol Lavrich, Technology Licensing Specialist., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Rockville, Maryland 20852–3804. (301) 496–7735 (ext. 287), Fax (301) 402–0220. There is no deadline by which license applications must be received. *See* 35 U.S.C. 207 and 37 C.F.R. Part 404.

The role of the successful pharmaceutical company under the CRADA will include the following:

1. Prepare and characterize GMP quality nonmetabolizable, analogs (as determined by both parties) of the active peptides and provide these to the DCBDC, NCI for characterization as angiogenesis and metastasis inhibitors.

2. Provide funds for preclinical development of the peptides *in vitro* and for screening activities in appropriate animal models.

3. Collaborate in the planning and support for clinical development leading to FDA approval and marketing.

Criteria for choosing the pharmaceutical company include the following:

1. Experience in preclinical and clinical drug development.

2. Experience and ability to produce, package, market, and distribute pharmaceutical products in the United States.

3. A willingness to cooperate with the Public Health Service in the collection, evaluation, publication, and maintenance of data from clinical trials of investigational agents.

4. A willingness to cost share in the development of heparin binding peptides as outlined above. This includes acquisition of material and synthesis of heparin binding peptides and/or peptidomimetics in adequate amounts as needed for future clinical trials and marketing.

5. An agreement to be bound by the DHHS rules involving human and animal subjects.

6. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines for preclinical and clinical development.

7. Provisions for equitable distribution of patent rights to any inventions arising under the CRADA. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, non-exclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an option to negotiate an exclusive or non-exclusive license to the company on terms that are appropriate (when a Government employee is the sole inventor).

Dated: December 22, 1994.

Karen Maurey,

Acting Director, Office of Technology Development, National Cancer Institute, National Institutes of Health.

[FR Doc. 95–1665 Filed 1–23–95; 8:45 am]

BILLING CODE 4140–01–P

Public Health Service

National Toxicology Program; Announcement of Intent To Conduct Toxicological Studies of 16 Chemicals

Request for Comments: As part of an effort to inform the public, the National Toxicology Program (NTP) routinely announces in the **Federal Register** the lists of chemicals for which plans to develop protocols for Toxicological studies are underway. This announcement will allow interested parties to comment and provide information on chemicals under consideration. Chemicals and types of studies under consideration are listed below.

Chemical 1. 2-Cyclohexene-1-one (CAS No. 930–68–7) 14-day, 13-week and 2-year toxicology and carcinogenesis inhalation studies.

2-Cyclohexene-1-one (2–CHX–1) belongs to a class of chemicals termed alpha, beta-unsaturated ketones. This class of chemicals was nominated by National Cancer Institute for carcinogenicity and mechanistic toxicity studies with high priority due to demonstrated human industrial and consumer exposure and inadequate health effects testing. 2–CHX–1 is being studied as an example of a cyclic member of the class of aliphatic alpha, beta-unsaturated ketones. It is used as an industrial chemical intermediate in the chemical, pharmaceutical, and agricultural chemical industries. It is used in the synthesis of resorcinol, phenol, 11-deoxy-prostaglandins, immunostimulants, anti-inflammatory agents, fungicides and herbicides. Consumer exposure includes the use of 2–CHX–1 in low-odor permanent wave hair preparations, antifungal agents and mold inhibitors for bread storage containers, smoke flavor preparations, and detergents. 2–CHX–1 is present in tobacco smoke and is present in side-stream smoke from tobacco combustion. Natural occurrence of 2–CHX–1 includes wild rice fermentation products, a component of beech wood and roasted coffee. 2–CHX–1 may also be present in foods and consumer products as an impurity in the flavor enhancer tetrahydronaphthalenone. The major effect reported on the toxic effects of 2–CHX–1 in animals is the depletion of glutathione in various tissues of rodents. 2–CHX–1 is a weak, direct acting mutagen in the Salmonella assay and in a rat hepatocyte/DNA repair test. 2–CHX–1 was able to react covalently with deoxyguanosine.

Chemical 2. Methyl Vinyl Ketone (CAS No. 78–74–4) 14-day, 13-week and 2-year toxicology and carcinogenesis inhalation studies.

Methy Vinyl Ketone (MVK), a member of the class of chemicals termed alpha, beta-unsaturated ketones, was nominated by the National Cancer Institute for carcinogenicity and mechanistic toxicity studies with high priority due to demonstrated human industrial and consumer exposure and inadequate health effects testing. MVK was selected as the prototype non cyclic member of the major class of straight-chain aliphatic alpha, beta-unsaturated ketones. MVK is used commercially in the production of pesticides, perfumes, plastics and resins. It is a pharmaceutical intermediate in the synthesis of steroids, vitamin A, and anticoagulants. Consumer exposure to MVK is widespread due to its presence in cigarette smoke, its production by gamma-irradiation from sugars in tropical fruit, and as a ubiquitous air pollutant due to its presence in vehicular exhaust. MVK is an alkylating agent and may interact with DNA to form covalent adducts. MVK was reported by the NTP to be mutagenic in the Salmonella assay.

Chemical 3. Ethyl vinyl ketone (CAS No. 1629–58–9) 14 and 90-day inhalation toxicity studies in F344 rats and B6C3F1 mice.

Ethyl vinyl ketone (EVK) is a secondary conjugated carbonyl compound from the subclass of aliphatic alpha, beta-unsaturated ketones, and has a wide distribution in the environment, particularly in foods. EVK is a component of the semi-volatile fraction of cigarette/tobacco smoke and is a volatile organic compound linked to odor and taste problems associated with water purification and fish breeding. Consumption in foods and beverages also represents a broad but very low level route of human exposure. The principal use of EVK is as a natural and synthetic flavoring agent in orange aqueous essence and oils for flavor and aroma enhancement, especially of frozen orange juice concentrates. The limited available test data on this compound include demonstrations of positive mutagenicity and the formation of DNA-damaging adducts. These data support the possibility that EVK may pose a mutagenic and carcinogenic risk to humans.

Chemicals 4 & 5. Trimethoprim/Sulfamethoxazole (CAS No. 8064–90–2) 13-week and 2-year dosed-feed studies in F344 rats and B6C3F1 mice.

Trimethoprim/Sulfamethoxazole (TMP/SMZ) (Bactrim®) is a chemical combination used to treat urinary tract infections and pneumonia. TMP/SMZ was nominated by the National Cancer Institute for carcinogenicity and neurotoxicity testing based on significant human exposure and the potential for increased use in the treatment of pneumonia in AIDS patients. In addition, because TMP/SMZ appears to exhibit antifolate activity, the role of folate deficiency in possibly enhancing the known carcinogenicity of Sulfamethoxazole may need to be investigated. A study to screen for TMP/SMZ reproductive/developmental toxicity effects was done as a part of the NIEHS AIDS Program.

Chemical 6. Dicyclopentadiene (CAS No. 77–73–6) 13–week and 2-year studies in F344 rats and B6C3F1 mice.

DCPD was nominated by the National Cancer Institute for evaluation of carcinogenicity and reproductive toxicity. DCPD is a high production chemical, with over 130 million pounds produced annually and over 43 million pounds imported in 1988. The nomination was based on the high and increasing production volume, the presence of DCPD in ground and surface water near sites where it is used, limited data on the hazards associated with subchronic exposure, and the absence of data on the hazards associated with long term exposure. DCPD is currently being evaluated in the NTP Continuous Breeding Protocol and Teratology protocols (gavage studies).

Chemical 7. Ethyl cyanoacrylate (CAS No. 7085–85–0) short-term inhalation studies.

Ethyl cyanoacrylate (ECA) was nominated by the Consumer Products Safety Commission. ECA is the major component of instant setting adhesives widely available in retail stores and there is widespread potential consumer exposure. There is potential occupational exposure to ECA vapors that exists wherever ECA glues are used for assembly, in packaging, or other adhesive applications. Irritant dermatitis and eye irritation in workers has been reported. There is one report of women occupationally exposed to ECA vapors giving premature birth to babies with malformations. There is very little toxicological data and no carcinogenicity data available for this chemical. A related chemical, isobutyl cyanoacrylate, is now used for medical applications because it does not produce formaldehyde during degradation as does the ECA. Evaluation of developmental and reproductive toxicity, neurotoxicity, and evaluation of carcinogenicity, using the inhalation route, have been recommended.

Chemical 8. Methylene Blue (CAS No. 7220–79–3) two-year toxicity/carcinogenesis and toxicokinetic gavage studies in F344 rats and B6C3F1 mice.

Methylene Blue (MB) was nominated for carcinogenicity testing by the National Cancer Institute (NCI) based on the widespread use of this compound and the potential for high exposure in animals and humans. Methylene blue is used therapeutically in the treatment of methemoglobinemia and cyanide poisoning. Other reported medicinal uses of MB have included the management of chronic urolithiasis and treatment of cutaneous viral infections as well as the treatment of manic-depressive psychosis. As a dye/stain, MB is used in surgical and medical marking, as an indicator dye, a bacteriologic stain, a food colorant and a dye for cotton and wool. Data from the National Occupational Exposure Survey (NOES) indicate that 69,563 workers, including 42,026 female employees, were potentially exposed to methylene blue between 1981 and 1983. In four-week and 13-week gavage toxicity studies conducted by NTP, the hematopoietic system was the major target of MB toxicity. Dose-related hemolytic anemia was seen in all of the groups treated with MB. Increased methemoglobin formation, decreased hematocrit, increased in reticulocyte production, splenomegaly, and increased Heinz body formation were seen in rats and mice of both sexes exposed to MB. Histologically, there was hyperplasia of the bone marrow in response to the anemia.

Chemical 9. Butanal Oxime (CAS No. 110–69–0) 14-day and 90-day prechronic dosed water toxicity studies in F344 rats and B6C3F1 mice.

Butanal oxime was nominated for toxicity and carcinogenicity evaluation by the National Cancer Institute. Along with methyl ethyl ketoxime and cyclohexanone oxime, butanal oxime is part of an oximes class study. Cyclohexanone oxime and methylethyl ketoxime have been studied in NTP 90–day drinking water toxicity studies in rats and mice, and industry sponsored inhalation carcinogenicity studies of methyl ethyl ketoxime have been completed. Unlike the other oximes, butanal oxime metabolism results in the release of cyanide, and is therefore expected to have a different toxicological profile. There is limited toxicology information available on butanal oxime.

Chemical 10. Cyclohexene Oxide (CAS No. 286–20–4) 28-day, 13-week, and 2-year topical and/or gavage toxicity/carcinogenesis studies in F344 rats and B6C3F1 mice.

Cyclohexene Oxide (CHO) was nominated by the National Cancer Institute for carcinogenicity, toxicity, and mechanistic studies as a representative cycloalkene monoepoxide which is produced in substantial annual volumes with potential human exposures. CHO is found widely in natural products, pharmaceuticals, and agricultural chemicals and, it has a wide range of uses, including the production of other chemicals and as a laboratory reagent. It is primarily used as an industrial raw material in organic synthesis of various chemical intermediates for a wide range of industrial products and there is the potential for worker exposure. In addition, a survey identified CHO in the drinking water of two of 17 municipalities suggesting the potential for more widespread exposure to the general population. CHO has a low acute toxicity in rats and rabbits, is a severe eye irritant, and is a moderate skin irritant. It is also a weak to moderate mutagen. There is minimal chronic toxicity information available.

Chemical 11. p-tert-Butylcatechol (CAS No. 98–29–3) 14-Day and 13-week dosed-feed studies.

p-tert-Butylcatechol (TBC) was nominated for carcinogenicity studies by the National Cancer Institute based

on high and increasing level of production and usage, potential for human exposure, suspicion of carcinogenicity, and interest in evaluating the toxicity of the dihydroxybenzenes chemical class of antioxidants. In 1989, U.S. production of TBC was reported to be 1.5 million lbs. TBC is used primarily as an antioxidant and stabilizer and there is potential for worker exposure. Consumer exposure occurs through TBC contamination of, and subsequent leaching from PVC products and other plastics and rubber products and from contact with Thermofax® duplicating papers. In addition, TBC is also being considered as a replacement for BHT and BHA, two chemicals used as food additives because of their antioxidant properties, but which have been found to be carcinogenic in rodents at high levels. TBC as well as BHA and BHT are non-mutagenic.

Chemical 12. Diisopropylcarbodiimide (CAS No. 693–13–0) 2-year carcinogenesis studies in F344 rats and B6C3F1 mice.

Diisopropylcarbodiimide together with Dicyclohexylcarbodiimide were nominated as representatives of the carbodiimide chemical class by the National Cancer Institute because of widespread potential exposure to personnel in biomedical laboratories and pharmaceutical and chemical industries, the lack of adequate toxicity data, and the suspicion of carcinogenicity because it is an alkylating agent. Both chemicals are potent sensitizers and have produced severe contact dermatitis, severe eye irritation, and delayed-onset temporary blindness. Fourteen-day topical studies have been completed and 90-day topical exposure studies are underway in F344 rats and B6C3F1 mice.

Chemical 13. Dicyclohexylcarbodiimide (CAS No. 538–75–0) 2-year carcinogenesis studies in F344 rats and C6C3F1 mice.

Dicyclohexylcarbodiimide together with Diisopropylcarbodiimide were nominated as representatives of the carbodiimide chemical class by the National Cancer Institute because of widespread potential exposure to personnel in biomedical laboratories and pharmaceutical and chemical industries, the lack of adequate toxicity data, and the suspicion of carcinogenicity because it is an alkylating agent. Both chemicals are potent sensitizers and have produced severe contact dermatitis, severe eye irritation, and delayed-onset temporary blindness. Fourteen-day topical studies have been completed and 90-day topical exposure studies are underway in F344 and B6C3F1 mice.

Chemical 14. Dimethyl adipate (CAS No. 627–93–0) 13-week and 2-year toxicity/carcinogenesis studies in F344 rats and B6C3F1 mice.

Dimethyl adipate (DMA) was nominated to the NTP for study by the Consumer Products Safety Commission (CPSC) because of widespread consumer exposure. Its primary consumer use is as a replacement for methylene chloride in paint strippers, along with other dibasic esters such as dimethyl glutarate and dimethyl succinate. This use is expected to increase because the standards for methylene chloride exposure are under review by regulatory agencies and new more stringent ones may be established. There is the potential for workers to be occupationally exposed to DMA and systemic exposure is primarily by inhalation of an aerosol or through percutaneous absorption. There is limited toxicity information available on DMA. NTP is coordinating its plans to conduct studies for this chemical with the Environmental Protection Agency and the Interagency Testing Committee.

Chemical 15. 2,3-Butanedione (CAS No. 431–03–8) 13-week and 2-year toxicity/carcinogenesis studies in F344 rats and B6C3F1 mice.

2,3,-Butanedione was nominated by the National Cancer Institute based on widespread human exposure and suggestive evidence of carcinogenicity from preliminary animal studies and genetic toxicity studies. The chemical is the parent compound of the a-diketones chemical class. The annual production of 2, 3-butanedione is less than 1 million pounds, and it is used in manufacturing processes and as a food (flavoring) additive. It was estimated in 1983 that 3,437 workers were potentially exposed to 2,3-butanedione in the workplace. Its widest exposure is through its natural occurrences in a wide variety of foods, including dairy products (5.9 ppm), meats, baked goods (44 ppm), produce, candy (21 ppm), and beverages (in coffee at levels up to 10 ppm), and is used as a flavor additive in foods. It is also a constituent of tobacco smoke. 2,3-Butanedione is also a bacterial mutagen. There was no information on the effects of chronic exposure to 2,3-Butanedione in the open literature.

Chemical 16. Methyl styryl ketone (CAS No. 122–57–6) 13-week and 2-year toxicity/carcinogenesis studies in F344 rats and B6C3F1 mice.

Methyl styryl ketone (MSK) was nominated by the National Cancer Institute based on its potential for human exposure. MSK is an apha, beta-saturated ketone that was produced at <1,000,000 lbs in 1989 (>55,000 lbs were imported in 1993) and is also present as a natural product. It is used as an intermediate in organic syntheses and in other industrial applications, and is a flavoring and fragrance additive in many products, including cosmetic products (soaps (50–100 ppm), creams and lotions (50–100 ppm), and perfumes (50–500 ppm); food products (baked goods (5.2 ppm) and candy (4.4 ppm)). It was recently identified as a flavoring additive to cigarettes, but its level of use was not reported. It occurs naturally in essential oils of flowers, as a pyrolysis product in waste gases resulting from the removal of coating materials in recycling processes, and as an ozonization product of the humic substance, p-hydroxybenzaldehyde. It has been estimated that 5,483 workers were potentially exposed to MSK in the workplace in 1983. MSK has been identified in wastewaters, and has been shown to bioaccumulate in blue crabs in the southern Chesapeake Bay. MSK is a bacterial mutagen. There was no information on the effects of chronic exposure to MSK in the open literature.

Anyone having relevant information (including ongoing toxicological studies, current or future trends in production and import, use pattern, human exposure levels, environmental occurrence and toxiocological data) to share with the NTP on any of these chemicals, should contact Dr. William Eastin within 60 days of the appearance of this announcement. The information provided will be considered by the NTP in designing these studies.

Contact may be made by mail to: Dr. William Eastin, NIEHS/NTP, P.O. Box 12233, Research Triangle Park, North Carolina 27709, by telephone at 919–541–7941, fax 919–541–4714, or email at Eastin@NIEHS.NIH.GOV.

Dated: January 17, 1995.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 95–1664 Filed 1–23–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–094–6334–04: GP5–059]

Establishment of Supplementary Rules; Lane County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of establishment of supplementary rules.

SUMMARY: The Eugene District, Bureau of Land Management, hereby establishes supplementary rules for use of those public lands included in the West Eugene Wetlands Project in the Coast Range Resource Area, Eugene District, Lane County, Oregon. These supplementary rules are intended to provide for public safety, to protect the natural resources of the project area and to be consistent with the City of Eugene regulations covering those project lands within the City of Eugene. A ''Notice of proposed establishment of supplementary rules'' was published in the **Federal Register** on November 28, 1994 (59 FR 60826) and provided for a thirty day comment period that ended December 28, 1994. No comments were received.

ADDRESSES: Comments should be sent to Wayne Elliott, Coast Range Area Manager, Eugene District Office, P.O. Box 10226, Eugene, Oregon 97440–2226.

FOR FURTHER INFORMATION CONTACT: Jock Beall, 503–683–6993.

SUPPLEMENTARY INFORMATION: Authority for the establishment of these supplemental rules is contained in 43 CFR 8365.1–6. A map showing the location of the lands subject to the supplementary rules is available in the Eugene District Office. The supplementary rules apply to those lands already acquired and to lands that will be acquired as part of the West Eugene Wetlands Project. These supplementary rules are subject to review and will be revised, if appropriate, to further the goals of providing for public safety and protecting natural resources.

DATES: These supplementary rules will become effective on January 24, 1995.

For the reasons set forth in the preamble, the Eugene District, Bureau of Land Management, establishes the following supplementary rules for the West Eugene Wetlands Project:

1. Use or operation of motor vehicles is prohibited except on those roads and parking areas specifically designated for motor vehicle use. Non-street legal motor vehicles are prohibited at all times. Motor vehicles being used by duly authorized emergency response personnel, including police, ambulance and fire suppression, as well as BLM vehicles engaged in official duties and other vehicles authorized by BLM, are excepted.

2. Possession, use and/or discharge of any weapons is prohibited, except that hunting on the Project lands outside the city limits of Eugene is permissible in accordance with federal and state laws.

3. Use and/or occupancy (including leaving personal property unattended) is prohibited between one-half hour after sunset to one-half hour before sunrise without the written permission of the authorized officer.

4. The collection, disturbance or possession of any natural resource is prohibited without the written permission of the authorized officer.

5. The possession or discharge of fireworks is prohibited.

6. Campfires or other open flame fires are prohibited without the written permission of the authorized officer.

7. No person shall, unless otherwise authorized, bring any animal onto the public lands unless such animal is on a leash not longer than six feet and secured to a fixed object or under control of a person, or is otherwise physically restricted at all times. This restriction does not apply to legal hunting activities with dogs outside the City of Eugene.

8. Bicycle travel and equestrian travel is limited to designated routes and areas, except as otherwise permitted in writing by the authorized officer.

9. The possession or consumption of alcoholic beverages is prohibited.

10. Hiking and foot traffic may be limited or closed by the authorized officer in designated areas to protect natural resources.

11. Littering and the disposal of any commercial, industrial or household waste is prohibited.

12. Audio devices creating unreasonable noise and disturbance are prohibited without the written permission of the authorized officer.

13. Smoking may be prohibited by the authorized officer when necessary to protect natural resources and adjacent landowners.

Date of Issue: January 10, 1995.

Barbara Hughes,

Acting District Manager.

[FR Doc. 95–1729 Filed 1–23–95; 8:45 am]

BILLING CODE 4310–33–P

[NM–931–05–1210–00 (603)]

Establishment of Visitor Restrictions for Designated Recreation Sites, Special Recreation Management Areas, and Other Public Land in the Roswell District, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Proposed visitor restrictions; request for comment.

SUMMARY: The proposed restrictions are necessary for the management of actions, activities, and use on public lands, including those which are acquired or conveyed to the BLM. The making of Rules of Conduct is provided for under Title 43 CFR Subpart 8365. These proposed regulations establish rules of conduct for the protection of persons, property, and public land resources. As a visitor to public lands, the user is required to follow certain restrictions designed to protect the lands and the natural environment, to ensure the health and safety of visitors, and to promote a pleasant and rewarding outdoor experience. This notice supersedes previous notices published in the **Federal Register** on January 22, 1991, (Vol. 56, No. 14), and correction to supplemental Rules No. 2. February 1, 1991, Vol. 56, No. 28, establishing Supplementary Rules for Designated Recreation Sites; Special Recreation Management Areas and Other Public Lands in New Mexico.

More specifically, the purpose falls into the following categories:

- Implementation of Management Plans—certain prohibited activities have been recommended as Restrictions for designated recreation sites and Special Recreation Management Areas (SRMA's). In order to implement these recommendations, they must be published as specific prohibited acts in the **Federal Register**. Use of Rules of Conduct Section of 43 CFR, Subpart 8365, is the most appropriate way of implementation. Rationale for these recommendations is presented in its entirety in the Carlsbad Resource Management Plan, the Roswell Management Framework Plan or recreation management plan for the specific areas.
- Mitigation of User Conflict—Certain other visitor restrictions are recommended because of specific user conflict problems. Prohibiting the reservation of camping space in developing campgrounds will allow such space to be available on a first-come-first-served basis. This will prevent people from monopolizing the use of limited developed camping space. Prohibition of motorized vehicle free-play (operation of any 2-, 3-, or 4-wheel motor vehicle for purposes other than accessing a campsite) is recommended to minimize the noise and nuisance factors that such activities represent in developed recreation sites.
- Public Health and Safety—The erection and maintenance of unauthorized toilet facilities or other containers for human waste on the public land could represent a major threat to public safety and health. Toilet structures may be permitted by the authorized officer on a case-by-case basis and only when appropriate State

and local permits have been obtained. it should be noted that shooting restrictions recommended do not prohibit legitimate hunting activities except within ½ mile of developed sites. Recreational shooters will be encouraged to use public land where such shooting restrictions do not apply and this use does not significantly conflict with other uses.

• Complementary Rules—Some restrictions, such as parking or camping near water sources, are recommended to complement those of State and local agencies. Because these restrictions provide for the protection of persons and resources in the interest and spirit of cooperation with the responsible agencies, these restrictions are deemed necessary.

Definitions

As used in these visitor restrictions, the term:

—An SRMA means an area where special or more intensive types of resource and user management are needed.

—A developed recreation site and area means sites and areas that contain structures or capital improvements primarily used for recreation purposes by the public. Development may vary from limited development for protection of the resources and the safety of users to a distinctly defined site to which developed facilities that meet the Land and Water Conservation Fund Act of 1965 (as amended) criteria for a fee collection site are provided for concentrated public recreation use.

—Public lands means any lands, interest in lands, or related waters owned by the United States and administered by the BLM. Related waters are waters which lie directly over or adjacent to public lands and which require management to protect Federally administered resources or to provide for enhanced visitor safety and other recreation experiences.

—Camping means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or the parking of a motor vehicle, motor home, or trailer for the apparent purpose of overnight occupancy. Occupying a developed camp site or an approved location within developed recreation areas and sites during the established night period of 10:00 p.m. to 6:00 a.m. will be considered overnight camping for fee collection and enforcement purposes.

—Campfire means a controlled fire occurring outdoors for cooking, branding, personal warmth, lighting, ceremonial, or aesthetic purposes.

—Abandonment means the voluntary relinquishment of control of property for longer than a period specified with no intent to retain possession.

—Administrative activities means those activities conducted under the authority of the BLM for the purpose of safeguarding persons or property, implementing management plans and policies developed in accordance and consistent with regulations or repairing or maintaining facilities.

—Pet means a dog, cat, or any domesticated companion animal.

—Occupancy means the taking or holding possession of a camp site, other location, or residence on public land.

—Vehicle means any motorized or mechanized device, including bicycles, hang gliders, ultra lights, and hot air balloons which is propelled or pulled by any living or other energy source, and capable of travel by any means over ground, water, or air.

—Authorized Officer means any employee of the BLM who has been delegated the authority to perform under Title 43.

—Stove fire means a fire built inside an enclosed stove or grill, a portable brazier, or a pressurized liquid or gas stove, including spaceheating devices.

—Weapon means a firearm, compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, speargun, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles or projectiles; hand-thrown spear, edged weapons, nun-chucks, clubs, billy-clubs, and any device modified for use or designated for use as a striking instrument; and includes any weapon the possession of which is prohibited under New Mexico law.

—Historic or prehistoric structure or ruin site means any location at least 50 years old which meets the standards for inclusion on the National Register of Historic Places as defined in 36 CFR 60.4, without regard to whether the site has been nominated or accepted.

Visitor Restrictions—ALL PUBLIC LANDS: In addition to regulations contained in 43 CFR 8365.1, the following visitor restrictions apply to all public lands, including those lands acquired or conveyed to the BLM, and related waters. The following are prohibited unless authorized by written permit:

Sanitation

• To construct or maintain any pit toilet facility.

• The dumping or disposal of sewage or sewage treatment chemicals from self-contained or containerized toilets, except at facilities provided for that purpose.

• To shower or bathe at any improved or developed water source, outdoor hydrant pump, faucet or fountain, or restroom water faucet unless such water source is designated for that purpose.

Occupancy and Use

• To camp or occupy any site on public lands or any approved location, including those in developed recreation areas and sites or SRMA's, for a period longer than 14 days within any period of 28 consecutive days. Exceptions, which will be posted, include areas closed to camping and areas or sites with other designated camping stay limits. The 28-day period begins when a camper initially occupies a specific location on public land. The 14-day limit may be reached either through a number of separate visits or through 14 days of continuous occupation. After the 14th day of occupation, campers must move beyond a 25-mile radius from the previous location. When a camping limit has been reached, use of any public land site within the 25-mile radius shall not occur again until at least 30 days have elapsed from the last day of authorized use.

• To park any motor vehicle for longer than 30 minutes, or camping within 300 yards of any spring, man-made water hole, water well, or watering tank used by wildlife or domestic stock.

• To dispose of any burning or smoldering material except at sites or facilities provided for that purpose.

• Unauthorized cutting, removing, or transporting woody materials including, but not limited to:

1. Any type or variety of vegetation (excluding dead and downed),

2. Fuelwood or firewood, either green or standing deadwood or,

3. Live plants (except for consumption, medicinal purposes, study or personal collection).

• Removing or transporting any mineral resources including, but not limited to, rock, sand, gravel, and minerals on or from public lands without written consent, proof of purchase, or a valid permit. Collection of specimens and samples in reasonable amounts for personal noncommercial use, under 43 CFR 8365.1–5(b) is not affected by this section.

• Collection or removal of any natural resource, including wood for campfires, where such restrictions are posted.

• Failure to prevent a pet from harassing, molesting, injuring, or killing humans, wildlife or livestock.

• Violation of the terms, stipulations, or conditions of any permit or use authorization.

• Failure to show a permit or use authorization to any BLM employee upon request.

• Camp or occupy or build any fire on, or in, any historic or prehistoric structure or ruin site.

• Competitive or commercial operations or events without a Special Recreation Permit.

Vehicles

• Operations of an off-road vehicle without full-time use of an approved spark arrestor and muffler.

• Failure to display the required State off-road vehicle registration.

• Lubricating or repairing any vehicle, except repairs necessitated by emergency.

• Operate, park, or leave a motorized vehicle in violation of posted restrictions or in such a manner or location as to:

1. Create a safety hazard,
2. Interfere with other authorized users or uses,
3. Obstruct or impede normal or emergency traffic movement,
4. Interfere with or impede administrative activities,
5. Interfere with the parking of other vehicles, or
6. Endanger property or any person.

Public Health and Safety

• Possession or use of fireworks.

• Leaving a campfire unattended, or failing to completely extinguish a fire after use.

• The sale or gift of an alcoholic beverage to a person under 21 years of age.

• The possession of an alcoholic beverage by a person under 21 years of age.

• Ignite or burn any material containing or producing toxic or hazardous material.

• Carrying of concealed weapons.

State and Local Laws

• Failure to comply with all applicable State of New Mexico regulations for boating safety, equipment, and registration.

• Visitor Restrictions—DEVELOPED RECREATION SITES/AREAS AND SPECIAL RECREATION MANAGEMENT AREAS: In addition to the regulations contained in 43 CFR 8356.1, 8365.2 and those listed above, the following visitor restrictions will be applied in accordance with 43 CFR 8365.2: The following activities are prohibited unless authorized by written permit:

• Failure to immediately remove and dispose of in a sanitary manner, all pet fecal material, trash, garbage or waste created.

• Failing to physically restrain a pet at all times within developed campsites and picnic areas. Pets are prohibited where posted on all designated nature or interpretive trails and from entering caves. Animals trained to assist handicapped persons are exempt from this rule.

• Reserving camping space, except at group facilities. Camping space is available on a first-come-first-serve basis.

• Failure to maintain quiet between the hours of 10:00 p.m. to 6:00 a.m. or other hours posted. During this period no person shall create noise which disturbs other visitors.

• More than two motorized vehicles and/or 10 individuals at any one approved site not designated for group use or parking area. Groups exceeding these limits must use a group site or additional designated sites.

• Vehicles off existing or designated roads and trails unless facilities have been specifically provided for such use. Motorized vehicles will be operated for access to and from developed facilities only.

• To park or occupy a parking space posted or marked for handicapped use without displaying an official identification tag or plate.

• Posting or distribution of any signs, posters, printed material, or commercial advertisements.

• The discharge of firearms or other weapons, hunting and trapping within ½ mile of developed recreation sites and areas.

• Using, displaying, or carrying weapons within developed campsites or picnic areas. Long guns shall be broken down or otherwise rendered inoperable and shall be stored out-of-sight.

• Disposing of any waste or grey water except where facilities are provided.

• Bringing equine stock, llama, cattle, or other livestock within campgrounds or picnic areas unless facilities have been specifically provided for such use.

• Gathering or collecting woody plants or any other natural resource, minerals, cultural, or historical artifacts that require permits.

• Cutting or gathering of green trees or their parts or removal of down or standing dead wood for any purpose.

• Not adhering to fire danger ratings issued by government.

• Entering the following caves from October 15 to March 31 of each year: Fort Stanton, Torgac, Torgac Annex, Crockett, Crystal, Big-Eared Cave, Bat Hole, Malpais Madness, Tres Ninos and Feather. Only personnel engaged in authorized scientific bat studies, census, monitoring, and emergencies will be allowed to enter caves during this time, due to bat hibernation.

• Entering a cave without each person wearing a safety helmet (hard hat) with chin strap and at least three sources of light.

• Annoying or disturbing bats at any time.

List of Developed Recreation Sites/ Areas and Special Recreation Management Areas

1. Valley of Fires Recreation Area (Roswell Resource Area)

T. 7 S., R. 10 E.,
Sec. 29, 30.

2. Fort Stanton SRMA (Roswell Resource Area)

T. 9, 10 S., R. 14, 15 E.

3. Mescalero Sands North Dune SRMA (Roswell Resource Area)

T. 10 S., R 30 E.,
Sec. 34, 35.

4. Cave SRMA's—McKittrick Hill, Lost, Fence Canyon, Manhole, Yellowjacket/Lair, Chosa Draw, Mudgetts, Honest Injun, KFF Caverns, Fort Stanton Cave, Torgac Cave, and Crocket's Cave

5. Dark Canyon SRMA (Carlsbad Resource Area)

T. 24 S., R. 23, 24 E.

6. Lonesome Ridge SRMA (Carlsbad Resource Area)

T. 26 S., R. 22 E.,
Sec. 19–21, 29–31.

7. Pecos River Canyon Complex (Carlsbad Resource Area)

T. 24, 25 S., R. 29, 30 E.

8. Guadalupe Escarpment Scenic Area (Carlsbad Resource Area)

T. 23–26 S., R. 22–26 E.

9. Alkali Lake Off-road Vehicle Area (Carlsbad Resource Area)

T. 21 S., R. 27 E.,
Sec. 4, 5, 9.

10. Hackberry Lake Off-road Vehicle Area (Carlsbad Resource Area)

T. 18–20 S., R. 30, 31 E.

11. Pecos River Corridor (Carlsbad Resource Area)

T. 22 S., R. 27 E., river section to T. 26 S., R. 29 E.

12. Chosa Draw SRMA (Carlsbad Resource Area)

T. 25 S., R. 25 E.,
Sec. 20–22, 27–29, 33.

13. Overflow Wetlands (Roswell Resource Area)

T. 11, 12 S., R. 25, 26 E.

DATES: Comments on the proposed visitor restrictions will be accepted until February 23, 1995. Comments received or postmarked after the above date may not be considered in the decision-making process on the final rule making.

ADDRESSES: Comments should be sent to the Roswell District Office, 1717 West 2nd, Roswell, New Mexico 88201, Telephone: (505) 627–0272. All written comments made pursuant to this action will be made available for public inspection during normal business hours (7:45 a.m. to 4:30 p.m., MST) at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Happel, Natural Resource Specialist, BLM, Roswell District Office, 1717 West 2nd Roswell, New Mexico 88201, Telephone: (505) 627–0203.

SUPPLEMENTARY INFORMATION: The Roswell District Manager is establishing these visitor restrictions, which are necessary for the protection of persons, property, and public lands and resources currently under the Bureau's administration within the Roswell District, New Mexico and those lands acquired for inclusion within the administrative jurisdiction of the BLM as provided for in 43 CFR 8365.1–6. These Visitor Restrictions apply to all persons using public lands. Violations of these restrictions are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Exceptions to the following visitor restrictions may be permitted by the authorized officer subject to limits and restrictions of controlling Federal and State law. Persons granted use exemptions must possess written authorization from the BLM Office having jurisdiction over the area. Users must further comply with the zoning, permitting, rules, or regulatory requirements of other agencies, where applicable.

Dated: January 13, 1995.

Leslie M. Cone,

District Manager.

[FR Doc. 95–1617 Filed 1–23–95; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Notice of Availability of the Draft Sharon Steel Damage Settlement Restoration Plan: A Concept Document, and Public Informational Meeting for its Review

AGENCY: Fish and Wildlife Service, Interior Department.

ACTION: Notice of availability and public informational meeting.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces release of the draft Sharon Steel Damage Settlement Restoration Plan: A Concept Document (Concept Plan) for public review. The Concept Plan covers the Service proposal to fund cooperative projects to restore natural resources injured as a result of hazardous materials released from the Sharon Steel Superfund Site, Midvale, Utah. The Concept Plan details the primary steps toward achievement of restoration as—(1) definition of restoration targets in terms of species and habitats, (2) development of criteria for identifying and ranking projects, (3) identification of restoration tools and solicitation of cooperative project proposals, (4) identification and ranking of restoration project proposals, (5) implementation of selected project(s), and (6) long-term monitoring.

DATES: Written comments must be submitted on or before March 31, 1995.

ADDRESSES: Requests for copies of the Concept Plan may be made to U.S. Fish and Wildlife Service, Salt Lake City Field Office, Lincoln Plaza, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115.

Written comments or materials regarding the Concept Plan should be sent to the above address.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Assistant Field Supervisor, or Brandt Gutermuth, Environmental Contaminants Program, at the above Salt Lake City Field Office address (telephone 801/524–5001).

SUPPLEMENTARY INFORMATION:

Background

A $2.3 million damage settlement was awarded to the U.S. Department of the Interior (DOI) in compensation for injuries to federal protected trust resources along the Jordan River, Utah, caused by Sharon Steel and Midvale Slag Superfund sites. Under Federal law, these trust resources are specifically protected on behalf of the public and include migratory birds, as well as threatened and endangered species and their habitats. Consequently, Sharon Steel damage settlement money must be used to restore, replace or acquire the equivalent of the trust resources injured on site and by contaminants from the site.

The DOI and the State of Utah signed a Memorandum of Understanding (MOU) July 11, 1991, to cooperate as trustees in planning and implementing resource restoration with Sharon Steel settlement money. The MOU establishes a Trustee Committee consisting of representatives from DOI and the State of Utah to plan and direct restoration activities.

The Trustee Committee outlined the following project goals: (1) To restore, replace, enhance, or acquire appropriate natural, functioning habitats along the Jordan River corridor for the benefit of identified trust resources; (2) to ensure that funds are utilized to provide maximum benefits for trust resources; and (3) to ensure the provision of benefits to trust resources in perpetuity. Restoration alternatives to meet these goals are identified. These alternatives included (a) no-action or natural recovery, (b) restoration on the Sharon Steel/Midvale Slag sites, and (c) Jordan River corridor replacement/enhancement of habitat for trust resources. Because of its protective and relatively cost effective nature, replacement/enhancement of resources in the Jordan River corridor was chosen as the preferred alternative for enhancement of wetland and riparian migratory bird habitats.

The primary steps toward achievement of project restoration goals were subsequently identified as (1) definition of restoration targets in terms of species and habitats, (2) development of criteria for ranking and selecting projects, (3) identification of restoration tools or activities and solicitation of cooperative project proposals, (4) ranking and selection of specific restoration projects (cooperative proposals) and/or sites, (5) implementation of selected project(s), and (6) monitoring of the project(s) to ensure long-term viability.

The Sharon Steel Damage Settlement Restoration Plan: A Concept Document (Concept Plan) was subsequently drafted to lend guidance in the process and to establish sideboards to guide Jordan River restoration. The Concept Plan proposes to accomplish trust resources restoration by selecting and funding cooperative projects that will be implemented in partnership with State or Federal agencies, county or local governments, or nonprofit organizations. Close cooperation among all programs in the Jordan River corridor

(e.g., Central Utah Project, Jordan River Parkway plans, Jordan River Subbasin Watershed Management Council, etc.) will ensure cost-effective expenditure of public funds, increase success of all programs, and provide maximum benefits to the Jordan River ecosystem.

Specific restoration project proposals will be identified, reviewed, and ranked according to the following 13 defined ranking criteria:

1. Restoration of Trust Resources
2. Location of Restoration Project(s)
3. Ownership/Management
4. Surrounding Land Use
5. Size of Individual Projects
6. Restoration Longevity
7. Project Cost/Benefits
8. Project Hazards—Attractive Nuisance Issues
9. Cooperative Projects
10. Natural Recovery Potential
11. Annual Maintenance Requirements
12. Compliance with Applicable Laws and Regulations
13. Other associated ranking factors:
    - Threat of additional trust resource loss
    - Public Health and Safety
    - Community Acceptance

The highest-ranked projects will be referred to the trustee committee for final review and selection for implementation. Ultimately, a restoration plan, which includes selected cooperative projects for implementation, will be developed. A National Environmental Policy Act (NEPA) environmental assessment (EA) will be prepared which addresses the cumulative potential environmental impact of all funded Sharon Steel restoration projects. Public review of the concept and restoration plans and input on NEPA issues will be solicited through the **Federal Register** and scoping meetings. Public review of the Final Concept Plan and accompanying request for project proposals will be solicited through local notices. Cooperators will work together with the Fish and Wildlife Service (Service) and the State of Utah to implement projects.

Management in perpetuity for wildlife will be ensured by Concept Plan stipulations which require land/wildlife management plans for each project proposal and deed restrictions, which stipulate future land uses and return of lands to DOI if cooperative agreements and management plan objectives are not upheld. Monitoring of sites will be performed by the Service to document project progress, to ensure compliance with management objectives and deed restrictions, and to measure timely success in the restoration of trust resources.

Interested members of the public are invited to review and comment on the Concept Plan. In Utah, copies are available for review at the U.S. Fish and Wildlife Service's Ecological Services Office in Salt Lake City (see **ADDRESSES** section), the Utah Department of Environmental Quality, Division of Environmental Response and Remediation (168 North 1950 West, Salt Lake City), and the Salt Lake City Library. The Service also is soliciting input regarding the timeframe for preparing and submitting project proposals once the Concept Plan is finalized and a request for proposals has been advertised.

A public informational meeting will be held to explain the Concept Plan and to answer questions. The meeting will be held in the Commission Chambers, at the Salt Lake County Government Center—South Building, 2001 South State Street, Salt Lake City, Utah, on Wednesday, March 8, 1995, at 7:30 p.m. All written and public meeting comments will be considered and addressed in the final Concept Plan.

Dated: January 18, 1995.

Terry T. Terrell,

Deputy Regional Director.

[FR Doc. 95–1706 Filed 1–23–95; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Announcement of Draft Interim Guidelines for Fiscal Year 1996 Title II Development Project Proposals

Pursuant to the Agricultural Trade and Development Act of 1990, notice is hereby given that the draft Interim Guidelines for Fiscal Year 1996 (FY 96) Public Law 480 Title II Development Project Proposals are being made available to interested parties for the required thirty (30) day comment period.

Individuals who wish to review and comment on the draft guidelines should contact: Office of Food for Peace, room 323, SA–8, Agency for International Development, Washington, DC 20523–0809. Contact person: Sheila Royston, (703) 841–2707.

The thirty day comment period will begin on the date that this announcement is published in the **Federal Register**.

Dated: January 13, 1995.

H. Robert Kramer,

Director, Office of Food for Peace, Bureau for Humanitarian Response.

[FR Doc. 95–1688 Filed 1–23–95; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32652]

Chicago SouthShore & South Bend Railroad—Trackage Rights Exemption—Norfolk and Western Railway Co.

Norfolk and Western Railway Company (NW) has agreed to amend the overhead trackage rights granted to Chicago SouthShore & South Bend Railroad (CSS), in *Chicago SouthShore & South Bend Railroad—Trackage Rights Exemption—Norfolk and Western Railway Company,* Finance Docket No. 32392 (ICC served Nov. 15, 1993). The trackage extends over a portion of NW's line as follows: beginning at a point on NW's trackage from the connection between the tracks of CSS and NW in the vicinity of 124th Street near Kensington, to the connection between NW and the Illinois International Port District (Port), near 130th Street, in Chicago, IL, a total distance of approximately 2 miles.[1]

The amended transaction was scheduled to become effective January 11, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Jo A. DeRoche, 1350 New York Ave., NW., Suite 800, Washington, DC 20005–4797.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: January 17, 1995.

[1] The amended trackage agreement will remove restrictions concerning commodities and service to customers located within the limits of the Port.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–1719 Filed 1–23–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Agency Information Collection Activities Under the Office of Management and Budget Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and,

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

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 OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Analysis of Law Enforcement Officers Killed and Assaulted.

(2) 1–728. Federal Bureau of Investigation, United States Department of Justice.

(3) Primary = State, Local or Tribal Government, Others = None. Instant revised Form 1–705 is used to facilitate the collection of data in compliance with a Presidential Directive, issued June 3, 1971, mandating the collection and publication of data relating to the analysis of law enforcement officers killed or assaulted.

(4) 132 annual respondents at .5 hours per response.

(5) 4,226 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: January 18, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–1710 Filed 1–23–95; 8:45 am]

BILLING CODE 4410–02–M

Agency Information Collection Activities Under the Office of Management and Budget Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and,

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

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 OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Law Enforcement Officers Killed and Assaulted.

(2) 1–705. Federal Bureau of Investigation, United States Department of Justice.

(3) Primary = State, Local or Tribal Government, Others = None. Instant Form 1–705 is used to facilitate the collection of data in compliance with a Presidential Directive, issued June 3, 1971, mandating the collection and publication of data relating to law enforcement officers killed or assaulted.

(4) 71,794 annual respondents at .15 hours per response.

(5) 14,358 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: January 18, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–1711 Filed 1–23–95; 8:45 am]

BILLING CODE 4410–02–M

Foreign Claims Settlement Commission

Claims Against Islamic Republic of Iran; Request for Current Addresses

AGENCY: Foreign Claims Settlement Commission of the United States, Justice.

ACTION: Notice.

SUMMARY: The persons listed at the end of this notice have claims pending against the Islamic Republic of Iran which are before the Foreign Claims Settlement Commission (FCSC) for adjudication as authorized under Title V

of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (Pub.L. 99–93, approved August 16, 1985, 99 Stat. 437 (50 U.S.C. 1701 note); the ''Iran Claims Act''), and the *Settlement Agreement in Claims of Less than $250,000, Case No. 86 and Case No. B38,* Award No. 483 (1990); the ''Settlement Agreement''). However, these persons have failed to inform the FCSC of their current addresses. The claims of the persons listed below will be dismissed by the FCSC, unless current addresses are provided to the FCSC by February 23, 1995.

DATES: The deadline for providing an updated address is February 23, 1995. Send the updated address to the person named in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission of the United States, 600 E Street, N.W., Room 6002, Washington, DC 20579, (202) 616–6975, FAX (202) 616–6993.

David E. Bradley,

Chief Counsel.

Name and last known address of claimant	Claim No.
Charles J. Carlson, 2725 Van Court, Snellville, GA 30278.	IR–2964
Arthur A. Hall, P.O. Box 90252,Long Beach, CA 90809.	IR–0814
Joe H. Blalock,7220 Deane Hill Dr.,Knoxville, TN 37919.	IR–1007

[FR Doc. 95–1670 Filed 1–23–95; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Full Committee Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act, will meet on February 14–15, 1995, in Room N3437 A–D of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, DC. The meeting is open to the public and will begin at 8:30 a.m. each day lasting until 12:30 p.m. on February 14 and 4 p.m. on February 15.

Agenda items will include overviews of activities of both the Occupational Safety and Health Administration (OSHA) and the National Institute for Safety and Health (NIOSH), as well as reports from two workgroups. Presentations will also be made on the following subjects: Focused Inspections in General Industry, Needs and Plans for Outreach Activities, NIOSH Document Development and Dissemination, Environmental Justice and the OSHA related activities of the Bureau of Labor Statistics.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone wishing to make an oral presentation should notify Joanne Goodell before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, to the extent time permits, at the discretion of the Chair of the Advisory Committee. Individuals with disabilities who need special accommodations should contact Tom Hall by February 5 at the address indicated below.

An official record of the meeting will be available for public inspection through Tom Hall, Division of Consumer Affairs, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210, telephone 202–219–8615.

For additional information contact: Joanne Goodell, Directorate of Policy, Occupational Safety and Health Administration, Room N–3641, 200 Constitution Avenue NW., Washington, D.C. 20210, telephone 202–219–8021.

Signed at Washington, DC this 18th day of January, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–1764 Filed 1–23–95; 8:45 am]

BILLING CODE 4510–26–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 94–4]

Cable Compulsory License: Specialty Station List

AGENCY: Copyright Office, Library of Congress.

ACTION: Request for information.

SUMMARY: The Copyright Office is compiling a new specialty station list to identify commercial broadcast television stations that claim to qualify as specialty stations for purposes of the former distant signal carriage rules of the Federal Communications Commission (FCC). We published a list in 1990, and at that time we stated that we would revise the specialty station list at approximately three year intervals. We are now in the process of updating the list, and request all interested television broadcast stations that qualify as specialty stations, including those that previously filed affidavits, to submit sworn affidavits to us stating that the programming of their stations satisfies certain former FCC requirements.

EFFECTIVE DATE: Affidavits should be received on or before March 27, 1995.

ADDRESSES: BY MAIL: Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. BY HAND: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380, Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Specialty station status is significant in the administration of the cable compulsory license, 17 USC 111. The licensing system indirectly allows a cable operator to carry the signal of a television station classified as a specialty station under the FCC's regulations in effect on June 24, 1981, at the relevant non-3.75% royalty rate for ''permitted'' signals. See 49 FR 14944, 14951 (April 16, 1984). Although specialty station status is determined by reference to former FCC regulations found at 47 CFR 76.5(kk)(1981),[1] the FCC no longer determines whether a station qualifies as a specialty station. The last time the FCC identified specialty stations was in 1976. In 1987 the Copyright Office was asked to update the list since the television industry had changed a great deal since the FCC compiled the 1976 list. Following the receipt of comments, we

[1] The FCC defined a specialty station as ''a commercial television broadcast station that generally carries foreign-language, religious, and/or automated programming in one-third of the hours of an average broadcast week and one-third of weekly prime-time hours.'' 47 CFR 76.5 (kk) (1981).

adopted a procedure for compiling a new list of specialty stations.

The Copyright Office compiled and published its first specialty station list, together with an announcement of our intention to update the list approximately every three years in order to maintain as current a list as possible. 55 FR 40021 (October 1, 1990). A list of stations that filed too late to be included on the 1990 list was published in 1991. 56 FR 26165 (June 6, 1991) This list of stations was not *per se* a list of additional specialty stations, but did list the stations that represented themselves as meeting the standards required to be carried by cable systems at specialty station rates. Since then, we have accepted sworn affidavits from broadcast stations that claim specialty station status and have kept them on file. Licensing examiners have not questioned cable systems' claims that they carry any of these distant broadcast stations as specialty stations.

Stations filing affidavits with us will be listed in a notice in the **Federal Register** in which we solicit public comments as to the eligibility of these stations as specialty stations. We will not verify the specialty station status of particular stations that file affidavits with us, but we will publish a final annotated list of specialty stations that includes references to any objections filed to stations' claims. The effective date of the final annotated list will coincide with the beginning of the accounting period that starts after the final list is published in the **Federal Register**. This will allow cable systems time to modify their channel line-ups should they discover that the status of a given station has changed.

We will operate under this final list as we did under the first specialty station list. Copyright Office licensing examiners will refer to the final annotated list in examining cable systems' claims on their statements of account that particular stations are specialty stations. If a cable system claims specialty station status for a station not on the final annotated list, the examiner will check to determine whether the station has filed an affidavit since publication of the list. Affidavits received in this manner will be accepted with the understanding that those stations will resubmit affidavits when the Office next formally updates the specialty station list.

When we first revised the specialty station list in 1990, we decided that a television broadcast station's ''current programming content'' (content guaranteed to have been carried over the previous 12 months) should dictate whether the station qualifies as a specialty station. This requirement was intended to discourage broadcast stations from changing their formats at any given time simply to qualify as specialty stations. We have not, however, seen evidence that stations change formats to qualify as specialty stations for copyright purposes. Instead we believe that in certain instances a station may be hampered by the 12-month requirement. For example, a station that went on the air less than 12 months ago may not be able to gain carriage on a distant cable system as a specialty station even though its programming would meet former FCC specialty station standards.

It is not our intention to create any hardships for broadcasters, cable systems, or television viewers. We are, therefore, eliminating the 12-month requirement. As of the date of this publication, any station that has carried specialty station programming since July 1, 1994, and that continues to carry sufficient programming may qualify as a specialty station.

We now request that the owner, or a valid agent of the owner, of any eligible television broadcast station submit an affidavit to the Copyright Office stating that he or she believes that the station qualifies as a specialty station under 47 CFR 76.5(kk) (1981), the FCC's former rule defining ''specialty station.'' The affidavit must be certified by the owner or an official representing the owner. Affidavits are due within 60 days of this publication. There is no particular format for the affidavit; however, the affidavit must confirm that the station owner believes that the station qualifies as a specialty station under the former FCC rules.

Following the 60 day period for submission of affidavits, we will compile and publish in the **Federal Register** a list of the stations that filed affidavits. At the same time, we will solicit views from any interested party as to whether or not particular stations on the list qualify as specialty stations. We will then publish in the **Federal Register** a list of specialty stations that notes any public objections to a station's claim. Copyright Office Licensing Examiners will refer to the final annotated list when examining cable systems' claims on their Statements of Account that particular stations are specialty stations.

Dated: January 17, 1995.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 95–1683 Filed 1–23–95; 8:45 am]

BILLING CODE 1410–31–P

NATIONAL CREDIT UNION ADMINISTRATION

Pacific Technology Federal Credit Union; Public Hearing

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of public hearing.

SUMMARY: The NCUA Board is holding a public hearing to seek testimony on the proposed merger of Patelco Credit Union of San Francisco into First Technology Federal Credit Union of Beaverton, Oregon.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, (703) 518–6304. Submit written statements or requests to present oral testimony either by mail at this address or by FAX at (703) 518–6319.

SUPPLEMENTARY INFORMATION: An application has been filed with the NCUA Board by Patelco Credit Union, a federally-insured credit union chartered by the state of California with assets of $953 million, to merge into First Technology Federal Credit Union, a federally chartered credit union with assets of $258 million. The resultant continuing credit union will be a federally chartered credit union named Pacific Technology Federal Credit Union with its main office in Bellevue, Washington, two branch offices in Washington, five in Oregon and 34 in California.

The Board must review the merger in accordance with the standards set forth in Section 205(c) of the Federal Credit Union Act. 12 U.S.C. 1785(c). In addition, section 120(a) of the Federal Credit Union Act charges the Board with the responsibility to prescribe rules and regulations affecting mergers. 12 U.S.C. 1766(a). Further, the Board has asked the applicants to address questions related to policy issues raised by mergers of large healthy credit unions.

In order to review the standards and issues as they apply to the proposed merger, the Board has decided to request public comment and testimony. While this hearing is of immediate importance to this particular merger, it has also been suggested that a decision on this matter has wide-spread implications and is, in fact, an issue of national scope and importance. Concerns have been raised with respect to the economic impact the merger would have on other credit unions, as well as the effect the merger would have on the continued ability of credit unions to operate as a cooperative movement.

Concerns have also been expressed related to the effects of consolidating large credit unions and the potential harm such an unlimited agglomeration of credit union assets could have on the National Credit Union Share Insurance Fund and the credit union system. The Board welcomes views and comments on any issues related to this proposed merger.

Public Hearing

Date: February 14, 1995.

Time: 9 a.m.

Place: Filene Board Room, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

Public participation: The hearing is open to the public. Members of the public who wish to make oral statements pertaining to the proposed merger should contact the Secretary of the Board at the address or fax telephone number listed above. Oral statements will be limited to five minutes. Requests to make oral statements must be received by February 3, 1995, and should be accompanied by a brief statement of issues or subjects to be addressed. Depending on the number of requests, the Board reserves the right to select witnesses. Every effort will be made to receive a broad range of views. Written statements, whether in addition to or in lieu of oral statements, must be filed by submitting ten (10) copies to the Secretary of the Board and must be received by February 10, 1995.

Copies of the proposed merging credit union's board resolutions and the proposed continuing credit union's field of membership are available for inspection by appointment at NCUA Central Office, Office of General Counsel Law Library, 1775 Duke Street, Alexandria, VA 22314–3428 (703–518–6540) and NCUA, Region VI, 2300 Clayton Road, Suite 1350, Concord, CA 94520 (510–825–6125) or may be purchased from the NCUA FOIA Officer located at NCUA's Central Office at a cost of $10 per copy. Written statements submitted prior to the hearing will be available for inspection at NCUA Central Office, Office of General Counsel Law Library.

Dated: January 17, 1995.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–1582 Filed 1–23–95; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts in Education Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Partnership Grants Section) to the National Council on the Arts will be held on February 15–17, 1995. The panel will meet from 9:00 a.m. to 6:00 p.m. on February 15; from 8:00 a.m. to 6:30 p.m. on February 16; and from 9:00 a.m. to 2:30 p.m. on February 17 in Room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public from 9:00 a.m. to 12:00 p.m. on February 15 for welcome and introductions, announcements, contract and travel information, and panelist orientation and on February 17, from 11:30 a.m. to 12:30 p.m. for a policy discussion.

Remaining portions of this meetings from 12:00 p.m. to 6:00 p.m. on February 15; from 8:00 a.m. to 6:30 p.m. on February 16; and from 9:00 a.m. to 11:30 p.m. and 1:30 p.m. to 2:30 p.m. on February 17 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington D.C., 20506, 202/682–5532, TYY 202/682–5496, at least 7 days prior to the meeting.

Further information with reference to this meting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5433.

Dated: January 18, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–1704 Filed 1–23–95; 8:45 am]

BILLING CODE 7537–01–M

Expansion Arts Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Theater Section) to the National Council on the Arts will be held on February 21–24, 1995. The panel will meet from 9:15 a.m. to 6:00 p.m. on February 21; 9:00 a.m. to 6:00 p.m. on February 22–23 and from 9:00 a.m. to 4:30 p.m. on February 24 in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506.

Portions of this meeting will be open to the public from 9:00 a.m. to 10:30 a.m. on February 21 for opening remarks and a general overview and on February 24 from 3:00 p.m. to 4:30 p.m., for a policy discussion.

The remaining portions of this meeting from 10:30 a.m. to 6:00 p.m. on February 21; from 9:00 a.m. to 6:00 p.m. on February 22–23; and from 9:00 a.m. to 3:00 p.m. on February 24 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of Section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington D.C., 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5433.

Dated: January 18, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–1705 Filed 1–23–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communication Systems.

Date and Time: February 3, 1995/8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 380, Arlington, Virginia 22230.

Contact Person: Dr. Deborah Crawford, Program Director, Solid State and Microstructures, Division of Electrical and Communications Systems Room 675, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Telephone: (703) 306–1339.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate applications of Research Equipment (REG) research proposal as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 18, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–1692 Filed 1–23–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Draft Supplemental Environmental Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of public comment period.

SUMMARY: On December 9, 1994, the Nuclear Regulatory Commission issued a notice of availability for the Draft Supplement (NUREG–0498, Supplement 1) to the Final Environmental Statement related to the operation of Watts Bar Nuclear Plant Units 1 and 2 (59 FR 63832). The Environmental Protection Agency also noticed the availability of the draft supplement on December 9, 1994 (59 FR 63791). Interested members of the public were requested to submit their comments by January 30, 1995. During a January 10, 1995, public meeting on the draft supplement, members of the public cited the extensive technical content of the document as the primary reason why additional time is needed to provide comments. After considering the public concerns, the Nuclear Regulatory Commission has decided to extend the comment period by an additional 15 days.

DATES: The comment period is extended to February 14, 1995. Interested parties are invited to submit comments.

ADDRESSES: Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments also may be delivered to Room 6D22, Two White Flint North, 1145 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays.

Single copies of the draft supplement report are available free, to the extent of supply, upon written request to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082 or the Office of Administration, Distribution and Mail Service Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

An individual copy is available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Scott C. Flanders, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–1172

Dated at Rockville, Maryland, this 18th day of January 1994.

For the Nuclear Regulatory Commission.

Scott F. Newberry,

Director, License Renewal and Environmental Review Project Directorate, Associate Director for Advanced Reactors and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 95–1714 Filed 1–23–95; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 1.160, ''Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' provides guidance on meeting the Commission's rules on maintenance and monitoring the effectiveness of maintenance in nuclear power plants. Although the concept of trigger values was included in the original guide as an option to be used as an alert to reveal emergency diesel generator performance problems that may need additional monitoring or corrective actions, it was clearly noted that conformance with such triggers was not a statistical demonstration of maintaining the emergency diesel generator reliability levels at levels selected for compliance with the station blackout rule (10 CFR 50.63). Since there has been continued misinterpretation of the triggers as related to statistical achievement of selected emergency diesel generator reliability, all language in this Revision 1 to Regulatory Guide 1.160 pertaining to emergency diesel generator performance and trigger values was deleted to avoid any misconceptions on their statistical significance. The Commission expects that in implementing the maintenance rule as applied to emergency diesel generators, each licensee will set performance goals that are consistent with the licensee's coping analysis performed to comply with the station blackout rule (10 CFR 50.63), unless there is a documented basis for the inconsistency.

No comments were received from the public regarding emergency diesel generator performance as related to the deletion of the trigger values. However, a number of comments were received requesting further clarification of

language in a guide, and the NRC staff has made some minor changes in language, as appropriate. Comments were also received from the Nuclear Energy Institute, State of Illinois Department of Nuclear Safety, Arizona Public Service Company, PECO Energy Company and Northeast Utilities System on matters that were not directly related to the removal of emergency diesel generator performance criteria and trigger values or clarification of language in the draft version of this guide, DG–1031, which was issued in June 1994. These matters were addressed previously in response to the comment period for the maintenance rule C10 CFR 50.65) and Regulatory Guide 1.160, and the commenters did not present new information that would lead the NRC staff to reconsider their prior resolution. The comments received, and the staff's basis for disposition of the comments, are available for public inspection and copying at the Commission's Public Document Room, 2120 L Street NW., Washington, DC.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 11th day of January 1995.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 95–1715 Filed 1–23–95; 8:45 am]

BILLING CODE 7590–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Palmetto Fort, Charleston County, SC

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Palmetto Fort, located in Mount Pleasant, Charleston County, South Carolina, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of this property may be mailed or faxed to the RTC until April 24, 1995.

ADDRESSES: Copies of detailed descriptions of this property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Dan Hummer, Resolution Trust Corporation, Atlanta Field Office, 245 Peachtree Center Avenue, Suite 1100, Atlanta, GA 30303, (404) 230–6594; Fax (404) 230–8159.

SUPPLEMENTARY INFORMATION: The Palmetto Fort property is located off of Six Mile Road in Mount Pleasant, South Carolina. The site consists of approximately 207.11 acres of undeveloped land of which approximately 83.9 acres of the southern portion of the property are tidal wetlands. The Palmetto Fort property is situated within an undeveloped floodplain and within a coastal zone. The historic Palmetto Fort is located adjacent to the site and the southern boundary of the Palmetto Fort property is formed by a battery and earthworks constructed by Confederate forces during the Civil War. Ten identified archaeological sites are located on the Palmetto Fort property and five of these sites are eligible for listing in the National Register of Historic Places. The site is adjacent to the Winston Creek State Shellfish Ground (No. 251) which is managed by the State of South Carolina for natural resource conservation purposes. This property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Pub. L. 101–591 (12 U.S.C. 1441a-3).

Written notice of serious interest in the purchase or other transfer of all or any portion of this property must be received on or before April 24, 1995 by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. ''Qualified organizations'' pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

RE: [insert name of property]

Federal Register Publication Date: January 24, 1995

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, Pub.L. 101–591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).
3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).
4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a-3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.
5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects

Environmental protection.

Dated: January 18, 1995.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 95–1686 Filed 1–23–95; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Information Collection Activities Under OMB Review

Acting Agency Clearance Officer: David T. Copenhafer, (202) 942–8800

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549

New

State Utility Questionnaire File No. 270–397

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''the Commission'') has submitted for the Office of Management and Budget approval a State Utility Questionnaire (''the Proposed Questionnaire'').

The Proposed Questionnaire will be used to obtain information on a voluntary basis in connection with a comprehensive study of the Public Utility Holding Company Act of 1935. The Proposed Questionnaire will solicit comments, and in some instances documents, on a range of issues that include the following: Utility financing; affiliate transactions; accounting, audits and inspections; ownership and acquisition regulation; and reporting requirements.

The estimated burden on state utility commissions is 10 hours. The total burden on the 51 state utility commissions would therefore be 510 hours.

General comments regarding the estimated burden hours should be directed to the Clearance Officer of the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to David T. Copenhafer, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549 and Clearance Office for the Securities and Exchange Commission, Office of Management and Budget, (Project No. 3235-new), Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: January 11, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1717 Filed 1–23–95; 8:45 am]

BILLING CODE 8010–01–M

[Release Nos. 33–7127; 34–35234; International Series Release No. 772]

Exemptions From Rules 10b–6, 10b–7, and 10b–8 During Distributions of Certain United Kingdom Securities and Certain Securities Traded on SEAQ International

January 18, 1995.

Pursuant to delegated authority, on January 10, 1995, the Division of Market Regulation issued the following letter granting class exemptions from Rules 10b–6, 10b–7, and 10b–8 (''Trading Practice Rules'') under the Securities Exchange Act of 1934 to facilitate distributions in the United States of securities of certain highly capitalized United Kingdom issuers and issuers whose securities are traded on SEAQ International. The exemptions permit transactions that otherwise would be prohibited by the Trading Practice Rules, subject to certain disclosure, recordkeeping, record production, and notice requirements.

The exemptions have been issued pursuant to the Commission's Statement of Policy contained in Securities Exchange Act Release No. 33137 (November 3, 1993), and are published to provide notice of their availability.

Margaret H. McFarland,

Deputy Secretary.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

January 10, 1995.

Mr. Dan Sheridan,

Director, Market Supervision, The London Stock Exchange, Old Broad Street, London EC2N 1HP, United Kingdom

Re: Distributions of Certain United Kingdom Securities and of Certain Securities Traded on SEAQ International, File No. TP 94–224

Dear Mr. Sheridan: In regard to your letter dated January 6, 1995 as supplemented by conversations with the staff, this response thereto is attached to the enclosed photocopy of your correspondence. By doing this we avoid having to recite or summarize the facts set forth in your letter.

Response

I. Distributions of Certain Qualified U.K. Securities

On the bases of your representations and the facts presented, the Commission hereby grants exemptions from Rules 10b–6, 10b–7, and 10b–8 under the Securities Exchange Act of 1934 (''Exchange Act'') to distribution participants, as defined in Rule 10b–6(c)(6)(ii), and their affiliated purchasers, as defined in Rule 10b–6(c)(6)(i) (collectively, ''Relevant Parties''), in connection with transactions in Relevant U.K. Securities outside the United States during distributions of Qualified U.K. Securities subject to the following terms, conditions, and limitations:

A. United Kingdom Securities

1. The security being distributed (''Qualified U.K. Security'') must:

a. be issued by: (i) a ''foreign private issuer'' within the meaning of Rule 3b–4 under the Exchange Act incorporated under the laws of the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, which issuer (''U.K. Issuer'') has outstanding a component security of the FT–SE 100;[1] or (ii) a subsidiary of a U.K. Issuer described in paragraph I.A.1.a.(i); and

b. satisfy one of the following:

(i) be an equity security of a U.K. Issuer which security has an aggregate market value that equals or exceeds the equivalent of £660 million (which exceeded US$1 billion as of January 5, 1995) and a world-wide average daily trading volume that equals or exceeds the equivalent of £3.5 million (which exceeded US$5 million as of January 5, 1995), as published by FFRAs[2] and any U.S. securities exchanges or automated inter-dealer quotation systems during the Reference Period for U.K. Issuers; or

(ii) be a security that is convertible into, exchangeable for, or a right to acquire a security of a U.K. Issuer described in paragraph I.A.1.b.(i).

2. ''Relevant U.K. Security'' means:

a. a Qualified U.K. Security; or

b. a security of the same class and series as, or a right to purchase, a Qualified U.K. Security (collectively, ''Relevant U.K. Securities'').

[1] References herein to the FT–SE 100 refer to the composition of such index on the date of this letter; *provided, however,* that any security added to the FT–SE 100 after the date of this letter also will be treated as a Qualified U.K. Security, if its issuer satisfies the requirements in paragraph I.A.1.a. and such security has an aggregate market value that equals or exceeds the equivalent of £660 million (which exceeded US$1 billion as of January 5, 1995) and a world-wide average daily trading volume that equals or exceeds the equivalent of £3.5 million (which exceeded US$5 million as of January 5, 1995), as published by foreign financial regulatory authorities (''FFRA'') and any U.S. securities exchanges or automated inter-dealer quotation systems, during a period (''Reference Period for U.K. Issuers'') that is 20 consecutive business days in London within 60 consecutive calendar days prior to the commencement of the Covered Period for U.K, Issuers as defined in paragraph I.C.1. below.

[2] An FFRA is defined in Section 3(a)(51) of the exchange Act, 15 U.S.C. 78c(a)(51), as any (A) foreign securities authority; (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities; or (C) membership organization a function of which is to regulate participation of its members in activities listed above. The London Stock Exchange, The Securities and Futures Authority (''SFA'') and The London International Financial Futures and Options Exchange (''LIFFE'') are considered to be FFRAs.

B. Transactions Effected in the United States

All transactions in Relevant U.K. Securities effected in the United States shall comply with Rules 10b–6, 10b–7, and 10b–8.

C. Transactions Effected in the United Kingdom

1. All transactions in Relevant U.K. Securities during the Covered Period for the Qualified U.K. Security that are effected in the United Kingdom shall be conducted in compliance with U.K. law. For purposes of these exemptions, ''Covered Period for the Qualified U.K. Security'' means: (i) in the case of a rights distribution, the period commencing when the subscription price is determined and continuing until the completion or abandonment of the distribution in the United States, and (ii) in the case of any other distribution, the period commencing three business days in London before the price is determined and continuing until the completion or abandonment of the distribution in the United States; *provided, however,* that the Covered Period for the Qualified U.K. Security shall not commence with respect to any Relevant Party until such person becomes a distribution participant.

2. All transactions in Relevant U.K. Securities during the Covered Period for the Qualified U.K. Security effected in the United Kingdom shall be effected on or reported to the Exchange, LIFFE or SFA.

3. *Disclosure of Trading Activities.*

a. The inside front cover page of the offering materials used in the offer and sale in the United States of a Qualified U.K. Security shall prominently display a statement in substantially the following form, subject to appropriate modification where circumstances require. Such statement shall be in capital letters, printed in bold-face roman type at least as large as ten-point modern type and at least two points leaded:

IN CONNECTION WITH THIS OFFERING, CERTAIN PERSONS MAY ENGAGE IN TRANSACTIONS FOR THEIR OWN ACCOUNTS OR FOR THE ACCOUNTS OF OTHERS IN (IDENTIFY RELEVANT U.K. SECURITIES) PURSUANT TO EXEMPTIONS FROM RULES 10b–6, 10b–7, AND 10b–8 UNDER THE SECURITIES EXCHANGE ACT OF 1934. SEE ''[IDENTIFY SECTION OF OFFERING MATERIALS THAT DESCRIBES THE TRANSACTIONS TO BE EFFECTED].''

b. In addition, there shall be included in the identified section of the offering materials a comprehensive description of the activities that may be undertaken by the Relevant Parties in the Relevant U.K. Securities during the distribution.

4. Recordkeeping and Reporting.

a. Each Relevant Party shall provide to the Exchange the information described in paragraph I.C.4.b. below with respect to its transactions in Relevant U.K. Securities in the United Kingdom; *provided, however,* that in the case of a distribution made pursuant to rights, such information is only required to be reported to the Exchange during the period or periods commencing at any time during the Covered Period for the Qualified U.K. Security that the rights exercise price does not represent a discount of at least 10 percent from the then current market price of the security underlying the rights and continuing until (a) the end of the Covered Period for the Qualified U.K. Security or (b) until the rights exercise price represents a discount of at least 12 percent from the then current market price of the security underlying the rights.[3]

b. When required pursuant to paragraph I.C.4.a. above, the Relevant Parties will provide the following information to the Exchange in a Comma Delimited ASCII (American Standard Code for Information Interchange) format including a common record layout acceptable to the Exchange and the Division, with respect to transactions in Relevant U.K. Securities during the Covered Period for the Qualified U.K. Security:

(i) name of the security, date, time (of execution and reporting, where available to the Relevant Party), price, and volume of each transaction; *provided, however,* that no information regarding a customer transaction need be provided unless such transaction has a value of £200,000 or more (currently $310,000);

(ii) the exchange or inter-dealer quotation system on which the transaction was effected, if any;

(iii) an indication whether such transaction was for a proprietary account or the account of a customer, *provided that* any transaction effected by an underwriter for a customer account for which it has exercised discretionary authority shall be reported as a discretionary customer trade; and

(iv) the identity of the counterparty to the transaction.

c. The Exchange and the Relevant Parties shall keep all documents produced or prepared pursuant to paragraph I.C.4.b. for a period of not less than two years.

d. Upon the request of the Division, the Exchange shall transmit the information provided by the Relevant Parties pursuant to paragraph I.C.4.b. above to the Division within 30 days of the request.

e. If the information required to be produced in paragraph I.C.4.b. above is not available from the Exchange upon the request of the Division the information shall be provided by each Relevant Party, with respect to their own reportable transactions, and be made available to the Division at its office in Washington, D.C. within 30 days of the request. The Division will notify the Exchange that it has received information pursuant to this paragraph, and upon appropriate request, will provide the Exchange the information submitted by the Exchange's member firms or their affiliates.

f. Representatives of a Relevant Party will be made available (in person at the office of the Division or by telephone) to respond to inquires of the Division relating to its records.

D. Transactions Effected in Significant Markets

All transactions in Relevant U.K. Securities in a Significant Market shall be effected in accordance with the requirements of Rules 10b-6, 10b-7, and 10b-8 or by other available exemptions. For purposes of these exemptions, ''Significant Market'' means any securities market(s) in a single country other than the United States or the United Kingdom, the Channel Islands, the Isle of Man, or the Republic of Ireland to which a U.K. Issuer has applied for listing or obtaining a quotation for the Qualified U.K. Security and been accepted, if during the Reference Period for the Qualified U.K. Security the volume in such Qualified U.K. Security, as published by the relevant FFRA in such securities market is 10 percent or more of the aggregate world-wide trading volume in that securities as published by all FFRAs in such Significant Markets, in the United King, the Channel Islands, the Isle of Man, the Republic of Ireland, and U.S. securities markets.

E. General Conditions

1. For purposes of these exemptions, a two business day cooling-off period shall apply under Rule 10b-6(a)(4) (xi) and (xii) in the United States and each Significant Market, provided that trading in Relevant U.K. Securities in Significant Markets shall be subject to the exemptive relief then available in such market, if any, or the record maintenance and record production requirements contained in *Letter regarding Application of Cooling-Off Periods Under Rule 10b-6 to Distributions of Foreign Securities* (April 4, 1994).

2. The lead underwriter or the global coordinator or equivalent person shall promptly, but in any event before the commencement of the Covered Period for the Qualified U.K. Securities, provide a written notice (''Notice'') to the Division and the Exchange containing the following information: (i) the name of the issuer and the Qualified U.K. Security; (ii) whether the Qualified U.K. Security is a FT–SE 100 component security or information with respect to the market capitalization and the average daily trading volume of the Qualified U.K. Security to be distributed; (iii) the identity of the Significant Markets where the Qualified U.K. Security trades; (iv) if the Notice is for more than one entity, the identity of all underwriters and selling group members relying on these exemptions; [4] and (v) a statement that the Relevant Parties are aware of the terms and conditions of these exemptions.

3. Any person who fails to comply with the conditions of the exemptions, including a failure to provide requested information, would not be permitted to rely on the exemptions in future distributions.Upon a showing of good cause, however, the Commission or the Division may determine that it is not necessary under the circumstances that the exemption be denied.

II. Distributions of Certain SEAQ International Securities

On the basis of your representations and the FACTS presented, the Commission hereby grants exemptions from Rules 10b-6, 10b-7, and 10b-8 under the Exchange Act to

[3] For purposes of these exemptions, unless stated otherwise, the ''current market price'' for a Qualified U.K. Security shall be the closing mid-price at the end of the mandatory quote period for the day on SEAQ.

[4] Supplemental Notices shall be provided or underwriters and selling group members identified after a Notice has been submitted.

Relevant Parties, in connection with transactions in Relevant SEAQ International Securities outside the United States during distributions of Qualified SEAQ International Securities subject to the following terms, conditions, and limitations:

A. Qualified SEAQ International Securities

1. The security being distributed (''Qualified SEAQ International Security'') must be:

a. ''Qualified German Security,'' as defined in Securities Exchange Act Release No. 33022 (October 6, 1993) (''Release No. 33022'')[5]; or

b. a ''Qualified French Security,'' as defined in Securities Exchange Act Release No. 34176 (June 7, 1994) (''Release No. 34176'');[6] or

c. any other security that qualifies for exemption pursuant to Securities Exchange Act Release No. 33137 (November 3, 1993) (''Release No. 33137'').[7]

2. ''Relevant SEAQ International Security'' means:

a. a Qualified SEAQ International Security; or

b. a security of the same class and series as, or a right to purchase, a Qualified SEAQ International Security.

B. Transactions Effected in the United States

All transactions in Relevant SEAQ International Securities effected in the United States shall comply with Rules 10b–6, 10b–7, and 10b–8.

C. Transactions Effected in United Kingdom

1. All transactions in Relevant SEAQ International Securities during the Covered Period for the Qualified SEAQ International Security that are effected in the United Kingdom shall be conducted in compliance with U.K. law. For purposes of these exemptions, ''Covered Period for the Qualified SEAQ International Security'' means: (i) in the case of a rights distribution, the period commencing when the subscription price is determined and continuing until the completion or abandonment of the distribution in the United States, and (ii) in the case of any other distribution, the period commencing three business days in the principal market for the Qualified SEAQ International Security before the price is determined and continuing until the completion or abandonment of the distribution in the United Startes; *provided, however,* that the Covered Period for the Qualified SEAQ International Security shall not commence with respect to any Relevant Party until such person becomes a distribution participant.

2. All transactions in Relevant SEAQ International Securities during the Covered Period for the Qualified SEAQ International Security effected in the United Kingdom shall be effected on or reported to the Exchange, LIFFE, or SFA.

3. Disclosure of Trading Activities.

a. The inside front cover page of the offering materials used in the offer and sale in the United States of a Qualified SEAQ International Security shall prominently display a statement in substantially the following form, subject to appropriate modification where circumstances require. Such statement shall be in capital letters, printed in bold-face roman type at least as large as ten-point modern type and at least two points leaded:

IN CONNECTION WITH THIS OFFERING, CERTAIN PERSONS MAY ENGAGE IN TRANSACTIONS FOR THEIR OWN ACCOUNTS OR FOR THE ACCOUNTS OF OTHERS IN (IDENTIFY RELEVANT SEAQ INTERNATIONAL SECURITIES) PURSUANT TO EXEMPTIONS FROM RULES 10b–6, 10b–7, and 10b–8 UNDER THE SECURITIES EXCHANGE ACT OF 1934. SEE ''[IDENTIFY SECTION OF OFFERING MATERIALS THAT DESCRIBES THE TRANSACTIONS TO BE EFFECTED].''

b. In addition, there shall be included in the identified section of the offering materials a comprehensive description of the activities that may be undertaken by the Relevant Parties in the Relevant SEAQ International Securities during the distribution.

4. Recordkeeping and Reporting.

a. Each Relevant Party shall provide to the Exchange the information described in paragraph II.C.4.b. below with respect to its transactions in Relevant SEAQ International Securities in the United Kingdom; *provided, however,* that in the case of a distribution made pursuant to rights, such information only is required to be reported to the Exchange during the period or periods commencing at any time during the Covered Period for Qualified SEAQ International Issuers that the rights exercise price does not represent a discount of at least 10 percent from the then current market price of the security underlying the rights and continuing until (a) the end of the Covered Period for Qualified SEAQ International Securities or (b) until the rights exercise price represents a discount of at least 12 percent from the then current market price of the security underlying the rights.[8]

b. When required pursuant to paragraph II.C.4.a. above, the Relevant Parties will provide the following information to the Exchange in a Comma Delimited ASCII (American Standard Code for Information Interchange) format including a common record layout acceptable to the Exchange and the Division, with respect to the Qualified SEAQ International Securities in Relevant SEAQ International Securities:

(i) name of the security, date, time (of execution and reporting, where available to the Relevant Party), price, and volume of each transaction; *provided, however,* that no information regarding a customer transaction need be provided unless such transaction has a value of £200,000, or more (currently $310,000);

(ii) the exchange or inter-dealer quotation system on which the transaction was effected if any;

(iii) an indication whether such transaction was for a proprietary account or the account of a customer, *provided that* any transaction effected by an underwriter for a customer account for which it has exercised discretionary authority shall be reported as a discretionary customer trade; and

(iv) the identity of the counterparty to the transaction.

c. The Exchange and the Relevant Parties shall keep all documents produced or prepared pursuant to paragraph II.C.4.b. for a period of not less than two years.

d. Upon the request of the Division, the Exchange shall transmit the information provided by the Relevant Parties pursuant to paragraph II.C.4.b. above to the Division within 30 days of the request.

e. If the information required to be produced in paragraph II.C.4.b. above is not available from the Exchange upon the request of the Division such information shall be provided by the Relevant Party and be made available to the Division of its office in Washington, D.C. within 30 days of the request. The Division will notify the Exchange that it has received information pursuant to this paragraph, and upon appropriate request, will provide the Exchange the information submitted by the Exchange's member firms or their affiliates.

f. Representatives of a Relevant Party will be made available (in person at the office of the Division or by telephone) to respond to inquiries of the Division relating to its records.

D. General Conditions

1. The lead underwriter or the global coordinator or equivalent person shall promptly, but in any event before the commencement of the Covered Period for the Qualified SEAQ International Security, provide a written notice to the Division and the Independent Entity containing the following information: (i) the name of the issuer and the Qualified SEAQ International Security; (ii) information with respect to the market capitalization and the average daily trading volume of the Qualified SEAQ International Security; (iii) if the notice is for more than one entity, the identity of all underwriters and selling group members relying on these exemptions;[9] and (iv) a statement that the Relevant Parties are aware of the terms and conditions of the exemptions.

2. Where a Notice is required to be provided to the Division pursuant to the exemptions granted in Release No. 33022, Release No. 34176, or Release No. 33137, the lead underwriter or the global coordinator or equivalent person may provide a single Notice, *provided that* the Notice contains the information in paragraph II.D.1.

3. Any person who fails to comply with the conditions of the exemptions, including a failure to provide requested information, would not be permitted to rely on the exemptions in future distributions. Upon a showing of good cause, however, the Commission or the Division may determine that it is not necessary under the circumstances that the exemptions be denied.

[5] 58 FR 53220.

[6] 59 FR 31274.

[7] 58 FR 60324.

[8] For purposes of this exemption, unless stated otherwise, the ''current market price'' for a Qualified SEAQ International Security shall be the closing mid-price at the end of the mandatory quote period for the day on SEAQ International.

[9] Supplemental Notices shall be provided for underwriters and selling group members identified after a Notice has been submitted.

The exemptions for ''passive market making'' granted by the Commission in *Letter regarding Distributions of Certain SEAQ and SEAQ International Securities* (July 12, 1993) shall continue to apply to transactions in securities covered by those exemptions and not qualifying for the exemptions granted herein.

The foregoing exemptions from Rules 10b–6, 10b–7, and 10b–8 are based solely on your representations and the facts presented, and are strictly limited to the application of those rules to the proposed transactions. Any different facts or representations might require a different response. Responsibility for compliance with any other applicable provisions of the federal securities laws must rest with the Relevant Parties. The Division expresses no view with respect to any other questions that the proposed transactions may raise, including, but not limited to, the adequacy of disclosure of any other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Brandon Becker,

Director.

London Stock Exchange

6 January 1995

Mr. Larry Bergmann,
Associate Director, Division of Market Regulation, US Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549, USA

Dear Larry

Distributions of Certain SEAQ and SEAQ International Securities

Introduction

I am writing to request an exemption from rules 10b–6, 10b–7 and 10b–8 under the US Securities Exchange Act of 1934 (''1934 Act'') for distribution of certain SEAQ and SEAQ International securities, in line with the 1993 Policy Statement issued by the Commission (''Commission'').

We seek exemptions for distributions of SEAQ securities that are component securities of FT–SE 100 Index[1] and have a market capitalisation of more than $1 billion (£660 million) and a daily world-wide turnover of $5 million (£3.5 million), and for distributions of certain SEAQ International securities, as discussed more fully below.

We also request that you confirm that distributions of SEAQ and SEAQ International securities which do not meet the requirements of the new exemptions may be made in conformity with the exemption from rules 10b–6 and 10b–7 granted in July 1993 (''1993 exemption'')[2], if the terms of that exemption are met.

[1] The FT–SE 100 consists of the 100 largest UK companies which have securities traded on the Domestic Equity Market.

[2] The 1993 exemption allows London Stock Exchange member firms who are Distribution Participants and Affiliated Purchasers (as defined in that exemption) to engage in passive market making activities during distributions of certain SEAQ and SEAQ International securities. That exemption was granted under rules 10b–6 and 10b–7 for multi-national distributions of a security with a US tranche quoted on:

1. SEAQ (a) with a normal market size of 5,000 shares or greater or (b) that did not meet this condition but are agreed on by the Division and the Exchange as eligible securities; or

2. SEAQ International (a) that qualifies as a firm quote security and (b) with an average daily trading volume during any 20 consecutive business day period within 60 consecutive calendar days prior to the commencement of the cooling-off period that equals or exceeds the equivalent of $250,000 (£166,000) as calculated from transactions reported to the Exchange as a foreign financial regulatory authority (''FFRA''), as that term is defined in section 3(a)(51) of the 1934 Act that publishes trade volume information.

The London Stock Exchange

The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited, which trades as the London Stock Exchange (''Exchange''), is an organised stock exchange and regulatory organisation of long standing in the United Kingdom. The offices, facilities and operations of the Exchange are located in London, England with branches in various British centres and Dublin, Ireland. The Exchange is subject to UK law and is not registered under the 1934 Act in any capacity. The Exchange is recognised by the UK Securities and Investments Board (''SIB'') as a Recognised Investment Exchange (''RIE'') under the Financial Services Act of 1986 (''FSA'').

The Exchange Markets.

The Exchange operates and regulates four markets.

1. Domestic Equity Market. Ordinary shares in UK and Irish companies are traded on the Domestic Equity Market. Over recent years, an average of 33,000 transactions have taken place every day, yielding a daily turnover of £1.6 billion.

The Stock Exchange Automated Quotation system (''SEAQ'') is the screen based competitive market making system for Domestic Equity Market securities that are designated by the Exchange for inclusion in SEAQ. A Domestic Equity Market security includes: ordinary shares which are issued by companies which are incorporated in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland (''the British Isles'') and which are listed on the Exchange or trade on the Unlisted Securities Market (''USM''); depositary receipts for, stock convertible into or warrants to subscribe for such ordinary shares (subject to such convertible stock or warrants themselves being listed or designated by the Exchange); and such other securities which the Exchange permits to be traded on the Domestic Equity Market.

A SEAQ security is a Domestic Equity Market security for which a minimum of two market makers, each of whom is obliged to display two-way prices on SEAQ during the mandatory quote period and for which it is possible to calculate a normal market size. Approximately 2,000 securities are traded through SEAQ.

2. International Equity Market. This market is the largest market in the world for trading securities of foreign companies. Over recent years, an average of 8,636 transactions have taken place each day, while annual turnover has reached £579 billion. This market is divided into 20 country sectors and the developing markets sector. Trading in the International Equity Market can take place 24 hours a day; currently, quotations may only be input to SEAQ International between 7.00 and 20.00 UK time.

The Stock Exchange Automated Quotation International system (''SEAQ International'') is the screen based competitive market making system used to support trading International Equity Market securities. An International Equity Market security includes: any equity security of a company which is incorporated in or has its principal office in, a country outside the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland and which is listed by or quoted under the rules of an approved organisation;[1] a depositary receipt for such a security; or any other security which the Exchange decides may be traded on the International Equity Market. A SEAQ International security is an International Equity Market Security for which a price is quoted on SEAQ International or a price on enquiry security.

3. Gilt-Edged and Sterling Bond Market. This is the market for trading gilt-edged securities and fixed income securities (Sterling-denominated corporate debt). In recent years, average daily turnover in gilt-edged securities has reached £6.3 billion, and in fixed interest securities has reached £4.3 billion.

4. Traditional Options Market. On this market, member firms effect transactions in traditional options in securities which are listed on the Exchange or are traded on the USM, in fixed interest securities which are not gilt-edged securities or in International Equity Market securities.

Exchange Market Making Obligations

The rules of the Exchange are designed, *inter alia,* to ensure that there is at all times a competitive and liquid market for securities listed on the Exchange and authorised for quotation on SEAQ or SEAQ International.

A firm that wishes to make a market on SEAQ or SEAQ International must be a member of the Exchange (rules 2.4, 3.3 and 4.3). Rule 4.5 obliges a market maker in a SEAQ security to display on SEAQ during the mandatory quote period firm two-way prices in not less than the minimum quote size and, subject to certain exceptions, to actively offer to buy from and sell to an enquiring member firm at the price and in the up to the size in a security displayed by it on SEAQ. Rule 3.6 requires a market maker in a SEAQ International security designated as a firm quote security, during the mandatory quote period, to display on SEAQ International two-way prices in not less than the minimum quote size and to actively offer to buy and sell at its displayed size and price upon enquiry from another Exchange member firm or a counterparty.

Certain adverse consequences may result when a member firm ceases to act as a market maker in a security. A market maker that withdraws its quotation from SEAQ or SEAQ

[1] An approved organization is an association or exchange which meets criteria agreed between the SIB and the Exchange and is included in a list published by the Exchange.

International in a security without the prior consent of the Exchange may have its registration as a market maker in such security terminated. A market maker that has withdrawn its quote on SEAQ International shall not, without the prior consent of the Exchange, re-enter quotations for that security during the day it was withdrawn unless the withdrawal arose by a failure of its market maker computer system (rule 3.10). A market maker shall obtain Exchange consent before withdrawing or re-entering its quotation in a SEAQ security during the mandatory quote period, and where withdrawal of a quotation was caused by the failure of a market maker computer system, the market maker shall re-enter its quotation as soon as it is able to do so (rule 4.17(b)).

A member firm may not resume market making on SEAQ or SEAQ International in a security in which its registration has been terminated without the prior consent of the Exchange. A market maker may have its registration in a security withdrawn by the Exchange where it has so requested (and where it has met any Exchange requirements in connection with such withdrawal) or where the Exchange has so ordered. A market maker cannot re-register in a security within three months of a prior de-registration in respect of the same security.

These rules are designed to inhibit ''fair weather market making'' by effectively preventing a member firm from resuming market making activities in a security for a period of three months after the member firm ceases to make a market in that security.

Trading characteristics of SEAQ and SEAQ International Securities

Securities listed on the Exchange and quoted on SEAQ are categorized according to a system based on normal market size (''NMS''). The NMS classification for SEAQ securities is determined by the following formula.

$$\text{NMS} = \frac{\text{value of customer turnover in prior 12 months (£)}}{\text{closing mid-price on last day of quarter} \times 10{,}000}$$

The Exchange uses fourteen NMS categories that range from 100 shares, the lowest NMS category, to 200,000 shares, the highest NMS category. The NMS classifications of SEAQ securities are reviewed quarterly.

Securities listed on the Exchange generally trade at lower prices per share than comparable United States (''US) securities. The share prices of many of the most highly capitalized companies in the United Kingdom are less than the equivalent of $5.00 per share.

Securities quoted on SEAQ International are categorised as either firm quote or indicative securities (and this includes price on enquiry securities).

Firm quote securities are generally the leading internationally traded equity securities listed on the major stock exchanges throughout the world. All other securities are indicative securities. The price per share of securities quoted on SEAQ International ranges from approximately $1 to $1,000 due to differences in market customs in the countries of these issuers. Normally, at least three member firms are required to register as market makers in a SEAQ International security before it can be designated as a firm quote security. However, there is discretion to permit a security to achieve firm quote status where only one or two member firms are registered to make markets in the security and wish to make firm quotes. A minimum quote size will be set for the security and, in general, each market maker will be committed to deal at the price and size it displays on the screen. The display of these securities is normally arranged on the basis of their country of origin giving rise to the geographic sectors on SEAQ International.

Market users are kept informed of any significant issues affecting the operation of the market by the transmission of market status messages which are transmitted via the same mechanism used to distribute market maker prices to quote vendors.

Member firms which register to make markets in indicative quote securities input indicative quotations without a minimum quote size to SEAQ International during the relevant mandatory quote period. If the market maker receives an enquiry from a member firm or counterparty, it is obliged to quote a firm two-way price in the security which must be based on the quotation displayed on SEAQ International. As a result, it is implicit that market makers in indicative quote securities must actively maintain and update the quote such that they are representative of the current market value.

At least one member firm is required to register as a market maker before a security can be admitted to this category. Where a minimum of two market makers are registered in a security, the competing quotations for that security are gathered together on one display page but the price and size in each quotation will be indicative rather than firm.

As with firm quote securities, indicative securities are normally displayed according to their country of origin.

Price on enquiry securities are securities in respect of which no price and size quotation is displayed. A member firm registers as a market maker and only the name of the firm, the security and contact number are disseminated to the market. The market maker is obliged, however, to quote a firm two-way price when receiving an enquiry from another member firm or counterparty.

Exchange Trade Reporting and Surveillance

As in RIE, the Exchange is the principal agency for receiving trade reports and transaction reports by its member firms for investment business.

The Exchange requires its member firms to trade report specific details of every transaction effected on the Domestic Equity Market (rule 4.50). Rule 4.53 generally requires trade reporting to the Exchange to take place within three minutes of the execution of a transaction in a SEAQ security. This is followed by transaction reporting to Checking which matches reports from firms.

A member firm is required to report to the Exchange every transaction to which it is a party in an international Equity Market security on the International Equity Market. Rule 3.22 imposes time deadlines for transaction reporting.

Transaction surveillance is effected by interrogating date received via the Checking and SEQUAL services under Exchange rules. Routine surveillance takes place to ensure that the member firms have complied with the dealing and reporting rules governing activity on SEAQ and SEAQ International.

Member firms must comply with rule 2.9, which prohibits any act, conduct or practice which, *inter alia,* creates a false or misleading impression as to the price or value of any security and which may induce another person to enter into or refrain from entering into any transaction. A market maker in a security that is a component with an index shall not changes its displayed quotation in that security with the sole intention of moving the index value (rule 2.10). The Exchange may bring disciplinary proceedings against member firms which have, *inter alia,* failed to comply with a direction of the Exchange having binding effect, or have engaged in conduct detrimental to the interests of the Exchange (rule 14.11).

Member firms also must comply with the FSA, including section 47(2) thereunder, which provides:

Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any investments is guilty of an offense if he does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those investments.

Bringing Securities to the Market

There are three main methods of flotation which are presently used in the UK for Domestic Equity Market securities. (Other techniques may be used for offers of International Equity Market securities.)

1. Offers for Sale. Shares are offered by a company's sponsor to the public, inviting subscriptions both from institutional investors and private individuals. The shares made available may be new shares being issued for cash or existing shares held by

current shareholders. Normally, the offer is underwritten, e.g., the sponsor undertakes to ensure that all the shares are taken up even if the offer is under-subscribed, so that the company receives all the money that it is seeking to raise. In order to pool the risks involved, the broker to the issue makes sub-underwriting arrangements, mainly with institutional investors.

Offers for sale normally take place at a fixed price per share. As with a placing, the price is set immediately before the offer period following discussions between the company and its financial advisers.

Less common are offers for sale by way of tender. In a tender offer, shares are offered and underwritten at a minimum price. Applicants may subscribe at any price at or above this level, and a ''striking price'' for all investors is determined on the basis of applications submitted. In theory, tender offers provide a basis for a more accurate market valuation of a company's shares, maximising proceeds for the company. In practice this has not always been the case, and the uncertainty and complexity can discourage private investors. Tender offers have been used where there is no comparable company already listed to use as a benchmark to determine the company's value. If the issue is small and a large over-subscription is expected, the tender offer may be used as the risk of failure may be considered minimal.

2. Placings. In a placing, new shares or shares of existing shareholders are offered to the public selectively. A company's sponsor or broker sells the shares to its own client base, typically investing institutions and private clients, finding purchasers with whom the shares are then placed.

The Exchange will permit the entire issue to be placed in the case of an initial public offer of £ 15 million or less. Above this monetary limit, which applies both to the Official List and the USM, different arrangements may apply depending on the amount of money to be raised. The Exchange's rules for placings afford issuers the maximum freedom in selecting how they raise capital, while ensuring a fair distribution of shares and an appropriate level of liquidity on the secondary market.

Placings which are particularly geared to smaller companies, are the most frequently used method of making an initial public offer. Compared to an offer for sale, a placing is typically a relatively low-key operation, with less publicity and no widespread advertising. Cost may be considerably lower than for an offer for sale but the resulting shareholder spread is more limited.

3. Introductions. Where a company's shares are already widely held and the proportion in public hands satisfies the Exchange's requirements (25% for listing; 10% for the USM), their shares may be ''introduced'' to the market. In an introduction, no money is raised. The Exchange does not normally permit an introduction if a company has offered securities within the six months prior to it coming to the market, or if there is an intention by shareholders to dispose of shares at the time of flotation.

Further issues of Securities

A company may return to the market following flotation to raise further funds.

Where a cash offer of equity securities is made, the UK Companies Act 1985 gives shareholders the right to subscribe for new shares in proportion to their existing shareholding (''rights issue'').

Rights issues are the most common form of further equity issue. In order to avoid dilution of shareholdings, shares are offered to existing shareholders in proportion to their shareholdings. To attract subscribers, rights issues usually take place at a discount to the prevailing market price. Underwriting is normally prudent to ensure that the issuer receives the funds required, unless the shares are offered at such a substantial discount that shareholders are almost certain to take up their rights. In order to give shareholders adequate opportunity to consider the terms of the issue and to take up their rights, the offer period must remain open for at least three weeks. The pre-emption right may be waived (to an extent) by a special resolution at the company's annual general meeting or at an extraordinary general meeting.

In the light of the costs and timetable involved, a company can opt to place new shares with institutions provided that the size of issue is within the terms agreed at the company's general meeting and is not issued at more than a 10% discount to the share price. A further issue of shares by way of a placing is not subject to the Exchange's limits on new issue placings.

Shares may be issued as consideration for the acquisition of a business or assets in cases where the vendor is ready to accept them instead of cash. This is more likely to be the case for quoted rather than unquoted shares, since quoted shares are marketable, and therefore normally more acceptable as a form of corporate currency.

An alternative is a vendor placing, which involves the issue of shares to the vendor together with arrangements being made on their behalf to sell some or all of the shares by placing them immediately with institutions so that the vendor receives cash. Such an arrangement does not fall within statutory pre-emption requirements, though shareholders may expect their directors to arrange for a ''clawback'' from the place in the case of an issue that was large in relation to the issued share capital.

The New Exemptions for Distributions of Certain SEAQ and SEAQ International Securities

The Exchange seeks exemptions from rules 10b–6, 10b–7 and 10b–8 for distribution participants and their affiliated purchasers (as defined in rule 10b–6(c)(b)(i) and (ii)) (''relevant parties''), in connection with transactions effected during distributions of certain SEAQ and SEAQ International securities:

A. *United Kingdom securities.*

1. *Securities.*

1.1 The security being distributed (''qualified UK security'') must:—

(a) be issued by (i) a foreign private issuer as that term is defined in rule 3b-4 under the 1934 Act, which issuer (''UK issuer'') is incorporated in the British Isles and has outstanding a component security of the FT—SE 100[1] or (ii) a subsidiary of a UK issuer described in paragraph A1.1(a)(i); and

(b) satisfy one of the following:

(1) be an equity security of a UK issuer which security has an aggregate market capitalisation equal to or greater than $1 billion (£660 million) and a world-wide average daily trading volume that equals or exceeds $5 million (£3.5 million) as published by FFRAs and any U.S. securities exchanges or automated inter-dealer quotation systems, during a period that is 20 consecutive business days in London within 60 consecutive calendar days prior to the commencement of the covered period for UK issuers (''reference period for UK issuers''); or

(2) be a security that is convertible into, exchangeable for or a right to acquire a security of a UK issuer as described in paragraph A1.1(b)(1).

1.2 A ''relevant UK security'' is a qualified UK security, a security of the same class and series as the qualified UK security or a right to purchase the qualified UK security.

2. *Transactions effected in the United States.*

2.1 Transactions in relevant UK securities effected in the United States shall comply with rules 10b-6, 10b–7 and 10b–8, unless otherwise excepted or exempted from the operation of these rules.

3. Transactions effected in the UK.

3.1 Transactions in relevant UK securities during the covered period for the qualified UK security that are effected in the UK shall be conducted in compliance with UK law. For the purposes of this exemption, the term ''covered period for the qualified UK security'' means: (i) in the case of a rights issue, the period commencing when the subscription price is determined and continuing until the completion or abandonment of the distribution in the United States; and (ii) in the case of any other distribution, the period commencing three business days in London before the price is determined and continuing until the completion or abandonment of the distribution in the United States; *provided,* that the covered period for the qualified UK security shall not start with respect to any relevant party until such person becomes a distribution participant.

3.2 All transactions in relevant UK securities during the covered period for the qualified UK security effected in the UK shall be effected on or reported to the Exchange, the London International Financial Futures and Options Exchange Limited (''LIFFE'') or the Securities and Futures Authority Limited (''SFA'').

3.3 *Disclosure of trading activities.*

(a) The inside front cover page of the offering materials used in the offer and sale

[1] References to the FT–SE 100 refer to the composition of the index on the date of this letter. Any security added to the FT–SE 100 after the date of this letter will be treated as a UK security if its issuer satisfies the criteria in paragraph A1.1(a) and the security satisfies the requirements in paragraph A1.1(b)(1). Any security which ceases to be a component security of the index or otherwise meet the eligibility requirements in paragraph A1.1(b)(1) shall cease to be eligible for this exemption.

in the United States of a qualified UK security shall prominently display a statement in substantially the following form, subject to appropriate modification where circumstances require. Such statement shall be in capital letters, printed in bold-face roman type at least as large as ten-point modern type and at least two points leaded: IN CONNECTION WITH THIS OFFERING, CERTAIN PERSONS MAY ENGAGE IN TRANSACTIONS FOR THEIR OWN ACCOUNTS OR FOR THE ACCOUNT OF OTHERS IN [IDENTIFY RELEVANT UK SECURITIES] PURSUANT TO EXEMPTIONS FROM RULES 10b–6, 10b–7 and 10b-8 UNDER THE SECURITIES EXCHANGE ACT OF 1934. SEE ''[IDENTIFY SECTION OF OFFERING MATERIALS THAT DESCRIBES THE TRANSACTIONS TO BE EFFECTED]''

(b) There shall be included in the identified section of the offering materials a comprehensive description of the activities that may be undertaken by the relevant parties in the relevant UK securities during the distribution.

4. *Record-keeping and reporting*

4.1 Each relevant party shall provide to the Exchange the information required in paragraph A4.2 with respect to its transactions in relevant UK securities in the UK: *provided,* that in the case of a rights issue, information is only required to be reported to the Exchange during the period or periods commencing at any time the covered period for the qualified UK security that the rights exercise price does not represent a discount of at least 10 per cent from the then current market price of the security underlying the rights and continuing until (i) the end of the covered period for the qualified UK security or (ii) until the rights exercise price represents a discount of at least 12 per cent from the then current market price of the security underlying the rights.[1]

4.2 When required pursuant to paragraph A4.1, the relevant parties will provide the following information to the Exchange in a Comma Delimited ASCII (American Standard Code for Information Interchange) format including a common record layout acceptable to the Exchange and the Division, with respect to transactions during the covered period in relevant UK securities during the covered period for the qualified UK security:

(a) the name of the security, date, time (of execution and also trade reported or transaction reported, as the case may be, where available to the relevant party), price and volume of each transaction: *provided,* that no information regarding a customer transaction shall be provided unless the transaction has a value of £200,000 (currently $31,000) or more:

(b) the exchange or inter-dealer quotation system on which the transaction was effected (if any);

(c) an indication whether the transaction was for a proprietary account or the account of a customer: *provided,* that a transaction effected by a relevant party for a customer account for which it has exercised discretionary authority shall be reported as a Discretionary Customer Trade; and

(d) the identity of the counterparty to the transaction.

4.3 The Exchange and the relevant parties shall keep all documents produced or prepared pursuant to paragraph A4.2 for a period of not less than two years.

4.4 Upon the request of the Division, the Exchange shall transmit the information provided by the relevant parties pursuant to paragraph A4.2 within 30 days to the Division.

4.5 If the information required to be produced pursuant to paragraph A4.2 is not available from the Exchange, the relevant parties shall upon request provide this information to the Division (at its offices in Washington DC) within 30 days, with respect to their own reportable transaction. The Division will notify the Exchange that it has received information pursuant to this paragraph and upon request will provide the Exchange the information submitted by the Exchange's member firms or their affiliates.

4.6 Representatives of a relevant party shall be available to respond to inquiries of the Exchange or the Division (in person at the offices of the Division or by telephone) relating to its records.

5. *Transaction effected in significant markets*

5.1 All transactions in relevant UK securities in a significant market shall be effected in accordance with rules 10b–6, 10b–7 and 10b–8, or other available exemptions. For purposes of this exemption, the term ''significant market'' means any securities market in a country other than the United States or the British Isles to which a UK issuer has applied for listing or obtaining a quotation for the qualified UK security and been accepted, if during the reference period for the qualified UK security the volume in such qualified UK security, as published by the relevant FFRA in such securities market, is 10 per cent or more of the aggregate world-wide trading volume in that security as published by all FFRAs in such significant markets, in the British Isles and the US securities markets.

6. *General conditions*

6.1 For purposes of these exemptions, a two business day cooling-off period shall apply under rule 10b–6(a)(4)(xi) and (xii) in the United States. Each significant market shall be subject to the exemptive relief then available in such market, if any, or the record maintenance and record production requirement in *Letter regarding Application of Cooling-off Periods Under Rules 10b–6 to Distributions of Foreign Securities* (April 4, 1994).

6.2 The lead underwriter, global co-ordinator or equivalent person shall promptly but in any event before the commencement of the covered period for the qualified UK securities and within such time limitations as are prescribed by the Exchange, provide written notice (''Notice'') to the Exchange and the Division containing the following information:

(a) the name of the issuer and the qualified UK security;

(b) whether the qualified UK security is FT–SE 100 component security or information about the market capitalisation and the world-wide average daily trading volume of the qualified UK security to be distributed;

(c) the identity of the significant market where the qualified UK security trades;

(d) if the Notice is for more than one entity, the identity of all underwriters and selling group members relying on these exemptions;[1] and

B. Certain SEAQ International securities.

1. *Securities*

1.1 The security being distributed (''qualified SEAQ International security'') must be:

(a) a ''qualified German security'' as defined in Securities Exchange Act Release No 33022 (6 October 1993);

(b) a ''qualified French security'' as defined in Securities Exchange Act Release No 34176 (7 June 1994); or

(c) a security that qualifies for exemption pursuant to Securities Exchange Act Release No 33137 (3 November 1993).

1.2 A ''relevant SEAQ international security'' is a qualified SEAQ International security or a security of the same class and series as or a right to purchase the qualified SEAQ International security.

2. *Transaction effected in the United States.*

2.1.Transaction in relevant SEAQ International securities effected in the United States shall comply with rules 10b–6, 10b–7 and 10b–8, [unless otherwise excepted or exempted from the operation of these rules.]

3. *Transactions effected in the UK.*

3.1 Transactions in relevant SEAQ International securities during the covered period for the qualified SEAQ International security in the principal market effected in the UK shall be conducted in compliance with UK law. For the purposes of this exemption, the term ''covered period for the qualified SEAQ International security'' means; (i) in the case of a rights issue, the period commencing when the subscription price is determined and continuing until the completion or abandonment of the distribution in the United States; and (ii) in the case of any other distribution, the period commencing three business days in the principal market before the price is determined and continuing until the completion or abandonment of the distribution in the United States: *provided,* that the covered period for the qualified SEAQ International security shall not start with respect to any relevant party until such person becomes a distribution participant.

3.2 All transactions in relevant SEAQ International securities during the covered period for the qualified SEAQ International security effected in the UK shall be effected on or reported to the Exchange, LIFFE or SFA.

3.3 *Disclosure of trading activities.*

(a) The inside cover page of the offering materials used in the offer and sale in the United States of a qualified SEAQ International security shall prominently

[1] For the purposes of this exemption, unless stated otherwise, the current market price for a qualified UK security shall be the closing mid-price at the end of the mandatory quote period for the day on SEAQ.

[1] Supplemental Notices shall be made for underwriters and selling group members identified after a Notice has been filed.

display a statement in substantially the following form, subject to appropriate modification where circumstances require. Such statement shall be in capital letters, printed in bold-face roman type at least as large as ten-point modern type and at least two points leaded

IN CONNECTION WITH THIS OFFERING, CERTAIN PERSONS MAY ENGAGE IN TRANSACTIONS FOR THEIR OWN ACCOUNTS OR FOR THE ACCOUNTS OF OTHERS IN [IDENTIFY RELEVANT SEAQ INTERNATIONAL SECURITIES] PURSUANT TO EXEMPTIONS FROM RULES 10b–6, 10b–7 and 10b–8 UNDER THE SECURITIES EXCHANGE ACT OF 1934. SEE ''[IDENTIFY SECTION OF OFFERING MATERIALS THAT DESCRIBES THE TRANSACTIONS TO BE EFFECTED].''

(b) There shall be included in the identified section of the offering materials a comprehensive description of the activities that may be undertaken by the relevant parties in the relevant SEAQ International securities during the distribution.

4. *Record-keeping and reporting.*

4.1 Each relevant party shall provide to the Exchange the information required in paragraph B4.2 with respect to its transactions in relevant SEAQ International securities in the UK: *provided*, that in the case of a rights issue, information is only required to be reported to the Exchange during the period or periods commencing at any time during the covered period for the qualified SEAQ International security that the rights exercise price does not represent a discount of a least 10 per cent from the then current market price of the security underlying the rights and continuing until (i) the end of the covered period for the qualified SEAQ International security or (ii) until the rights exercise price represents a discount of a least 12 percent from the then current market price of the security underlying the rights.[1]

4.2 When required pursuant to paragraph B4.1, the relevant parties will provide the following information to the Exchange in a Comma Delimited ASCII (American Standard Code for Information Interchange) format including a common record layout acceptable to the Exchange and the Division, with respect to transactions during the covered period for qualified SEAQ International securities during the reference period in qualified SEAQ International securities:

(a) the name of the security, date, time (of execution and also trade reported or transaction reported, as the case may be, where available to the relevant party), price and volume of each transaction: *provided*, that no information regarding a customer transaction shall be provided unless the transaction has a value of $200,000 (currently $310,000) or more;

(b) the exchange or inter-dealer quotation system on which the transaction was effected;

(c) an indication whether the transaction was for a proprietary account or the account of a customer: *provided*, that a transaction effected by a relevant party for a customer account for which it has exercised discretionary authority shall be reported as a Discretionary Customer Trade; and

(d) the identity of a counterparty to the transaction.

4.3 The Exchange and the relevant parties shall keep all documents produced or prepared pursuant to paragraph B4.2 for a period of not less than two years.

4.4 Upon request, the Exchange will transmit the information provided by relevant parties pursuant to paragraph B4.2 within 30 days to the Division.

4.5 If the information required to be produced pursuant to paragraph B4.2 is not available from the Exchange, the relevant parties will upon request provide this information to the Division (at its offices in Washington DC) within 30 days, with respect to their own reportable transaction. The Division will notify the Exchange that it has received information pursuant to this paragraph and upon request will provide the Exchange the information submitted by the Exchange's member firms or their affiliates.

4.6 Representatives of a relevant party will be made available to respond to inquiries of the Exchange or the Division (in person at the offices of the Division or by telephone) relating to its records.

5. *General conditions.*

5.1 The lead underwriter, the global co-ordinator or equivalent person shall promptly, but in any event before the commencement of the covered period for the qualified SEAQ International security, provide a written notice to the Division and the Exchange containing the following information: (i) the name of the issuer and the qualified SEAQ International security; (ii) information with respect to the market capitalization and the average daily trading volume of the qualified SEAQ International security; (iii) if the notice is for more than one entity, the identity of all underwriters and selling group members relying on these exemptions; and (iv) a statement that the relevant parties are aware of the terms and conditions of the exemptions.

5.2 Where a Notice is required to be given pursuant to an exemption named in paragraph B1.1, the lead underwriter, the global manager or equivalent person may provide a single Notice: *provided*, that the Notice contains the information required by paragraph B5.1.

Conclusion

This request for an exemption relates to distributions of those SEAQ or SEAQ International securities which meet the specified requirement statement above. A distribution of a SEAQ or SEAQ International security which is subject to rules 10b–6, 10b–7 or 10b–8 and does not meet the terms of the new exemption, may be made subject to the 1993 exemption. A distribution of any SEAQ or SEAQ International security subject to rules 10b–6, 10b–7 and 10b–8 and falling outside this exemption, the 1993 exemption or any other exemption in force would require a specific grant of relief.

If you have any questions, please do not hesitate to call me or, in my absence, Mark Berman of our Legal department (071 707 3512).

Yours sincerely.

Dan Sheridan,

Head of Market Supervision.

[FR Doc. 95–1716 Filed 1–23–95; 8:45 am]

BILLING CODE 8010–01–P

[1] For the purposes of this exemption, unless stated otherwise, the current market price for a qualified SEAQ International security shall be the closing mid-price at the end of the mandatory quote period for the day on SEAQ International.

[Release No. 34–35233 File No. SR–CHX–94–22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Stock Exchange, Inc. Relating to Exclusive Issues

January 18, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on November 10, 1994, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change and on January 4, and 9, 1995, filed Amendment Nos. 1 and 2, respectively, to the proposed rule change,[1] as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Stock Exchange, Incorporated, pursuant to Rule 19b–4 promulgated under the Securities Exchange Act of 1934, as amended, submits a proposed rule change relating to exclusive issue rules (Article XXX, Rule 23).

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.

[1] See letters from David Rusoff, Foley & Lardner, to Amy Bilbija, SEC, dated December 29, 1994; and to Glen Barrentine, SEC, dated January 5, 1995. Amendment Nos. 1 and 2 made non-substantive changes to the proposal.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change is to impose additional requirements and prohibitions on specialists, and others, when the Exchange is the primary market in a particular issue (''exclusive issue''). The rule proposal is designed to prohibit specialist units registered in an exclusive issue from engaging in business transactions [2] with the issuer.[3] It is also intended to promote fair dealings in exclusive issues by prohibiting certain types of transactions [4] without first securing the approval of floor officials. Furthermore, the proposal makes the ''equalizing'' exemption in paragraph (e)(5) of SEC Rule 10a–1 unavailable for specialists and market makers when selling short an exclusive issue.[5] Finally, the proposal includes a definition of an exclusive issue.[6] The CHX specialists are provided a statistical report on a monthly basis containing data regarding trade and share volume of each issue by exchange. Thus, a specialist will be aware—by reviewing the monthly report—if exclusive issue obligations have been triggered and will be responsible for conducting his business accordingly.[7]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a 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

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–94–22 and should be submitted by February 14, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–1685 Filed 1–23–95; 8:45 am]

BILLING CODE 8010–01–M

[2] The term ''business transaction'' is intended to be interpreted broadly to include, for example: Loans, purchase of assets from the issuer, and acquisition of any beneficial ownership of shares of such issuer.

[3] In addition to the specialist unit, the proposed rule extends to any co-specialist or other associated person, officer, director, partner or employee of a specialist unit registered in the exclusive issue.

[4] The specific types of transactions are listed in CHX proposed Rule 23(b)(2), and include transactions such as a purchase at a price above the last sale in the same session and a proposed transaction involving a price movement of ½ point or more.

[5] 17 CFR § 240.10a–1(e)(5). Rule 10a–1 generally prohibits persons from effecting a short sale of a registered security (a) below the price of the last sale, or (b) at such price if it is lower than the last sale at a different price. the exception provided for in paragraph (e)(5) permits registered specialists or registered exchange market makers (or a third market maker for its own account over-the-counter) to effect, for their own account, a sale (a) at a price equal to or above the last sale, or (b) at a price equal to the most recent offer communicated for the security by such registered person if such offer, when communicated, was equal to or above the last sale. In addition, the Rule expressly provides that an exchange may prohibit its registered specialists and market markers from availing themselves of the exemption if the exchange determines that such action is necessary or appropriate in its market, in the public interest, or for the protection of investors.

[6] An ''exclusive'' issue is defined in the proposed rule as the stock of any company traded on the Exchange not otherwise traded on the New York or American Stock Exchanges or NASDAQ/NMS, and, where there exists another market for such issue, the Exchange has executed 25% or more of the transactions in the issue during the three previous months.

[7] Conversation between Amy Bilbija, SEC, David Rusoff, Foley & Lardner, and Dan Liberti, CHX, on January 13, 1995.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2760]

California; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 10, 1995, and amendments thereto on January 12, 13, and 16, I find that the following counties in the State of California constitute a disaster area as a result of damages caused by flooding beginning on January 3, 1995 and continuing: Alameda, Amador, Butte, Colusa, Contra Costa, Del Norte, Glenn, Humboldt, Kern, Lake, Lassen, Los Angeles, Marin, Mendocino, Modoc, Monterey, Napa, Nevada, Orange, Placer, Plumas, Riverside, Sacramento, San Bernardino, San Diego, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sonoma, Sutter, Tehama, Trinity, Ventura, Yolo, and Yuba. Applications for loans for physical damage may be filed until the close of business on March 13, 1995, and for loans for economic injury until the close of business on October 10, 1995, at the address listed below:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Alpine, Calaveras, El Dorado, Fresno, Imperial, Inyo, Kings, Merced, San Benito, San Francisco, San Joaquin, Sierra, Siskiyou, Solano, Stanislaus, and Tulare Counties in California; Curry, Josephine, Klamath, and Lake Counties in Oregon; Clark and Washoe Counties in Nevada; and LaPaz and Mohave Counties in Arizona.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 276006. For economic injury the numbers are 842600 for California; 842700 for Oregon; 842800 for Nevada; and 844000 for Arizona.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 18, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–1746 Filed 1–23–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Economic Injury Disaster Loan Area #8424]

California; Declaration of Disaster Loan Area

Humboldt County and the contiguous counties of Del Norte, Mendocino, Siskiyou, and Trinity in the State of California constitute an economic injury disaster loan area due to damages caused by a fire which occured on November 7, 1994 in the City of Garberville. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on October 17, 1995 at the address listed below:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795

or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: January 17, 1995.

Cassandra M. Pulley,

Acting Administrator.

[FR Doc. 95–1703 Filed 1–23–95; 8:45 am]

BILLING CODE 8025-01–M

[Declaration of Disaster Loan Area #2759]

Florida; Declaration of Disaster Loan Area

Marion County and the contiguous counties of Alachua, Citrus, Lake, Levy, Putman, Sumter, and Volusia in the State of Florida constitute a disaster area as a result of damages caused by tornadoes which occurred on January 7, 1995. Applications for loans for physical damage may be filed until the close of business on March 20, 1995 and for economic injury until the close of business on October 17, 1995 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 275912 and for economic injury the number is 8425.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 17, 1995.

Cassandra M. Pulley,

Acting Administrator.

[FR Doc. 95–1743 Filed 1–23–95; 8:45 am]

BILLING CODE 8025–01–M

[License No. 01/01–0362]

Fleet Equity Partners VI, L.P.; Notice of Issuance of a Small Business Investment Company License

On November 25, 1994, a notice was published in the **Federal Register** (59 FR 60677) stating that an application had been filed by Fleet Equity Partners VI, L.P. of Providence, Rhode Island, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business on December 24, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01–0362 on January 11, 1995, to Fleet Equity Partners VI, L.P. to operate as a small business investment company.

The Licensee will be owned by Fleet Growth Resources II, Inc. (97.5%), Silverado IV Corp. (1.3%), and by certain employees of Fleet Financial Group. Fleet Growth Resources II, Inc. is a wholly-owned subsidiary of Fleet Private Equity Co., which is in turn a wholly-owned subsidiary of Fleet Financial Group. The Licensee will begin operations with $10.0 million of private capital.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 12, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–1671 Filed 1–23–95; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99000144]

North Dakota Small Business Investment Co.; Notice of Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102) (1994)) by North Dakota Small Business Investment Company, 502 First Avenue North, P.O. Box 1389, Fargo, North Dakota 58107, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (15 U.S.C. *et seq.*), and the Rules and Regulations promulgated thereunder. North Dakota Small Business Investment Company is a limited partnership formed under North Dakota

law. Its principal office address listed above shall be replaced when the partnership establishes its permanent office in an appropriate city in North Dakota. The applicant will be managed by its General Partner, InvestAmerica ND, L.L.C., a Delaware limited liability company located at the same address as the applicant. David R. Schroder, Robert A. Comey, Kevin F. Mullane, and Steven J. Massey are the owners of the General Partner. No individual or entity owns more than 10 percent of the proposed SBIC.

The applicant will begin operations with capitalization in excess of $5 million and will be a source of equity financings for qualified small business concerns. The applicant will focus its North Dakota Office on North Dakota and contiguous state investments. It may also co-invest with other investment firms in businesses outside of North Dakota.

Mattrs involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Fargo, North Dakota.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: January 19, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–1702 Filed 1–23–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

DATES: January 17, 1995.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, IRM Strategies Division, M–32, Office of the Secretary of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on January 17, 1995:

DOT No: 4024.

OMB No: 2115–0012.

Administration: U.S. Coast Guard.

Title: Application for Appointment as a Cadet, USCG.

Need for Information: Title 14 USC 211(a)1 authorizes the appointment of permanent commissioned officers in the Regular Coast Guard from the Coast Guard Academy.

Proposed Use of Information: This information will be used by the Coast Guard Academy to screen and review applicant's qualifications to determine eligibility.

Frequency: One time.

Burden Estimate: 8,600 hours.

Respondents: Men and women between the ages of 17 and 22.

Form(s): CG–4151, CGAD–618A, CGAD–635, CGAD–634A, CGAD–634B, and CGAD–618B

Average Burden Hours Per Response: 15 minutes reporting.

DOT No: 4025.

OMB No: 2115–0518.

Administration: U.S. Coast Guard.

Title: Requirements for the Installation and Use of Oil Discharge Monitoring Equipment on Tank Vessels.

Need for Information: Title 46 USC 3703 gives the Coast Guard the authority to regulate the design, repair and equipping of tank vessels, including machinery and appliances used in the handling and stowage of oil cargoes.

Proposed Use of Information: Coast Guard will use this information to determine if a vessel's construction, arrangement and equipment are in compliance with regulations.

Frequency: On occasion.

Burden Estimate: 783 hours.

Respondents: Vessel owners.

Form(s): None.

Average Burden Hours Per Response: 45 minutes reporting; 15 minutes recordkeeping.

DOT No: 4026.

OMB No: 2125–0016.

Administration: Federal Highway Administration.

Title: Driver's Record of Duty Status.

Need for Information: Title 49 CFR 395.8 requires drivers to record their hours of service to assure compliance with driving and on-duty time limitations set forth in the Federal Motor Carrier Safety Regulations.

Proposed Use of Information: The information will be used to determine driver and motor carrier compliance with maximum time regulations.

Frequency: Recordkeeping (6 months).

Burden Estimate: 14,799,033 hours.

Respondents: Motor carriers.

Form(s): None.

Average Burden Hours Per Response: 4 hours and 29 minutes recordkeeping.

DOT No: 4027.

OMB No: 2125–0556.

Administration: Federal Highway Administration.

Title: Determining Accident Rates for Longer Combination Vehicles (LCVs).

Need for Information: Out of concern for the safety of the traveling public, Congress placed a freeze on the operation of LCVs. However, the U.S. General Accounting Office has determined that the safety of LCVs is unknown. To compare the safety of

LCVs and conventional tractor semitrailers, accident data and carrier specific vehicle miles of travel are needed under similar circumstances of driver experience, highway system, driving environment, company size and other factors that are thought to influence accident rates.

Proposed Use of Information: The FHWA will analyze the data as part of its effort to compare the safety of LCVs with that of conventional tractor semitrailers. Substantial transportation savings have been projected through the expanded use of LCVs which offer increased productivity.

Frequency: One time.

Burden Estimate: 800 hours.

Respondents: Motor carrier companies operating LCVs.

Form(s): None.

Average Burden Hours Per Response: 4 hours reporting.

DOT No: 4028.

OMB No: 2115—New.

Administration: U.S. Coast Guard.

Title: Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels.

Need for Information: Title 46 USC 2110 authorizes the Coast Guard to create user fees for the inspection or examination of U.S. and foreign commercial vessels.

Proposed Use of Information: Coast Guard will use the information collected to: (1) Credit payment to specific vessels and if an incorrect amount is submitted or the payment instrument fails to clear the bank, followup action will be taken; (2) give vessel owners an opportunity to pay annual vessel inspection fees for future years in advance; and (3) give organizations who are charitable in nature, not for profit and youth oriented, an opportunity to seek an exemption from the vessel inspection fee.

Frequency: Annually.

Burden Estimate: 2,900 hours.

Respondents: Owners or operators of commercial U.S. and foreign vessels.

Form(s): CG–5565 and CG–5565–A.

Average Burden Hours Per Response: 7 minutes reporting.

DOT No: 4029.

OMB No: 2120–0021.

Administration: Federal Aviation Administration.

Title: Certification: Pilots and Flight Instructors, FAR 61.

Need for Information: The information is needed to ensure compliance with Section 602 of the Federal Aviation Act of 1958 (49 USC 1422), which specifically empowers the Secretary of Transportation to issue airman certificates to properly qualified persons. Federal Aviation Regulations Part 61, Certification: Pilots and Flight Instructors, and Part 143, Ground Instructors, implement that portion of the Act.

Proposed Use of Information: The information collected on the airman certificate and/or rating application forms and the required records/logbooks/statements will be used to determine qualifications of the applicant for issuance of a pilot or instructor certificate, or rating, or authorization.

Frequency: As requested by the airman.

Burden Estimate: 256,695 hours.

Respondents: Individual Airmen.

Form(s): FAA Form 8710–1

Average Burden Hours Per Response: Up to 30 minutes per response.

DOT No: 4030.

OMB No: 2130—New.

Administration: Federal Railroad Administration.

Title: FRA Customer Service Survey.

Need for Information: Executive Order 12862 dated September 11, 1993, requires agencies to establish and implement customer service standards.

Proposed Use of Information: The information will provide a mechanism whereby FRA can determine the quality of services provided to their customers (internal/external) and benchmark against the best in the business.

Frequency: One time.

Burden Estimate: 267 hours.

Respondents: Individuals.

Form(s): Survey form.

Average Burden Hours Per Response: 20 minutes.

DOT No: 4031.

OMB No: 2115–0016.

Administration: U.S. Coast Guard.

Title: Characteristics of Liquid Chemicals Proposed for Bulk Water Movement.

Need for Information: The Coast Guard has the authority under 46 CFR 30–40 to administer and enforce the laws for the safe transportation of hazardous materials on board tank vessels.

Proposed Use of Information: Coast Guard will use this information to evaluate and determine the precautions that are taken to protect the vessel, its personnel and the general public that reside along the proposed route.

Frequency: On occasion.

Burden Estimate: 300 hours.

Respondents: Chemical manufacturers.

Form(s): CG–4355.

Average Burden Hours Per Response: 3 hours reporting.

DOT No: 4032.

OMB No: 2127—New.

Administration: National Highway Traffic Safety Administration.

Title: Head Protection Phase-in Reporting Requirements.

Need for Information: Title 15 USC 1392 authorizes NHTSA to issue Federal Motor Vehicle Safety Standards to require improved head protection in impacts against the vehicle upper interior components.

Proposed Use of Information: The information received from the manufacturers will be used to determine the extent to which they are complying with the requirement for improved head protection in impacts against the vehicle upper interior components.

Frequency: Annually.

Burden Estimate: 1,260 hours.

Respondents: Manufacturers.

Form(s): None.

Average Burden Hours Per Response: 24 hours reporting; 12 hours recordkeeping.

DOT No: 4033.

OMB No: 2106–0030.

Administration: Office of the Secretary.

Title: Aircraft Accident Liability Insurance (Title 14 CFR 205).

Need for Information: Title 14 CFR 205 contains minimum requirements for air carrier accident liability insurance to protect the public from losses, and directs that certificates evidencing appropriate coverage be filed with DOT as proof of coverage.

Proposed Use of Information: The information will be used to monitor compliance with Section 205 and to assure the public that air carriers possess the required levels of aircraft accident liability insurance.

Frequency: On occasion.

Burden Estimate: 3,043 hours.

Respondents: U.S. and foreign air carriers.

Form(s): OST Forms 6410 and 6411.

Average Burden Hours Per Response: 30 minutes reporting.

DOT No: 4034.

OMB No: 2125—New.

Administration: Federal Highway Administration.

Title: Nationwide Survey of Public Roads Readers.

Need for Information: Executive Order 12862 requires agencies to establish and implement customer service standards.

Proposed Use of Information: The data collected will be analyzed to determine the manner and extent to which the magazine, Public Roads, is achieving its objectives and meeting the needs of its readers and customers.

Frequency: One time.

Burden Estimate: 611 hours.

Respondents: Public, government.

Form(s): survey form.

Average Burden Hours Per Response: 15 minutes reporting.

DOT No: 4035.

OMB No: 2125–0507.

Administration: Federal Highway Administration.

Title: Voucher for Federal-Aid Reimbursement.

Need for Information: Title 23 USC 121 and 117 require the submission of vouchers for State highway agencies to be reimbursed for costs incurred on Federal-aid projects.

Proposed Use of Information: The information will be used to assure that the amount of the claim and the terms of the agreements have been certified by an authorized State official.

Frequency: On occasion.

Burden Estimate: 13,201 hours.

Respondents: State highway agencies.

Form(s): PR–20, FHWA–1447 and FHWA–1175.

Average Burden Hours Per Response: 1 hour reporting.

DOT No: 4036.

OMB No: 2115–0580.

Administration: U.S. Coast Guard.

Title: Emergency Evacuation Plan for Manned Outer Continental Shelf Lands Act (OCS) Facilities.

Need for Information: Title 43 USC 133(d) authorizes the Coast Guard to promulgate and enforce regulations promoting the safety of life and property on OCS facilities.

Proposed Use of Information: Coast Guard will use this information to ensure that operators of manned OCS facilities develop, implement and maintain comprehensive contingency evacuation plans for the complete evacuation of all personnel from their facilities in case of emergency.

Frequency: On occasion.

Burden Estimate: 7,769 hours.

Respondents: Owners and operators of OCS facilities.

Form(s): None.

Average Burden Hours Per Response: 40 hours to prepare a new emergency evacuation plan; 10 hours to revise an emergency evacuation plan; 2 hours recordkeeping.

Issued in Washington, D.C. on January 17, 1995.

Paula R. Ewen,

Chief, IRM Strategies Division.

[FR Doc. 95–1721 Filed 1–23–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–95–6]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 13, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1); Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 17, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 25862.

Petitioner: Cessna Aircraft Company.

Sections of the FAR Affected: 14 CFR 47.69(b).

Description of Relief Sought: To Extend Exemption No. 5043, which allows the operation of aircraft outside the Untied States by using a Dealer's Aircraft Registration Certificate subject to the same terms and conditions stated in the original grant.

Docket No.: 27934.

Petitioner: Alaska Airlines, Inc.

Sections of the FAR Affected: 14 CFR paragraph III(d)(2), appendix A and paragraph III(d)(2), appendix B of part 61; paragraph III(n)(2), appendix E and paragraph III(d)(2), appendix F of part 121.

Description of Relief Sought: To permit Alaska Airlines, Inc., (ALA) to conduct, in a simulator, circling approaches that do not permit a normal landing on a runway that is a least 90 degrees from the final approach course, in both ALA's approved training course, and in practical tests for the issuance of airline transport pilot certificates.

Docket No.: 27971.

Petitioner: Bell Helicopter Textron, Inc.

Sections of the FAR Affected: 14 CFR 21.19(b)(1).

Description of Relief Sought: To permit Bell Helicopter Textron, Inc., to obtain an amended type certificate for TC H2SW that would include the Model 407LT and use the same certification basis as that used for the Model 407L.

Docket No.: 27974.

Petitioner: Robert F. Loughran.

Sections of the FAR Affected: 14 CFR 47.2(3) and 47.9(c).

Description of Relief Sought: To allow an otherwise qualifying U.S. corporation to continue to be treated as a U.S. citizen for aircraft registration purposes even though it has appointed a non-U.S. citizen as its president, or to allow flight time accrued during international trips originating from within the U.S. and returning to the U.S. to be counted toward the 60 percent U.S. flight hour requirement for non-U.S. citizen corporations.

Dispositions of Petitions

Docket No.: 25617.

Petitioner: Japan Airlines Company, Ltd.

Sections of the FAR Affected: 14 CFR paragraphs (a) and (b), appendix B, part 43; 45.11; 91.203(c); and 91.417 (c) and (d).

Description of Relief Sought/ Disposition: To extend Exemption No. 5006, as amended, which allows Japan Airlines Company, Ltd., (JAL)

to continue to operate its U.S.-registered aircraft that have been modified by installed of fuel tanks in the passenger or baggage compartment without keeping an FAA Form 337 on board aircraft. This exemption allows JAL to continue to operate its U.S.-registered aircraft without having an identification plate secured to the fuselage exterior and, with respect to JAL's U.S.-registered aircraft manufactured before March 7, 1988, this extension would allow continuation of operation without displaying the aircraft model designation and manufacturer's serial number on the aircraft exterior.

GRANT, December 30, 1994, Exemption No. 5006C

Docket No.: 25653.
Petitioner: Singapore Airlines, Ltd.
Sections of the FAR Affected: 14 CFR paragraphs (a) and (b), appendix B, part 43; 45.11; 91.203(c); and 91.417 (c) and (d).
Description of Relief Sought/ Disposition: To extend Exemption No. 5008, as amended, which allows Singapore Airlines, Ltd., (SIA) to continue to operate its U.S.-registered aircraft that have been modified by installed of fuel tanks in the passenger or baggage compartment without keeping an FAA Form 337 on board aircraft. This exemption allows SIA to continue to operate its U.S.-registered aircraft without having an identification plate secured to the fuselage exterior and, with respect to SIA's U.S.-registered aircraft manufactured before March 7, 1988, this extension would allow continuation of operation without displaying the aircraft model designation and manufacturer's serial number on the aircraft exterior.

GRANT, December 30, 1994, Exemption No. 5008C

Docket No.: 27396.
Petitioner: Northwest Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.440(a).
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5815, which allows Northwest Airlines, Inc., (NWA) to conduct a Single Visit Training Program (SVTP) in preparation for transition to an Advanced Qualification Program for all fleets under SFAR 58, in order to permit implementation of a random line check program. For this purpose NWA has requested exemption from the annual line check requirement of § 121.440(a), as well as modification of the requirement in its existing exemption to conduct a pilot-in-command (PIC) line check 6 months following an SVTP session. The exemption amendment permits NWA to administer line checks on a random basis to 50 percent of its PICs per year. All such line checks will include entire cockpit crews, all aircraft fleet types, and typical aircraft routes. Under the program NWA would ensure that no PIC would exceed 24 months between line checks.

GRANT, December 22, 1994, Exemption No. 5815A

Docket No.: 27964.
Petitioner: Cayman Airways Limited.
Sections of the FAR Affected: 14 CFR 91.861(a).
Description of Relief Sought/ Disposition: To allow assignment of a base level of ''one'' to Cayman's Stage 2 Boeing 737–2Q8 (Registration No. VR–CNN, Serial No. 21518) airplane, in order to operate the airplane to and from airports in the contiguous United States.

GRANT, December 23, 1994, Exemption No. 6001

[FR Doc. 95–1745 Filed 1–23–95; 8:45 am]
BILLING CODE 4910–13–M

Research and Special Programs Administration

[Notice No 95–1]

Supplemental Emergency Preparedness Grant Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice.

SUMMARY: RSPA is providing notice of the availability of grant funds in the amount of $250,000 and soliciting applications from national nonprofit employee organizations engaged solely in fighting fires to train instructors to conduct hazardous materials response training programs. RSPA also seeks comments on the provisions contained in this notice in order to improve operation of the program. Grant application packages, reflecting comments made, will be available on April 1, 1995.

DATES: *Comments.* Comments must be submitted on or before February 6, 1995.

Applications. Applications must be submitted by May 15, 1995.

ADDRESSES: *Comments and applications.* Address comments and applications to the Grants Unit, DHM–64, Room 8104, Research and Special Programs Administration, Department of Transportation, 400 Seventh St., SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Charles G. Rogoff, Grants Manager, Office of Hazardous Materials Planning and Analysis, Research and Special Programs Administration, Department of Transportation, 400 Seventh St., SW., Washington, DC 20590–0001, telephone: (202) 366–6001.

SUPPLEMENTARY INFORMATION:

Introduction

On August 26, 1994, President Clinton signed into law the Hazardous Materials Transportation Authorization Act of 1994 (HMTAA; Pub. L. 103–311). Section 119 of the HMTAA amended 49 U.S.C. 5116 to add a new subsection (j) concerning supplemental training grants. These supplemental grants are intended to further the purposes of the State and Indian tribe grants under section 5116(b) to train public sector employees to respond to accidents and incidents involving hazardous material. Section 5116(j)(1) provides that the Secretary of Transportation shall, subject to the availability of funds, make grants to national nonprofit employee organizations engaged solely in firefighting to train instructors to conduct training programs for individuals responding to hazardous materials accidents. Section 5116(j)(2) requires the Secretary to consult with interested organizations to identify regions or locations in which fire departments are in need of training and prioritize those needs. Section 5116(j)(3) provides that funds granted to an organization may only be used to train instructors to conduct hazardous materials response training programs, to purchase equipment used to train those instructors, and to disseminate information necessary to conduct those training programs. Section 5116(j)(4) provides that a grantee must agree to use courses developed under the National Training Curriculum, and section 5116(j)(5) provides that the Secretary may impose such additional terms and conditions on grants as the Secretary determines are necessary to carry out the objectives of the supplemental grant program. RSPA asks commenters to address the definitions of eligible applicants and criteria for grant selection described below.

Availability of Funds

Section 119(b) of the HMTAA amended 49 U.S.C. 5127(b) to provide that there shall be available to the Secretary, from the registration fee account established under section 5116(i), $250,000 for each of fiscal years

1995, 1996, 1997, and 1998. Under section 5116(i), amounts in the registration fee account are available without further appropriation. In addition, section 5127(b) was amended to authorize appropriations of $1,000,000 for each of fiscal years 1995, 1996, 1997, and 1998; however, Congress did not appropriate any of the authorized $1,000,000 for fiscal year 1995.

Approximately $250,000 is projected to be available in fiscal year 1995. Awards will be made for a 12-month budget period within a project period not to exceed four years. Continuation awards within the project period will be made on the basis of satisfactory progress toward achieving grant activities, and the availability of Federal funds.

Eligible Applicants

By law, grants are intended for ''national nonprofit employee organizations engaged solely in fighting fires for the purpose of training instructors to conduct hazardous materials response training programs for individuals with statutory responsibility to respond to hazardous materials accidents and incidents.'' 49 U.S.C. 5116(j)(1). RSPA interprets the first part of the quoted phrase to mean nonprofit organizations with employee members who fight fires.

Objectives of the Grant Program

RSPA expects that, by training additional instructors, course deliveries to hazardous materials emergency responders will increase. Because many responders cannot leave their immediate locations for extended periods of time, due to budget and other limitations, the only way to deliver training to them is to train sufficient instructors for required course deliveries at convenient locations.

As provided by statute, funds awarded to an organization under this grant program may only be used to train instructors to conduct hazardous materials response training programs, to purchase training equipment used exclusively to train instructors to conduct those training programs, and to disseminate information and materials necessary for the conduct of training programs. RSPA will make a grant to an organization under this program only if the organization enters into an agreement with RSPA to train instructors, on a nondiscriminatory basis, to conduct hazardous materials response training programs using a course or courses developed or identified as qualified under the curriculum guidelines prepared by RSPA and its interagency partners, or other courses that RSPA determines are consistent with the objectives of the curriculum guidelines. Ultimate course selection and delivery to responders is the responsibility of State and Indian tribe grantees under the Hazardous Materials Emergency Preparedness Grant Program.

Grant and Selection Criteria

Grants will be awarded on a competitive basis. RSPA intends to evaluate applications based on the criteria set forth below. Applications shall include, at a minimum:

(1) How applicants intend to accomplish training for instructors of individuals with statutory responsibility to respond to accidents and incidents involving hazardous materials.

(2) The regions or locations in which fire departments or other organizations providing emergency response to hazardous materials transportation accidents and incidents are in need of hazardous materials training and the method used to identify those needs.

(3) Prioritized training needs, and a description of the means for identifying additional specific training needs.

(4) A statement of work for the upcoming budget period that describes and sets priorities for the activities and tasks to be conducted, the costs associated with each activity, the number and types of deliverables and products to be completed, and a schedule for implementation.

In addition, since RSPA expects that the amount of funds requested by all applicants may exceed a total of $250,000, applicants should provide a prioritized listing of specific program tasks to be performed and the cost of each task.

Applications will be rated on the ability to achieve the above-stated requirements. RSPA encourages the addition of non-Federal funds to support the project, but does not require cost sharing. Program funding is dependent on collection of registration fees and may be less than the authorized amount. Applications must be received not later than May 15, 1995. An application kit will be available from RSPA on April 1, 1995.

Issued in Washington, DC, on January 19, 1995.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–1720 Filed 1–23–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Department Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Custom Service will be held on February 17, 1995 at the Treasury Executive Institute, Suite 500, 1255 22nd Street, NW., Washington, DC at 9:30 a.m..

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary (Enforcement), Room 4004, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Tel. (202) 622–0220.

SUPPLEMENTARY INFORMATION: The Secretary of the Treasury has renewed the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service for a two-year term. The Committee is chaired by the Under Secretary of the Treasury (Enforcement) and is composed of the following twenty private sector representatives appointed by the Secretary of the Treasury.

Mr. Charles V. Bremer
American Textile Manufacturers Institute
William H. Brown, III, Esq.
Schnader, Harrison, Segal & Lewis
Mr. Ezunial Burts
Port of Los Angeles
Mr. Kenneth R. Button
Economic Consulting Services
Mr. Dennis J. Curran
Arthur Anderson & Co.
Mr. Michael M. Davenport
Roanoke Companies
Ms. Marian E. Duntley
DHL Airways, Inc.
Prof. Marsha A. Echols
Howard University
Mr. Stanley P. Hebert
Port of Oakland
Mr. William F. Joffroy, Jr.
William F. Joffroy, Inc.
Mr. Arthur L. Litman
Tower Group International
Salvatore R. Martoche, Esq.
Hiscock & Barclay
Ms. Mary K. McMunn
Air Transport Association
Ms. Houda Nounou
Motorola Worldwide
Ms. Jane B. O'Dell
Eddie Bauer, Inc.
Mr. Robert A. Perkins
A.N. Deringer
Mr. David Phelps

American Iron and Steel Institute
Mr. Burton B. Ruby
Jaymar-Ruby Corp.
Mr. M. Sigmund Shapiro
Samuel Shapiro & Co.
Mr. Paul F. Wegener
M.G. Maher & Co., Inc.

The preliminary agenda to be considered at the meeting is as follows:

1. Committee role, operations, and bylaws.
2. Customs reorganization.
3. Customs budget.
4. Customs Modernization Act implementation.
5. The Customs in-bond program.
6. Administration of border cargo selectivity.

The provisional agenda may be amended prior to the meeting. The meeting is open to the public. However, participation in the discussion is limited to Committee members and Treasury and Customs staff. It is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give advance notice. In order to be admitted to the meeting, please contact Ms. Theresa Manning no later than February 10, 1995, Tel: (202) 622–0220.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–1656 Filed 1–23–95; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Disciplinary Appeals Board Panel

AGENCY: Department of Veterans Affairs.

ACTION: Notice with request for comments.

SUMMARY: Section 203 of the Department of Veterans Affairs Health Care Personnel Act of 1991 (Pub. L. 102–40), dated May 7, 1991, revised the disciplinary, grievance and appeal procedures for employees appointed under 38 U.S.C. 7401(1). It also required the periodic designation of employees of the Department who are qualified to serve on Disciplinary Appeals Boards. These employees constitute the Disciplinary Appeals Board Panel from which Board members in a case are appointed. This notice announces that the roster of employees on the panel is available for review and comment. Employees, employee organizations, and other interested parties shall be provided (without charge) a list of the names of employees on the panel upon request and may submit comments concerning the suitability for service on the panel of any employee whose name is on the list.

DATES: Names that appear on the panel may be selected to serve on a Board or as a grievance examiner February 23, 1995.

ADDRESSES: Send requests for the list of the names of employees on the panel and written comments to: Secretary of Veterans Affairs (058A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT:

James Scaringi, Acting Chief, Employee Relations Division (058A), Office of Human Resources Management, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 535–8884.

SUPPLEMENTARY INFORMATION: Pub. L. 102–40 requires that the availability of the roster be posted in the **Federal Register** periodically, and not less than annually.

Approved: January 11, 1995.

Jesse Brown,

Secretary, Veterans Affairs.

[FR Doc. 95–1660 Filed 1–23–95; 8:45 am]

BILLING CODE 7320–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 15

Tuesday, January 24, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 4–95

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Wed., Feb., 1, 1995 at 10:30 a.m.—Consideration of Proposed Decisions on Claims against Iran.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, on January 19, 1995.

Jeanette Matthews,

Administrative Assistant.

[FR Doc. 95–1909 Filed 1–20–95; 3:38 pm]

BILLING CODE 4410–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notices of Meetings

TIME AND DATE: 1:00 p.m., Friday, January 27, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

BOARD BRIEFINGS:

1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Requests from Corporate Credit Unions for field of membership amendments.

TIME AND DATE: 10:30 a.m., Friday, January 27, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Section 205 of the Federal Credit Union Act. Closed pursuant to exemption (8).
3. Administrative Action under the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker.

Secretary of the Board.

[FR Doc. 95–1914 Filed 1–20–95; 3:51 pm]

BILLING CODE 7535–01–M

NATIONAL LABOR RELATIONS BOARD

Notice of Meeting

TIME AND DATE: 2:30 p.m., Thursday, January 12, 1995.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., N.W., Washington, D.C. 20570.

STATUS: Part of this meeting will be open to the public. The remainder of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion open to the public.

Extension of Time for Filing Briefs.
Witness Sequestration Orders.

Portion closed to the public.

Personnel matters.
Case adjudication.

CONTACT PERSON FOR MORE INFORMATION: Joseph E. Moore, Acting Executive Secretary, Washington, D.C. 20570, Telephone: (202) 273–1940.

Dated Washington, DC, January 19, 1995.

By direction of the Board:

Joseph E. Moore,

Acting Executive Secretary, National Labor Relations Board.

[FR Doc. 95–1822 Filed 1–20–95; 11:19 am]

BILLING CODE 7445–01–M

NUCLEAR REGULATORY COMMISSION

DATES: Weeks of January 23, 30, February 6, and 13, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 23

Tuesday, January 24

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)

Wednesday, January 25

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 30—Tentative

Wednesday, February 1

10:00 a.m.
Briefing by Organization of Agreement States (Public Meeting)
(Contact: Rosetta Virgilio, 301–504–2307)

2:00 p.m.
Briefing on Core Shroud Issues (Public Meeting)
(Contact: Ashok Thadani, 301–504–1274)

Thursday, February 2

2:00 p.m.
Briefing on NRC's Initiatives on Responsiveness to the Public ((Public Meeting)
(Contact: James Blaha, 301–415–1703)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, February 3

10:00 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
(Contact: Victor McCree, 301–415–1711)

2:00 p.m.
Briefing on Advanced Reactor Technical Issues (Public Meeting)
(Contact: Ashok Thadani, 301–503–1274)

Week of February 6—Tentative

There are no meeting scheduled for Week of February 6.

Week of February 13—Tentative

There are no meetings scheduled for the Week of February 13.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

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: William Hill (301) 415–1661.

Dated: January 20, 1995.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 95–1893 Filed 1–20–95; 8:45 am]

BILLING CODE 7590–01–M

UNITED STATES DEPARTMENT OF AGRICULTURE

AGENCY: Rural Telephone Bank, USDA

Staff Briefing for the Board of Directors

TIME AND DATE: 2 p.m., Wednesday, February 1, 1995.

PLACE: Room 5066, South Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: General discussion involving privatization planning; options for revising Bank Board election procedures; and update on the RUS telecommunications loan program.

ACTION: Regular Meeting of the Board of Directors.

TIME AND DATE: 10 a.m., Thursday, February 2, 1995.

PLACE: Monet I Room, Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to Order.
2. Approval of Minutes of the November 16, 1994, Board meeting.
3. Report on loans approved in the first quarter of FY 1995.
4. Review first quarter financial statements for FY 1995.
5. General discussion concerning Bank Board election procedures.
6. Consideration of resolution to continue the functions and objectives of the Privatization Committee.
7. Consideration of resolution to continue the functions and objectives of the Prepayment Committee.
8. Consideration of resolution amending policy regarding time, month, and location of regular Board meetings.
9. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Matthew P. Link, Assistant Secretary, Rural Telephone Bank, (202) 720–0530.

Dated: January 19, 1995.

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 95–1868 Filed 1–20–95; 2:46 pm]

BILLING CODE 3410–15–P

Corrections

Federal Register

Vol. 60, No. 15

Tuesday, January 24, 1995

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 COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 675, and 676

[Docket No. 941242-4342; I.D. 111494A]

Foreign Fishing; Groundfish Fishery of the Bering Sea and Aleutian Islands; Limited Access Management of Federal Fisheries In and Off of Alaska

Correction

In proposed rule document 94–30727 beginning on page 64383 in the issue of Wednesday, December 14, 1994 make the following correction:

On page 64387, in Table 2, under the Non-roe season heading, in the 60% column, in the Offshore and Total entries for the Aleutian Islands and in all entries for Bogoslof ''Do.'' should read ''Remainder''.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94F-0451]

The Shepherd Color Co., Filing of Food Additive Petition

Correction

In notice document 95–838 appearing on page 2976, in the issue of Thursday, January 12, 1995, make the following correction:

On page 2976, in the second column, in the signature line, in the first line, ''**Alan R. Rulis,**'' should read ''**Alan M. Rulis,**''.

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

RIN 1029-AB34

Use of Applicant/Violator Computer System (AVS) in Surface Coal Mining and Reclamation Permit Approval; Standards and Procedures for Ownership and Control Determinations

Correction

In the correction of rule document 94-26554 appearing on page 61656 in the issue of Thursday, December 1, 1994, the CFR title should read as set forth above.

BILLING CODE 1505-01-D

federal register

Tuesday
January 24, 1995

Part II

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards for Surface Waters of the Sacramento and San Joaquin Rivers, and San Francisco Bay and Delta, California; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[OW–FRL–5084–4]

Water Quality Standards for Surface Waters of the Sacramento River, San Joaquin River, and San Francisco Bay and Delta of the State of California

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule, required under Section 303 of the Clean Water Act, is part of an interagency effort designed to ensure that the fish and wildlife resources of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay/Delta) are protected and to minimize the likelihood of future listings of Bay/Delta species under the Endangered Species Act. The Bay/Delta is the West Coast's largest estuary, supplying habitat for over 120 fish species and large populations of waterfowl. Over the past two years, the U.S. Environmental Protection Agency (EPA) has worked closely with the Departments of the Interior and Commerce, as well as the State of California, to address the severe and continuing decline of Bay/Delta fish and wildlife resources. This decline has been so severe that a number of fish species, including the winter-run chinook salmon are considered threatened or endangered under the Endangered Species Act. In coordinating their respective actions in the Bay/Delta, the Federal agencies endorsed an ecosystem (as opposed to a species-by-species) approach. EPA's final rule establishes four sets of water quality criteria protecting habitat conditions in the estuary.

EFFECTIVE DATE: This rule shall be effective February 23, 1995.

ADDRESSES: The public may inspect the administrative record for this rulemaking, including documentation supporting the criteria, and all public comments received on the proposed rule at the Environmental Protection Agency, Water Management Division, 11th Floor, 75 Hawthorne Street, San Francisco, California 94105 (Telephone Sara Hedrick at 415–744–2200) on weekdays during the Agency's normal business hours of 9 a.m. to 5 p.m. A reasonable fee will be charged for photocopies. Inquiries can be made by calling Sara Hedrick at 415–744–2200.

FOR FURTHER INFORMATION CONTACT: Judy Kelly, Bay/Delta Program Manager, Water Management Division, W–2–4, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, 415/744–1162.

SUPPLEMENTARY INFORMATION: This preamble is organized according to the following outline:

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A. Background

1. Introduction

This section of the Preamble introduces the topics which are addressed subsequently, provides a brief description of the environmental issues at stake in the San Francisco Bay/Sacramento-San Joaquin River Delta Estuary (Bay/Delta), and reviews the U.S. Environmental Protection Agency's (EPA or the Agency) recent involvement in these issues. Section B of this Preamble describes the statutory framework of section 303 of the Federal Water Pollution Control Act (33 U.S.C. 1251 to 1387) (CWA or the Clean Water Act), as well as the regulatory process for developing and revising water quality standards. In addition, Section B summarizes the recent actions of the State of California (State) and EPA under section 303 of the CWA. Section C describes the Final Rule, focusing especially on the changes from the criteria proposed at 59 FR 810, January 6, 1994 (Proposed Rule). Sections D, E, F, G, and H discuss the public comments, the requirements of Executive Order 12866, the Regulatory Flexibility Act, Executive Order 12875, and the Paperwork Reduction Act, respectively.

In addition to publishing the Proposed Rule, EPA, on August 26, 1994, at 59 FR 44095, published a Notice of Availability announcing the availability of two documents prepared since the close of the comment period. The first of these documents was a summary of a series of scientific workshops on EPA's proposed Fish Migration criteria that were sponsored and facilitated by the California Urban Water Users (CUWA) and four environmental organizations. The second document was an internal EPA staff paper presenting a reformulation of the Fish Migration criteria based upon the comments at the workshops. EPA accepted public comments on the issues raised in these two documents until September 30, 1994. EPA received two written comments in response to the Notice of Availability.

This final rule satisfies EPA's obligations under a settlement agreement approved and entered as an order in *Golden Gate Audubon Society et al.* v. *Browner* (E.D. Cal. Civ. No. 93–646 (LKK)).

2. Background

a. Environmental Concerns

The Bay/Delta is the West Coast's largest estuary, encompassing nearly 1600 square miles, and draining over 40 percent of California. The Bay/Delta is the point of convergence of California's two major river systems—the Sacramento River system flowing southward and draining a large part of northern California, and the San Joaquin River system flowing northward and draining a large part of central California. These two river systems come together at the western tip of the Delta, forming an estuary as fresh water mixes with marine water through a series of bays, channels, shoals and marshes and ultimately flowing into San Francisco Bay and then to the Pacific Ocean.

The Bay/Delta constitutes one of the largest systems for fish production in the country, supplying habitat for over 120 fish species. It also comprises one of the largest areas of waterfowl habitat

in the United States, providing a vital stopover for rest and feeding for more than one-half of the waterfowl and shorebirds migrating on the Pacific Flyway. Within the boundaries of the Bay/Delta is the Suisun Marsh, the largest contiguous brackish water marsh in the United States.

The Bay/Delta is also the hub of California's two major water distribution systems—the Central Valley Project (CVP) built and operated by the U.S. Bureau of Reclamation (USBR) and the State of California's State Water Project (SWP). These two projects account for approximately 60% of the watershed's diversions (San Francisco Estuary Project (SFEP) 1992). In addition, at least 7,000 other permitted water diverters, some large and some small, have developed water supplies from the watershed feeding the Bay/Delta estuary (California State Lands Commission 1991). Together, these water development projects divert, on average, 50% of the natural flow in the Bay/Delta estuary (SFEP 1992). Most of the State's developed water—75 to 85 percent—is used for irrigation purposes by agriculture, irrigating over 4.5 million acres throughout the State. The Bay/Delta watershed also provides part or all of the drinking water supply for over 18 million people.

In large part due to the effects of these water diversions, and as discussed in more detail in the preamble to the Proposed Rule, the fish and wildlife resources in the Bay/Delta estuary have deteriorated drastically over the past twenty years. One common measure used to quantify this deterioration is the Striped Bass Index (SBI) (a measure of the relative abundance of young striped bass in the estuary). The SBI measures the relative health of an indicator species for the Bay/Delta, the striped bass. In its 1978 Water Quality Control Plan (1978 Delta Plan), the California State Water Resources Control Board (State Board) committed to maintaining an SBI value of 79. Since that time the SBI has never attained its targeted value of 79, but instead has plummeted to unprecedented low values.[1]

The precipitous decline in striped bass is indicative of the poor health of other aquatic resources in the Bay/Delta estuary. Several species have experienced similar declines, including chinook salmon (the winter-run of chinook salmon has recently been reclassified as an endangered species under the Federal Endangered Species Act, 16 U.S.C. 1531 to 1540 (ESA)), Delta smelt (listed as a threatened species under the ESA), and the Sacramento splittail (recently proposed for listing as a threatened species under the ESA). The California Department of Fish and Game (California DFG) recently testified that virtually all of the estuary's major fish species are in clear decline. (CDFG 1992b, WRINT–DFG–8)[2] Another recent report suggests that at least three more of the Bay/Delta estuary's fish species (spring-run Chinook salmon, green sturgeon, and Red Hills roach) qualify for immediate listing under the ESA (Moyle and Yoshiyama 1992). Furthermore, the decline in aquatic resources is not limited to fishes. One recent workshop noted that the available data ''indicate clearly that species at every trophic level are now at, or near, record low levels in the Delta and in Suisun Bay.''[3] (SFEP 1993) The ecological communities under stress include the plant and animal communities in the tidal portions of the brackish water marshes adjacent to Suisun Bay (Collins, J.N. and T.C. Foin, 1993).

b. State Designation of Uses in the Bay/Delta

Under section 303(c) of the CWA, states review their water quality standards every three years and submit any new or revised standards to EPA for approval or disapproval (the ''triennial review''). A water quality standard for a waterbody consists of two components: (1) Designated uses for the waterbody and (2) water quality criteria which support such designated uses.[4] In California, designated uses are equivalent to state law ''beneficial uses'' and criteria are equivalent to state law ''water quality objectives.'' Thus, the water quality objectives and beneficial use designations adopted under the California Water Code serve as water quality standards for purposes of section 303 of the CWA.

Pursuant to state and federal law, the State Board, on May 1, 1991, adopted State Board Resolution No. 91–34, formally approving the 1991 Bay/Delta Plan. The Plan restated the specific designated uses that had been included in the 1978 Delta Plan and related regional board basin plans. As restated in the 1991 Bay/Delta Plan and submitted to EPA for review under the Clean Water Act, the designated uses for waters of the Bay/Delta included the following: Agricultural Supply, Cold and Warm Fresh-Water Habitat, Estuarine Habitat, Fish Migration, Fish Spawning, Groundwater Recharge, Industrial Process Supply, Industrial Service Supply, Municipal and Domestic Supply, Navigation, Contact and Non-Contact Water Recreation, Ocean Commercial and Sport Fishing, Preservation of Rare and Endangered Species, Shellfish Harvesting, and Wildlife Habitat.[5]

c. EPA Activity Under CWA Section 303

As explained in detail in the preamble of the Proposed Rule, the serious environmental crisis for fish and wildlife resources in the Bay/Delta has been the source of an ongoing dialogue between EPA and the State for many years. Pursuant to section 303(c)(3) of the CWA, EPA reviewed the 1978 Delta Plan in 1980. While EPA approved the Plan, it was concerned that the 1978 Delta Plan standards would not provide adequate protection of striped bass and the estuary's fishery resources. EPA therefore sought and received assurances from the State Board as to the interpretation of the standards, and secured the State Board's commitment to review and revise the 1978 Delta Plan standards immediately if there were measurable adverse impacts on striped bass spawning, or if necessary to attain ''without project'' levels of protection for the striped bass as defined by an SBI value of 79. The ''without projects'' level of protection is the level of protection that would have resulted in the absence of the state and Federal water projects (the SWP and the CVP). EPA also conditioned its approval on the State Board's commitment to develop additional criteria to protect aquatic life and tidal wetlands in and surrounding the Suisun Marsh. The State Board concurred with these

[1] During the 1980's, the SBI averaged approximately 23.5, and in 1985 reached an all-time low of 4.3. Some of the decline in the SBI may be attributable to drought conditions in the late 1970's and again in the late 1980's. In all but two years since the 1978 Delta Plan was adopted, the SBI has ranged from 4.3 to 29.1, a substantial shortfall from the stated goal of 79.

[2] If a reference was presented to the State Board during one of its hearings, this preamble will present citations in both the standard scientific form and in the State Board hearing record form. Accordingly, the eighth exhibit submitted by California DFG at the Board's interim water rights hearings in the summer of 1992 is cited as indicated.

[3] The workshop report went on to state that this low level of biological diversity was ''not surprising considering the recent drought, the introduction of exotic species, and the increased diversion of water.''

[4] In addition, a state's criteria must be consistent with the state's antidegradation policy. The federal regulations provide that, at a minimum, the state's policy must maintain ''[e]xisting instream water uses [those existing in the waterbody at any time on or after November 28, 1975] and the level of water quality necessary to protect the existing uses. * * *'' 40 CFR 131.12(a)(1).

[5] As explained in more detail below, under certain circumstances a state may revise or even remove designated uses. However, in the Bay/Delta context, the State Board has made no effort to revise the designated uses adopted and restated in the 1991 Bay/Delta Plan.

interpretations in its letter to EPA dated November 21, 1980.

As fish and wildlife resources in the Bay/Delta continued to decline, EPA on several occasions expressed its continuing concern to the State Board about the need to develop standards that would adequately protect these resources. Throughout the first and second triennial reviews ending in 1981 and 1985, EPA urged the State Board to review and revise the 1978 Delta Plan in accordance with EPA's 1980 approval letter. After its second triennial review, in a letter to EPA dated June 23, 1986, the State Board acknowledged that the 1978 Delta Plan standards were not adequate to protect the estuary's fishery resources. It then outlined the hearing process it was planning for revising the standards. In response, and as part of its consideration of the State Board's second triennial review, EPA, on June 29, 1987, sent a letter to the State Board stating that EPA could no longer approve the striped bass survival standards (or the related provision allowing relaxation of the spawning standard in drier years) because these standards did not adequately protect the designated fish and wildlife uses. EPA recognized, however, that the State Board had initiated new hearings to revise the 1978 Delta Plan standards. EPA therefore indicated that it would await the results of the new hearings and approve or disapprove the revised standards after the State Board's submission to EPA of a complete set of revised standards. Following the first phase of the new hearings, the State Board in November 1988 issued a draft Plan that included revised salinity and flow standards to protect the fisheries and other designated uses (SWRCB 1988). The State Board subsequently withdrew that draft Plan, however, and issued a revised workplan that served as the basis for the State Board's present Water Quality Control Plan for Salinity for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (1991 Bay/Delta Plan).

The 1991 Bay/Delta Plan, which the State Board submitted to EPA for review on May 29, 1991, amended certain salinity criteria and adopted new temperature and dissolved oxygen criteria for specified locations in the estuary. The 1991 Bay/Delta Plan did not, however, revise the earlier 1978 Delta Plan to address EPA's longstanding concerns about adequate protection for the designated fish and wildlife uses of the Bay/Delta.

On September 3, 1991, EPA approved in part and disapproved in part the provisions of the 1991 Bay/Delta Plan. EPA's letter found that ''[t]he record * * * does not support the conclusion that the State has adopted criteria sufficient to protect the designated uses'' of the estuary. The designated uses at risk, as defined by the State Board, include Estuarine Habitat, and also Cold and Warm Water Habitat, Fish Migration, Fish Spawning, Ocean Commercial and Sport Fishing, Preservation of Rare and Endangered Species, Shellfish Harvesting, and Wildlife Habitat. In addition to its general finding that the 1991 Bay/Delta Plan did not contain sufficient criteria to protect the designated uses, EPA also disapproved the absence of salinity standards to protect the Estuarine Habitat and other fish and wildlife uses in the Suisun, San Pablo, and San Francisco Bays and Suisun Marsh, the absence of scientifically supportable salinity standards (measured by electrical conductivity) to protect the Fish Spawning uses of the lower San Joaquin River, and the absence of scientifically supportable temperature standards on the San Joaquin and Sacramento Rivers to support the Fish Migration and Cold Fresh Water Habitat uses, including the fall-run and winter-run chinook salmon.

In the summer of 1992, the State Board held hearings for the purpose of establishing interim measures to protect the natural resources in the Bay/Delta estuary. EPA participated in these hearings—rather than proposing federal standards at that time—in the hope that the hearings would result in state adoption of approvable standards and preclude the need for a federal rulemaking. EPA submitted its own recommendations to the State Board and joined with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) in submitting an Interagency Statement of Principles. These statements specifically recommended that the State Board adopt a habitat and ecosystem-based approach to standards that would satisfy CWA requirements and meet the State Board's goal of reversing the decline of the estuary's fish and wildlife resources.

At the conclusion of these hearings, the State Board, on December 10, 1992, issued its recommended interim measures in Draft Water Rights Decision D–1630 (hereinafter D–1630). After the close of the comment period for D–1630, however, the State Board declined to adopt D–1630. Accordingly, the State criteria EPA disapproved on September 3, 1991, are still in effect. In response to the State Board's failure to revise these criteria, EPA, pursuant to section 303 (c)(3) and (c)(4) of the Act, published a Proposed Rule that would establish Federal water quality criteria for the Bay/Delta which would in effect supersede and supplement the disapproved State criteria for purposes of the CWA. EPA's Proposed Rule also satisfied its obligations under a partial settlement agreement approved and entered as an order in *Golden Gate Audubon Society et al.* v. *Browner,* (E.D. Ca. Civ. No. 93–646 (LKK)).

EPA's Proposed Rule was one component of a coordinated initiative by the several Federal agencies having regulatory or operational responsibilities in the Bay/Delta. In early 1993, these four agencies—EPA, USFWS, NMFS, and USBR—formed the Federal Environmental Directorate (now known almost exclusively as ''Club FED'') for the purpose of assuring that the Federal agencies worked in a coordinated manner in taking actions under their respective statutory authorities that would affect the estuary. The Federal initiative announced in December 1993 included the EPA Proposed Rule, the USFWS proposal to list the Sacramento splittail as a threatened species under the ESA, the USFWS proposal for critical habitat for the threatened Delta smelt, and the NMFS reclassification of the winter-run chinook salmon as endangered. This initiative also coincided with the USBR's preliminary water allocation forecast for CVP deliveries for the 1994 water year.

d. Post-Proposal Activities

Since the publication of the Proposed Rule, EPA has moved towards final promulgation of protective criteria in an expeditious and open manner. EPA held several public hearings throughout the state in late February, 1994, to hear comments on the Proposed Rule. In addition, EPA met with a number of interested parties to discuss the economic analysis prepared in conjunction with the Proposed Rule. The purpose of these meetings was to solicit recommendations as to how to improve the analysis of potential economic impacts resulting from the State's implementation of the Federal criteria.

EPA also participated in a series of scientific workshops arranged and facilitated by California Urban Water Agencies (CUWA), the Bay Institute, the Natural Heritage Institute, Save San Francisco Bay Association, and the Environmental Defense Fund. These workshops were designed to discuss the extensive scientific comments submitted by CUWA on the criteria proposed in the Proposed Rule. Dr. Wim Kimmerer, the reporter for these workshops, prepared written summaries of the discussions on the Estuarine

Habitat criteria and the Fish Migration Criteria (Kimmerer 1994b). As discussed above, the summary of the workshops on the Fish Migration criteria and EPA's alternative formulation of the Fish Migration criteria were made available to the public in EPA's Notice of Availability published on August 26, 1994, 59 FR 44095.

The Federal interagency cooperation effort begun before the publication of the Proposed Rule has continued during the past year. The most formal aspects of this cooperation effort have been the consultations under Section 7 of the ESA between EPA and the USFWS and NMFS on the potential effects of EPA's criteria on threatened and endangered species and their critical habitat.[6] EPA and the Services began consulting informally in December 1991. Formal consultations were initiated in August 1993. In recognition of the tentative nature of a proposed rule, the Services deferred preparing a formal biological opinion for the Proposed Rule and instead, on November 24, 1993, submitted formal comments to EPA on the Proposed Rule. These formal comments raised the major concerns of the respective Services about potential effects of the proposed criteria on threatened and endangered species. Since publication of the Proposed Rule, the Services have worked closely with EPA to assure that the final rule complies with the ESA. The Services have been actively involved in reviewing comments received from the public, and participated in the CUWA scientific workshops on EPA's Proposed Rule.

In early November 1994, after discussing the probable final criteria with EPA, NMFS and USFWS concluded their reviews of the final criteria and issued their respective final conclusions as to the anticipated effects of the implementation of these criteria on threatened and endangered species. The USFWS issued a ''no jeopardy'' biological opinion under Section 7 of the ESA, finding that implementation of these criteria would not likely jeopardize the continued existence of any listed species or result in adverse modification of habitat deemed critical to the survival of listed species. In recognition of the fact that the final EPA criteria may be implemented only when the State Board adopts final implementation plans, the USFWS biological opinion also called for the reinitiation of consultations when the implementation plans are finalized by the State Board so that any possible problems for endangered or threatened species caused by implementing the criteria can be addressed.

NMFS concluded its review by making a finding that implementation of these criteria would not adversely affect the threatened and endangered species or result in adverse modification of critical habitat of those species (anadromous fishes) under its jurisdiction. The NMFS findings also called for reinitiation of consultation when implementation plans are developed by the State Board, so that any possible problems for threatened or endangered species caused by implementing the criteria can be addressed.

In addition to the formal ESA consultation process, the four Club Fed agencies have again coordinated several of their regulatory and operational duties and are announcing two Federal actions simultaneously. In addition to EPA's final promulgation of water quality criteria under the CWA, the USFWS is making it's final designation of critical habitat for the Delta smelt under the ESA. These coordinated Federal actions serve as the underlying basis for the long-term solution to fish and wildlife protection in the Bay/Delta estuary.

Finally, in an effort to facilitate the long-term resolution of Bay/Delta issues, the Club Fed agencies and their counterpart agencies in the State of California executed, as of July 1994, a Framework Agreement laying out the Federal and State intentions as to how these agencies would work together cooperatively on a range of issues in the estuary. One key element of this Framework Agreement was EPA's agreement to sign a final rule regarding these water quality criteria by the end of 1994. At the same time, the State Board agreed to prepare a draft revision to its water quality plan by the end of 1994, and to finalize that plan in early 1995. The Framework Agreement envisions that, if EPA finds that the revised State plan submitted to EPA meets the requirements of the CWA, EPA will initiate action to withdraw this rule.

Consistent with its commitment in the Framework Agreement, the State Board conducted a series of workshops on Bay/Delta issues throughout the spring, summer and fall of 1994. EPA participated in these workshops, and has continued to work with the State Board to assure that the revisions adopted by the State Board will meet the requirements of the CWA. It is EPA's hope that the cooperative process outlined in the Framework Agreement will lead to approvable state standards for protecting the designated uses in the Bay/Delta estuary.

EPA is aware of efforts by urban and agricultural users, in cooperation with environmental groups, to identify alternative standards that may meet the requirements of the CWA. EPA encourages affected parties to continue to work with EPA and the State to develop proposals that meet the requirements of the CWA. EPA would welcome the adoption by the State of a revised plan based in whole or in part on such private proposals provided that it complies with the requirements of the CWA.

B. Statutory and Regulatory Background

Section 303(c) of the Act requires that state water quality standards ''* * * be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this [Act]. Such standards shall be established taking into consideration their use and value for propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes. * * *'' Key concerns of this statutory provision are the enhancement of water quality for the protection of the propagation of fish and other aquatic life. The ultimate purpose of water quality standards, as with the other provisions of the CWA, is ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' CWA section 101(a).

Under section 303(c) of the Act, a water quality standard for a specific waterbody consists of two components: designated uses for which a waterbody is to be protected (such as recreation in and on the water, protection and propagation of fish and wildlife, or agricultural uses) and the water quality criteria which support those designated uses.[7]

The Act gives primary responsibility for the adoption of water quality standards to the states. After adopting its initial water quality standards, a state is required, no less than every three years, to review those standards, and, if necessary, modify them. Under section 303(c)(1) of the Act, if a state revises or adopts a new standard, it must submit such a standard to EPA for approval or disapproval.

[6] As stated above, the species of concern include primarily the winter-run chinook salmon (a listed endangered species under the jurisdiction of NMFS) and the Delta smelt (a listed threatened species under the jurisdiction of the USFWS). The USFWS has also formally proposed that the Sacramento splittail be listed as threatened.

[7] As discussed below, a state's water quality standards must also contain an antidegradation policy.

EPA's Water Quality Standards regulations at 40 CFR part 131 specify the requirements for designated uses. ''Designated Uses'' are those uses specified in water quality standards for each water body or segment whether or not they are being attained. 40 CFR 131.3(f). Examples of designated uses are listed in section 303(c)(2)(A) of the CWA. They include: public water supplies, protection and propagation of fish, shellfish, and wildlife, recreation, agricultural and industrial, and navigation. Other uses have been adopted as well (e.g. aquifer protection, coral reef preservation).

Under certain circumstances, States may remove a designated use which is not an existing use. 40 CFR 131.10(g). ''Existing Uses'' are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards. 40 CFR 131.3(f). Generally, existing uses, whether or not they are ''designated uses,'' may not be removed. 40 CFR 131.3(g) and (h). A state must conduct a ''use attainability analysis'' as defined in 40 CFR 131.3(g) whenever (1) the State designates uses that do not include the uses specified in section 101(a)(2) of the CWA, or (2) the State wishes to remove a designated use that is specified in section 101(a)(2) of the CWA or to adopt subcategories of uses which require less stringent criteria. 40 CFR 131.3(j). The state may take economics into account when it designates uses, as, for example, in a use attainability analysis. 40 CFR 131.3(g)(6).

EPA's Water Quality Standards regulations at 40 CFR part 131 specify the requirements for water quality criteria.

> States must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use. 40 CFR 131.11(a).

Thus, once designated uses are established, the water quality criteria are based on what is necessary scientifically to protect the most sensitive designated use.

In addition, a state's criteria must be consistent with the state's antidegradation policy. The federal regulations provide that, at a minimum, the state must have an antidegradation policy that maintains ''[e]xisting instream water uses [those existing in the waterbody at any time on or after November 28, 1975] and the level of water quality necessary to protect the existing uses. * * *'' 40 CFR 131.12(a)(1).

In order to approve a state's water quality criteria, EPA must determine that the state has adopted ''water quality criteria [that are] sufficient to protect the designated uses.'' 40 CFR 131.6(c).

Section 303(c)(4) of the Act provides that the Administrator shall promptly prepare and publish proposed regulations establishing a new or revised standard in either of two situations: first, when the Administrator has disapproved a state standard under section 303(c)(3) and the state has not taken corrective action within 90 days; and, second, in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of the Act. Once promulgated, the federal regulations are applicable to the state's waters, and, if they are more stringent, have the effect of supplanting and supplementing the state's standards for all purposes under the CWA. However, it is EPA's longstanding policy that the federal water quality standards will be withdrawn if a state adopts and submits standards that in the Agency's judgment meet the requirements of the Act.

The chronology of State and EPA actions under the CWA in the Bay/Delta estuary over the past two decades were described in more detail in the preamble to the Proposed Rule, and in paragraph A.1.c. herein. Briefly stated, the State Board's adoption of the 1978 Delta Plan, and of the revised Bay/Delta Plan in 1991, were intended to meet the State's obligations to establish water quality standards under the CWA. Pursuant to its mandate under section 303(c)(3) of the Act, on September 3, 1991, EPA disapproved several of the criteria contained in the State Board's plan. EPA's letter found that ''[t]he record * * * does not support the conclusion that the State has adopted criteria sufficient to protect the designated uses'' of the estuary. The designated uses at risk, as defined by the State Board, include Estuarine Habitat, and also Cold and Warm Water Habitat, Fish Migration, Fish Spawning, Ocean Commercial and Sport Fishing, Preservation of Rare and Endangered Species, Shellfish Harvesting, and Wildlife Habitat. In addition to its general finding that the 1991 Bay/Delta Plan did not contain sufficient criteria to protect the designated uses, EPA also disapproved the absence of salinity criteria to protect fish and wildlife uses in the Suisun, San Pablo, and San Francisco Bays and Suisun Marsh, the absence of scientifically supportable salinity criteria (measured by electrical conductivity) to protect the Fish Spawning uses of the lower San Joaquin River, and the absence of scientifically supportable temperature standards on the San Joaquin and Sacramento Rivers to protect the Fish Migration and Cold Fresh Water Habitat Uses.

For the reasons outlined herein, in the Proposed Rule, and in EPA's letter of September 3, 1991, the Agency finds that the water quality criteria adopted by the State fail to protect the designated uses and that the criteria below meet the requirements of the Act. Accordingly, pursuant to sections 303(c)(3) and 303(c)(4) of the Act, the Administrator is promulgating the following water quality criteria applicable to the Bay/Delta's waters.

C. Description of the Final Rule and Changes From Proposal

1. Estuarine Habitat Criteria

a. Overview

(1) Importance of the Estuarine Habitat Designated Use. The State's 1991 Bay/Delta Plan included ''Estuarine Habitat'' as a designated use for the Bay/Delta estuary. This Estuarine Habitat designated use is intended to provide ''an essential and unique habitat that serves to acclimate anadromous fishes (salmon, striped bass) migrating into fresh or marine conditions. This habitat also provides for the propagation and sustenance of a variety of fish and shellfish, numerous waterfowl and shore birds, and marine mammals.'' *See* Water Quality Control Plan, San Francisco Bay Basin [2], December 1986, at II–4.

EPA considers protection of the Estuarine Habitat designated use to be important for a number of important reasons. As described in detail in the Preamble to the Proposed Rule, conditions in the estuary are of critical importance because the estuary's particular characteristics provide a unique food source, spawning habitat or nursery habitat for a whole range of aquatic and aquatic-dependent species. The Estuarine Habitat designated use protects this vital ecosystem, an ecosystem that has a crucial role in restoring and protecting the fish and wildlife populations of the Bay/Delta. EPA and the other Federal agencies are committed to multispecies or ecosystem protection approaches, rather than focusing on the peculiar needs of individual species. In addition, the resource values benefitting from the protection of the Estuarine Habitat use include resources described in other state-designated uses, including Ocean Commercial and Sport Fishing, Preservation of Rare and Endangered Species, Fish Migration, and Wildlife

Habitat.[8] Indeed, many of the resources targeted for protection by these related uses would not be fully protected without adequate protection of the Estuarine Habitat designated use. In developing criteria protective of the Estuarine Habitat use, EPA has been mindful of the overlapping designated uses and of the range of natural resources affected by the broad Estuarine Habitat.

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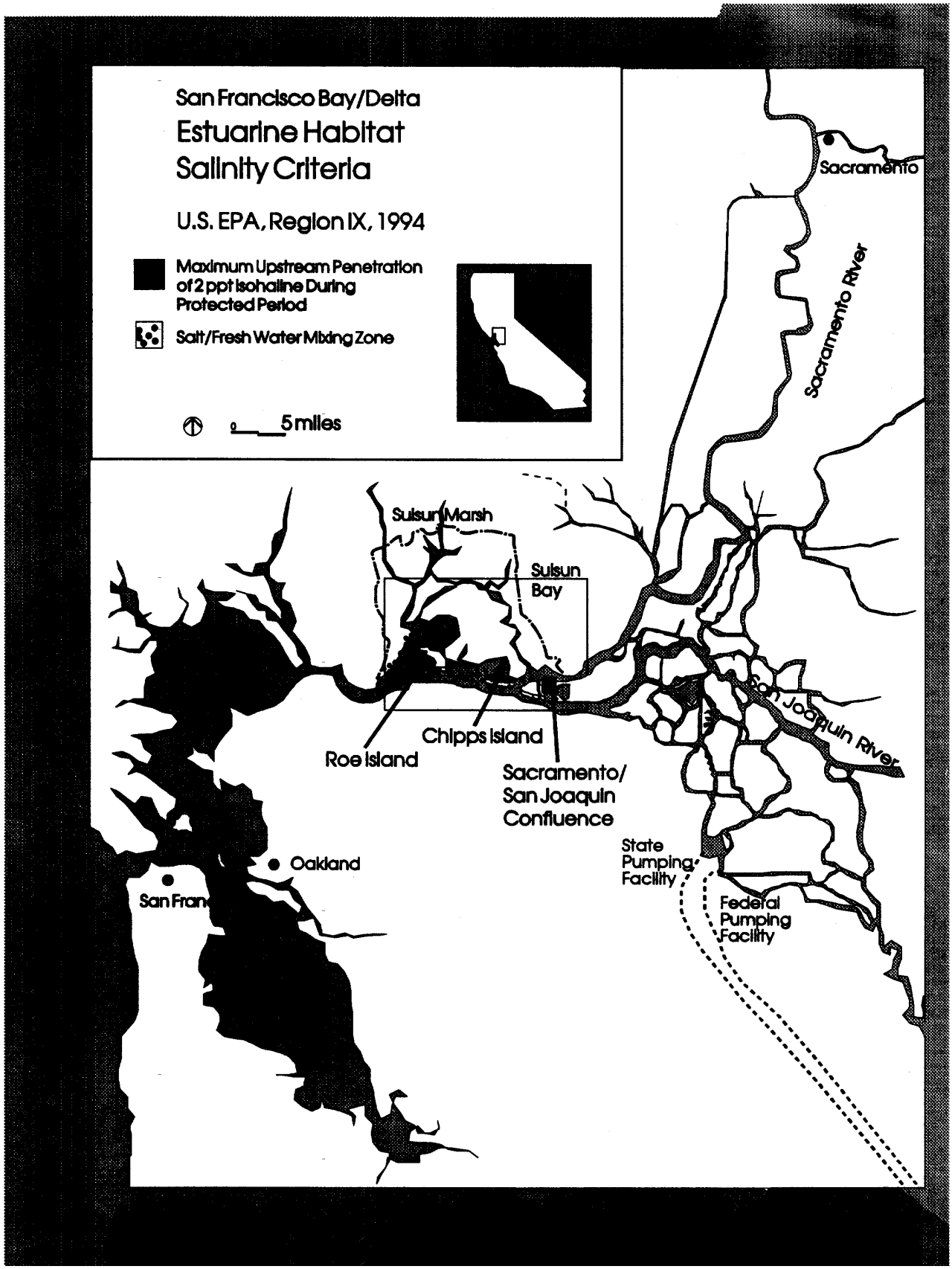
[8] As described by the State Board, the Ocean Commercial and Sport Fishing designated use protects the ''commercial fishing and collection of various types of fish and shellfish, including those taken for bait purposes, and sport fishing in ocean, bays, estuaries and similar non-freshwater areas.'' The Preservation of Rare and Endangered Species use ''[p]rovides an aquatic habitat necessary, at least in part, for the survival of certain species established as being rare and endangered species.'' As described below, the Fish Migration use ''[p]rovides a migration route and temporary aquatic environment for anadromous or other fish species.'' Finally, the Wildlife Habitat ''[p]rovides a water supply and vegetative habitat for the maintenance of wildlife.''



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(2) Proposed Criteria. As stated in the Proposed Rule, the Estuarine Habitat criteria consisted of three interrelated components:

(i) A salinity requirement of 2 parts per thousand (2 ppt);

(ii) Maintained at one or more of three monitoring locations in the Suisun Bay;

(iii) For a specified number of days during the critical spring months.

These criteria were designed to reflect the conditions in the estuary at a time when it attained protection of the designated Estuarine Habitat use.

As a preliminary matter, EPA determined the ''reference period,'' the historical time period during which the salinity regime in the estuary was sufficient to protect the designated uses. To determine the reference period, EPA was guided by the Interagency Statement of Principles signed by EPA, USFWS and NMFS, which called for estuarine conditions similar to the late 1960's to early 1970's as necessary to protect the Estuarine Habitat. However, the decade from 1965 to 1974 did not include water years types from each of the five water year type categories.[9] Therefore, in order to estimate those conditions over the entire range of possible hydrological conditions that may occur in the future, EPA used data from the years 1940 to 1975 to represent the conditions in the reference period of the late 1960's to early 1970's, and used this larger set of historical data to determine the minimum number of days of compliance.

As explained in more detail below and in the preamble to the Proposed Rule, EPA then focused on the salinity regime in the estuary to develop criteria that protect the Estuarine Habitat. Salinity was selected for several reasons: it is closely associated with the abundance and distribution of species at all trophic levels, it can be measured accurately and easily, and it integrates a number of important estuarine properties and processes.

Salinity conditions in the estuary vary dramatically from month to month and year to year, primarily in response to natural factors such as precipitation and snowmelt upstream, and to man-made factors such as reservoir operations, upstream diversions and export rates. EPA concluded that maintaining salinity conditions reflecting the natural hydrology in the Bay/Delta during the reference period would provide estuarine habitat conditions that protect the fish and wildlife resources dependent on that habitat. In other words, because precipitation varies naturally from year to year and within each year, salinity conditions reflecting this natural variability at a time period when the Bay/Delta attained its designated uses would protect the natural resources dependent upon estuarine habitat. While it may seem counterintuitive to provide *less* fresh water to the estuary in a dry year, and *more* water in a wet year, the natural resources in the Bay/Delta ecosystem have adapted to the cycle of both within-year hydrological fluctuations and substantial year-to-year fluctuations in hydrology. The intent of the proposed criteria was to restore a pattern and magnitude of those hydrological fluctuations that reflected the historical period during which the designated uses were fully protected.

To provide these conditions, EPA proposed maintaining the low salinity[10] 2 ppt isohaline (an isohaline is simply a line joining all points of equal salinity) in Suisun Bay during the critical wet season months of February to June. This particular time period is important because many different species use the low salinity habitat in the spring for spawning, as nursery habitat, for transportation through the Delta, or for a combination of these three purposes. To take account of the variation in natural hydrological conditions, EPA proposed criteria that varied according to the water year type. In all water years, the 2 ppt salinity criteria would be met at the furthest upstream monitoring site (the confluence of the Sacramento and San Joaquin Rivers at the upstream end of Suisun Bay). In wetter years, the 2 ppt salinity criteria would also be met at one or both of two downstream monitoring sites (Chipps Island and Roe Island, in the middle and downstream end of Suisun Bay, respectively).

The proposal was stated as requiring attainment of the 2 ppt salinity criteria at or below one of the three monitoring sites for a specified number of days during the February to June period, depending on the water year type. For example, under the Proposed Rule, in a ''below normal'' water year, the 2 ppt isohaline would have been required at or downstream of Chipps Island for a total of 119 days during the February to June period. This ''number of days'' approach allowed the criteria to be responsive and replicative of the varying natural hydrology during February to June. That is, if February or March were particularly wet, the criteria's ''number of days'' could be met at that time using those natural storm flows, rather than requiring reservoir releases later in the February to June period.

Finally, again in an attempt to match the criteria with the natural hydrology, the Proposed Criteria included a ''trigger'' for compliance with the farthest downstream monitoring site (Roe Island). Compliance at that site would not be required unless and until the 2 ppt isohaline had been pushed that far downstream through natural storm events.

(3) Final Criteria. The Estuarine Habitat criteria in the final rule have been revised to address many of the technical issues raised in the public comments. The fundamental structure of the Estuarine Habitat criteria is unchanged: The criteria require maintenance of the 2 ppt[11] isohaline at or downstream of one of three monitoring sites in Suisun Bay during a specified portion of the February through June period. The final criteria continue to require a 2 ppt salinity value at the Confluence of the Sacramento and San Joaquin rivers each day between February through June in all years. The 2 ppt salinity value is to be met at Chipps Island for a specified number of days, depending on the amount of precipitation. The greater the precipitation, the higher the number of days the criteria must be attained. The 2 ppt salinity value must be met at Roe Island only if it is triggered by precipitation sufficient to push the 2 ppt salinity value downstream to Roe Island during the last half of the previous month. Once triggered, the 2 ppt salinity value is to be met at Roe Island for a specified number of days, depending on precipitation.

The changes to the final criteria are primarily refinements to how the rule determines the number of days the salinity standard must be met at Chipps and Roe Islands. The primary revisions include:

[9] ''Water year'' type categories in California refer to precipitation patterns for the year. The standard water year categories are wet, above normal, below normal, dry, and critically dry years.

[10] Low salinity in the 2 ppt range is being used to describe salinity conditions in the ''mixing zone'' between freshwater coming downstream and marine water moving inland from the ocean in response to tidal influences and fluctuations in freshwater outflow. This mixing zone generally contains low surface salinity of 1 to 6 ppt, whereas ocean salinity is over 30 ppt and freshwater salinity is generally less than 1 ppt (Arthur and Ball 1979).

[11] The Proposed Rule stated the criteria as a requirement for 2 ppt salinity. As discussed more fully below, in order to state the requirement more precisely, the final rule language will define the criteria in terms of micromhos per centimeter specific conductance at 25 °C instead of parts per thousand salinity. Accordingly, the final rule will state the criteria value as ''2640 micromhos/cm,'' which is equivalent to 2 ppt salinity. Although EPA is restating the actual rule language in the more precise specific conductance language, it will continue to refer to this criteria value as 2 ppt in this discussion of the final rule.

(i) *Shift from water year categories to a ''sliding scale''.* Rather than basing the number of days on data reflecting average salinity for each of the five water year types, EPA is basing the number of days on a ''sliding scale'' or ''smooth function'' that more precisely states the correlation between precipitation and the number of days of the 2 ppt value. For example, whereas the previous approach would require the same number of days of the 2 ppt value for all ''above normal'' years, the sliding scale requires fewer number of days for a *dry* ''above normal'' year than for a *wet* ''above normal'' year. In other words, rather than stating the criteria as five discrete points representing water year types, the sliding scale uses all the data underlying those five points to construct a continuous function or line reflecting salinity as a function of flow. The sliding scale is a more realistic description of the relationship between salinity and flow as it existed at the time during which the estuary attained its designated uses.

(ii) *Shift from yearly hydrology to monthly hydrology.* Instead of basing the number of compliance days at Chipps and Roe Islands on the expected hydrological conditions for the entire year, the final criteria base the current month's requirements only on the previous month's hydrological conditions. This change requires that these criteria specify a ''sliding scale'' for each month, but allows a much more accurate reflection of variations in natural hydrology.

(iii) *Revising the data used to reflect more accurately conditions in the estuary during the reference period.* As explained above, the reference period is the historical time period when the estuary attained its designated uses. In the Proposed Rule, EPA used the late 1960's to early 1970's as the reference period because the available information about the fish and wildlife resources in the Bay/Delta suggests that this time period encompasses the most recent time period during which the designated uses were attained. To describe hydrological and salinity conditions in this late 1960's to early 1970's reference period, the Proposed Rule used data from 1940 to 1975. This longer period was used because the actual conditions in the late 1960's to early 1970's did not provide representative samples of the possible broad range of hydrological conditions in the estuary. The Proposed Rule suggested that the period 1940–1975 could be considered representative of the late 1960's to early 1970's because the longer period was one of fairly consistent hydrological conditions bracketed by the completion of Shasta Dam on the Sacramento in the early 1940's and by the severe drought of the mid-1970's.

EPA received much comment on the approach in the Proposed Rule, with some commenters arguing convincingly that the 1940 to 1975 was in fact not one of consistent hydrological conditions, since the ''level of development''—the change in the facilities used for water diversion and storage—changed over time during this period due to additional construction activities at the state, federal, and local levels. EPA agrees with these comments and has reevaluated the historical data to account for the effects of the level of development on the salinity regime in Suisun Bay. As discussed below, EPA has determined that it is appropriate to use the level of development—and corresponding salinity regime—represented by calendar year 1968 as a surrogate for the late 1960's to early 1970's reference period when the estuary attained its designated uses.

(iv) *Alternative measures of attainment.* Under the CWA, the State Board has the responsibility for developing an implementation plan, including the methodology for measuring attainment. Based on the comments received as discussed below, EPA believes that attainment could be measured at the Roe Island and Chipps Island monitoring sites by any of (1) the daily salinity value, (2) the 14-day average salinity, or (3) the ''flow equivalence'' of the salinity value, as predicted in the recent Contra Costa Water District (CCWD) model described below. For reasons that are peculiar to that model, attainment at the Confluence monitoring site could be measured by either of the first two of these approaches only.

b. Detailed Discussion

(1) Proposed Estuarine Habitat Criteria

The Estuarine Habitat criteria included in the Proposed Rule specified the location and number of days that the 2 ppt salinity value would need to be met to protect the designated use. EPA's proposed criteria are shown in Table 1. They consisted of 2 ppt salinity criteria [12] to be attained for a specified number of days at Roe Island, Chipps Island, and at the Sacramento/San Joaquin River confluence during the period of February through June. The Proposed Rule provided that the 2 ppt salinity value must be met at the Sacramento/San Joaquin River confluence monitoring station for the entire 150 day period from February through June. The number of days of compliance with the 2 ppt value at Chipps and Roe Islands were based on the late 1960's to early 1970's ''reference period'' representing a time in which the conditions in the estuary were adequate to protect the designated uses. To represent this reference period, the criteria replicated the average number of days in each of the five water year types during which the 2 ppt salinity value occurred at or downstream from each of these locations during the historical period 1940–1975. Because no critically dry years occurred in the period from 1940 to 1975, the required number of days for critically dry years was based on an extrapolation of the data. In addition, in a number of years in the 1940–1975 period, data existed for flow conditions in the estuary but not for salinity. For these years, the Kimmerer-Monismith model (SFEP 1993) was used to estimate the salinity regime based on the existing flow data.

The proposed criteria were to be measured using a 14-day moving average.[13] The use of a 14-day moving average allowed the mean location to be achieved despite the varying strength of tidal currents during the lunar cycle, because any 14 day period would include the full range of spring and neap tidal conditions.[14]

[12] EPA's proposed Estuarine Habitat criteria were stated as a certain number of days when the average daily near-bottom salinity at each of three locations in the estuary is less than 2 parts per thousand. This salinity is approximately equivalent to electrical conductivity less than 2.640 mmhos/cm EC when corrected to a temperature of 25°C.

[13] A 14 day moving average would compute the salinity for a given day by taking the overall average of daily averages of salinity values for the measurement day and each of the previous 13 days. At the monitoring sites used in the Estuarine Habitat criteria, salinity is generally measured at least hourly, thereby facilitating computation of daily averages.

[14] Spring and neap tides refer to the times during the 28 day lunar cycle when tides are strongest and weakest, respectively.

TABLE 1.—PROPOSED 2 PPT ESTUARINE HABITAT CRITERIA [1]

Year type	Roe Island [km 64]	Chipps Island [km 74]	Confluence [km 81]
Wet	133 days	148 days	150 days.
Above normal	105 days	144 days	150 days.
Below normal	78 days	119 days	150 days.
Dry	33 days	116 days	150 days.
Critically dry	0 days	90 days	150 days.

[1] Numbers indicate the required number of days (based on a 14-day moving average) at or downstream from each location for the 5-month period from February through June. The water year classifications are identical to those included in the 1991 Bay/Delta Plan for the Sacramento River Basin. Roe Island salinity shall be measured at the salinity measuring station maintained by the USBR at Port Chicago (km 64). Chipps Island salinity shall be measured at the Mallard Slough station, and salinity at the Confluence shall be measured at the Collinsville station, both of which are maintained by the California Department of Water Resources. The Roe Island number represents the maximum number of days of compliance, based on the adjustment described in the text.

As explained in more detail in the Proposed Rule, the proposed Estuarine Habitat criteria also included a ''trigger'' that limited the applicability of the Roe Island criteria to wetter years. This trigger provided that the Roe Island criteria would not apply in a particular year unless and until the average daily salinity at Roe Island attained the 2 ppt level through natural uncontrolled flows. If that occurred, the 2 ppt salinity value would have to be met at Roe Island for the number of days specified in Table 1 (or the number of days left in the February to June period, if that number was less). In effect, this ''trigger'' provided that the additional water needed to move the 2 ppt isohaline downstream to Roe Island would come from natural storms rather than from reservoir releases or export restrictions. This approach helped the criteria reproduce the natural variability in timing and quantity of runoff that existed during the reference period.

In the Proposed Rule, EPA requested public comment on a number of issues, including the desirability of stating the criteria as a ''sliding scale'' rather than by water year categories, the appropriate compliance measurement period, and the appropriate reference period for criteria target levels. EPA has incorporated many of the comments received on these and other issues in its revisions to the Proposed Rule.

(2) Technical Changes to the Estuarine Habitat Criteria

The fundamental structure of the Estuarine Habitat criteria in the final rule is unchanged from the Proposed Rule: The criteria require maintenance of the 2 ppt isohaline at or downstream of one of three monitoring sites in Suisun Bay during a specified portion of the February through June period. The final criteria continue to require a 2 ppt salinity value at the Confluence of the Sacramento and San Joaquin rivers each day between February through June in all years.

Virtually all of the changes to the final Estuarine Habitat criteria involve refinements for determining the number of days the salinity standard must be met at Chipps and Roe Islands. In general, these changes either make certain measurements more accurate or provide a closer approximation of the natural hydrological cycles. The changes, which are highly technical, can be grouped into four broad categories: (i) underlying computational revisions, (ii) using a sliding scale, (iii) using monthly rather than annual compliance, and (iv) alternative measurement of attainment of the criteria. These changes to the final rule are reflected in the final criteria at 40 CFR 131.37(a)(1).

(i) *Underlying Computational Revisions.*

The first group of changes in the final criteria are slight refinements to the methodology of some of the computations used in the rule. These include:

(I) *Updated model correlating salinity and flows.* As described above, the Proposed Rule used data from the historical period 1940 to 1975 to approximate conditions in the targeted late 1960's to early 1970's reference period. For years during that historical period when actual salinity data was unavailable, the Proposed Rule used the Kimmerer-Monismith model to estimate salinity conditions based on the available flow data. This earlier model, which was used by the San Francisco Estuary Project (SFEP) (SFEP 1993), was considered at that time to be the most accurate available for this purpose. Since the Proposed Rule was published, a revised model correlating salinity and flow has been developed by the CCWD (Denton, R.A. 1993, and Denton, R.A. 1994). EPA concluded, and the participants at the CUWA scientific workshops generally agreed (Kimmerer 1994b), that the CCWD model is a more appropriate model to use in developing the Estuarine Habitat criteria.[15] The final rule will use this new CCWD model to estimate the number of days that salinities have been less than 2 ppt historically at each of the compliance monitoring stations.

The earlier model used for the Proposed Rule measured salinity one meter above the bottom. The new CCWD model measures salinity measured at the surface. There is substantial evidence that at salinities near 2 ppt there is little variability in stratification so that bottom salinities are accurately predicted from surface salinities (CCWD 1994; Monismith 1993). Therefore, bottom salinities of 2 ppt as modeled by the Kimmerer-Monismith model correspond to surface conductivities described, as discussed below, in terms of electroconductivity of 2.640 mmhos/cm EC in the CCWD model.

(II) *Use of entire basin unimpaired flow.* In calculating the applicable Estuarine Habitat criteria value, the Proposed Rule measured flow by reference to the Sacramento Basin Water Year Type classification. EPA did this primarily to simplify calculations and to reflect the dominant role of Sacramento River flows in the Bay/Delta estuary.[16] Nevertheless, as commenters noted, in some circumstances the omission of the San Joaquin River basin flows from the calculation could significantly overstate

[15] The CCWD model developed by Denton and Sullivan models salinity at a particular location, whereas the Kimmerer-Monismith model models the location of a particular salinity. Thus, the Kimmerer-Monismith model can predict whether the 2 ppt salinity value is upstream or downstream of a given location whereas the CCWD model can predict if the salinity at the same point is greater or lesser than 2 ppt. The CCWD model is more accurate because it predicts salinity based not only on flow (as in the Kimmerer-Monismith model) but also based on the location being modeled. For example, the relationship between flow and salinity is slightly different at Roe Island than at the Confluence, and only the CCWD model reflects that difference in the relationship.

[16] The Sacramento River basin usually accounts for about 80% of net Delta outflow, with the remainder coming primarily from the San Joaquin River basin.

or understate the actual hydrological conditions in the estuary because precipitation patterns in the two river basins are not identical. Further, one of the reasons EPA chose the three locations for compliance (all at or downstream of the confluence of the Sacramento and San Joaquin Rivers) was to give the State Board maximum flexibility in determining the source of flows to meet the Estuarine Habitat criteria. To reflect the importance of the San Joaquin River basin, the final criteria have been revised to measure unimpaired flow by reference to both the Sacramento River basin (Sacramento, Feather, Yuba, and American rivers) and the San Joaquin River basin (Stanislaus, Tuolumne, Merced, and San Joaquin rivers). EPA believes that the Sacramento/San Joaquin Unimpaired Flow Index described by CUWA is the best statement of how this unimpaired flow should be computed, and will generally refer to this index as the ''8–River Index.'' [17]

(III) *''Parts per thousand'' versus ''electroconductivity''.* The Proposed Rule stated the criteria as a requirement for 2 ppt salinity at the three compliance stations for varying numbers of days. In order to state the requirement more precisely, the final rule language will define the criteria in terms of millimhos per centimeter electroconductivity or ''mmhos/cm EC'' instead of parts per thousand salinity. This change is being made to conform the final rule to the more traditional methodology for measuring fresh water salinity. Accordingly, the final rule will state the criteria value as ''2.640 mmhos/cm EC,'' which is equivalent to 2 ppt salinity.

Although EPA is restating the actual rule language in the more precise electroconductivity language, it will continue to refer to this criteria value as 2 ppt in this discussion of the final rule. To do otherwise would unnecessarily confuse the interested scientific and policy community, which for a number of years has been using the 2 ppt language in its discussion of estuarine habitat criteria.

These revisions to the underlying computational methodology apply to the Estuarine Habitat at all three monitoring sites (the Confluence, Chipps, and Roe Islands). The remaining revisions to the final criteria pertain primarily to the methodology used in defining the number of days of compliance to be met at Chipps and Roe Islands.

(ii) *Using a Sliding Scale.*

In the final Estuarine Habitat criteria, EPA is restating the number of days that the 2 ppt salinity value must be met as a sliding scale correlating the number of days of compliance with unimpaired flow. The sliding scale approach has also been called the ''continuous function'' or ''smooth function'' approach. This approach replaces the Proposed Rule's statement of the criteria as a single fixed number of days of compliance for each of the five water year categories. The previous approach did not account for the substantial differences in hydrological conditions *within* water year types. For example, an ''above normal'' water year type could range from a *wet* ''above normal'' year to a *dry* ''above normal'' year. Given the extreme variation of hydrological conditions in the Bay/Delta, these variations within each of the five standard water years types are substantial, and should be factored into the calculation of the number of days of compliance with the 2 ppt salinity criteria.

The sliding scale approach addresses this problem by transforming the average salinity values for the five discrete water year categories into a more precise equation (graphically, a single line or curve) correlating the number of days of compliance with the specific observed hydrological conditions. This sliding scale approach would result in the same *average* number of days of compliance for each year type, and therefore represents the same level of protection for the Estuarine Habitat use as the Proposed Rule. The new approach, however, more accurately reflects differences *within* water year categories, thereby allowing a more accurate reflection of the natural hydrological cycles representative of the reference period necessary for protection of the use.

In addition, while the sliding scale approach equally represents the conditions under which the estuary attains its designated uses, the sliding scale results in lower water costs and, for operational reasons, may actually enhance protection of the uses. Testimony at recent State Board hearings criticized the use of water year type categories. Because water year types can change as the year progresses, criteria based on the historical mean for each water year type can cause major changes in project operations and habitat conditions if a given year shifts from one water year type to another over the course of the winter months. For example, a later season storm could cause the water year type to be reclassified from the below normal category to the above normal category. This shift would increase the number of days the criteria must be met at one of the monitoring sites. Such large and sudden changes are inefficient for water resource management and may harm aquatic resources by dewatering or washing away newly spawned eggs. Incorporating a sliding scale definition of the criteria would likely ease the actual operational procedures necessary to meet the criteria and would avoid the relatively sudden, large scale changes in operations that might come from a sudden shift in the determination of year type as spring progresses.

The comments EPA received on the Proposed Rule were generally supportive of this change in approach (CUWA 1994a, California DWR 1994, NHI 1994, and Kimmerer 1994a). Both written comments and the discussions at the CUWA scientific workshops offered several suggestions as to how the sliding scale function should be formulated.

There are two major components to the sliding scale approach. First, the shape of the scale must be determined. Second, the actual scaled values must be determined.

(I) *Defining the sliding scale.* There are a number of possible mathematical definitions of a sliding scale, including (a) a straight line, (b) a quadratic equation, or (c) a logistic equation.[18]

In the Proposed Rule, EPA suggested that a quadratic equation could be used to define the sliding scale. After reviewing the public comments, EPA has concluded that the Estuarine Habitat criteria should be stated as a logistic equation defining the sliding scale. Dr. Wim Kimmerer, in his comments on the Proposed Rule (Kimmerer 1994a), noted that the logistic model is ''appropriate

[17] As stated on page 3 of Appendix 1 to the California Urban Water Agencies ''Recommendations to the State Water Resources Control Board for a Coordinated Estuarine Protection Program for the San Francisco Bay-Sacramento and San Joaquin River Delta Estuary'' dated August 25, 1994, the Sacramento/San Joaquin Unimpaired Flow Index ''shall be computed as the sum of flows at the following stations:

1. Sacramento River at Band Bridge, near Red Bluff
2. Feather River, total inflow to Oroville Reservoir
3. Yuba River at Smartville
4. American River, total inflow to Folsom Reservoir
5. Stanislaus River, total inflow to New Melones Reservoir
6. Tuolumne River, total inflow to Don Pedro Reservoir
7. Merced River, total inflow to Exchequer Reservoir
8. San Joaquin River, total inflow to Millerton Lake.''

[18] The standard forms of these types of equations are (a) a straight line (y=a+b*x), (b) a quadratic equation (y=a+b*x+c*x2) or (c) a logistic equation ($y=1/(1+e^{3(a+b*x)})$).

for a relationship between a dichotomous variable (i.e. compliance or no compliance) and a continuous variable.'' A logistic model cannot require fewer than 0 or more than the number of days available in the month, whereas linear equations (such as one included in written comments of CCWD (CCWD 1994) or quadratic equations (such as the one EPA suggested in the Proposed Rule) can result in unrealistic extrapolations (e.g., resulting in the criteria having to be met less than zero days or more than the number of possible days each month).[19]

Kimmerer suggested a sliding scale based on logistic equations that stated the percentage number of days of compliance during the February to June period as a function of the unimpaired flow for those five months. An example of graphic representations of these equations for Roe Island is shown in Figure 1. EPA has adopted this basic approach; however, as discussed below, EPA has revised the logistic equations to reflect monthly computations of compliance.

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[19] While uncommon in some fields, the logistic equation is the basis of many ecological models, especially for population dynamics and epidemiology. In these ecological applications, the logistic model is useful because of the nature of the dichotomous variables (such as how many individuals are alive or dead in population dynamics, or how many individuals are infected or healthy in epidemiological studies). In each case, the dichotomous variables are arrayed along time as the continuous variable. In both cases, also, the function is constrained between 0 and the total population size, which is biologically realistic. EPA is using the logistic equation to model the number of days of attainment of the 2 ppt value (the dichotomous variable) against unimpaired flow (as the continuous variable). The logistic model also provides that no less than 0 and no more than the total number of days in the month can be required for attainment.

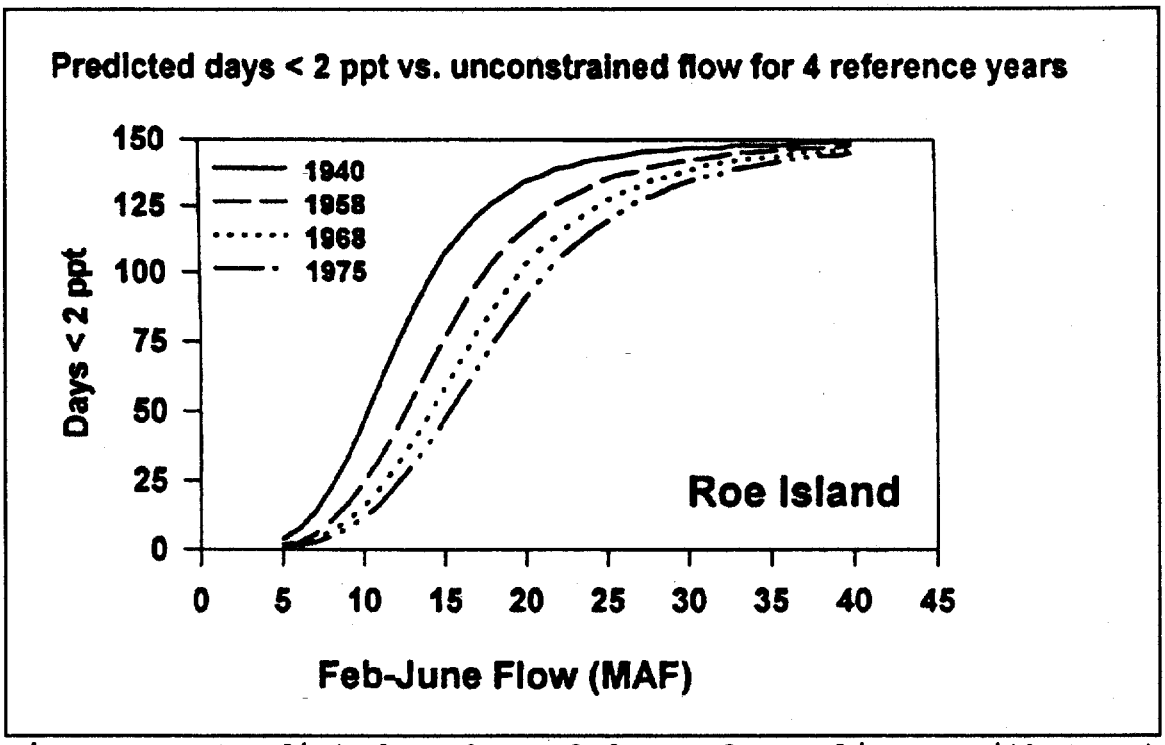

Figure 1. Predicted number of days of compliance with 2 ppt criteria during February to June at four levels of development across a range of unimpaired flows.

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(II) *Selecting sliding scale values: the reference period that would reflect protection of the designated uses.* Having concluded that the logistic equation is the best form of sliding scale for the Estuarine Habitat criteria, EPA still needed to determine the appropriate reference period reflected in that logistic equation.

In the Proposed Rule, EPA chose as the reference period the late 1960's to early 1970's. Available information suggested that during this period the estuarine conditions were able to support the designated uses. To describe the conditions in this late 1960's to early 1970's reference period, the Proposed Rule used hydrological and salinity data from 1940 to 1975. This longer period was used because the actual conditions in the late 1960's to early 1970's did not provide representative samples of the possible broad range of precipitation conditions in the estuary.[20] The Proposed Rule suggested that the period 1940–1975 could be considered representative of the late 1960's to early 1970's because the longer period was one of fairly consistent hydrological conditions bracketed by the completion of Shasta Dam on the Sacramento in the early 1940's and by the severe drought of the mid-1970's.

EPA received substantial comment about its choice of an historical reference period to define the targeted level of protection for the Estuarine Habitat criteria. One group of comments criticized the choice of the years included in the reference period. Various other historical periods were discussed by different commenters as alternatives. (Bay Institute 1994, California DWR 1994, and NHI 1994). EPA's specific responses to these comments are in the comment response document included in the record to this rule.

A second set of comments raised a more fundamental problem with the use of an historical reference period. These comments argued that the choice of any particular historical reference period was inherently suspect if it could not account for the changing ''level of development'' (that is, the changing system of dams, diversion facilities, storage reservoirs, etc.) during the 1940 to 1970 period (California DWR 1994). For example, if exactly the same amount of precipitation had fallen in each of 1940 and 1970, the different ''level of development'' in each year would affect how much water actually made its way down the rivers into Suisun Bay. In other words, the level of development, independent of the amount of rainfall, would affect the number of days that the 2 ppt salinity value was attained in Suisun Bay. Without accounting for the level of development, it would be hard to use rainfall data from the 1940's to represent conditions in the late 1960's to early 1970's.

EPA is persuaded that addressing these concerns about the effects of the level of development on resulting salinity criteria is, to a certain extent, appropriate. EPA and others (notably, the CUWA scientific workshops) have presented and discussed methods for accounting for the level of development. The Final Rule includes a straightforward approach to this issue. Standard statistical regression analysis was used to isolate the effects on the number of days of 2 ppt salinity of (1) the level of development, represented by calendar year,[21] and (2) precipitation (Kimmerer 1994b; Ferreira and Meyer

[20] In fact, no dry or critically dry years, and only one above normal year occurred during the late 1960's to early 1970's.

[21] The use of the calendar year as a surrogate for the level of development is reasonable up until the late 1970's, because up until that time there was a fairly consistent increase year-by-year in the number and capacity of diversion and storage facilities, and the significant changes to the salinity regime imposed by the 1978 Delta Plan had not yet taken effect.

1994). This statistical procedure allowed EPA to separate the effects of year-to-year variability in precipitation from the effects of increased levels of upstream development.[22]

The results of these recomputations are shown graphically in Figures 1 and 2. The response surface or curved plane in Figure 2 shows how the number of days of 2 ppt salinity at Roe Island changes with both the precipitation (flow) and the changing level of development over time. Figure 1 shows several ''slices'' of the curved plane in Figure 2. Each of these different slices corresponds to a particular year's level of development (1940, 1958, 1968, and 1975), and show how the number of 2 ppt days would have varied over different hydrological conditions at that year's level of development. Historically, of course, each year experienced only one hydrological scenario; the purpose of the regression equations for these four different years is to show how that particular level of development would have influenced the position of the 2 ppt isohaline over the entire range of possible hydrological conditions.

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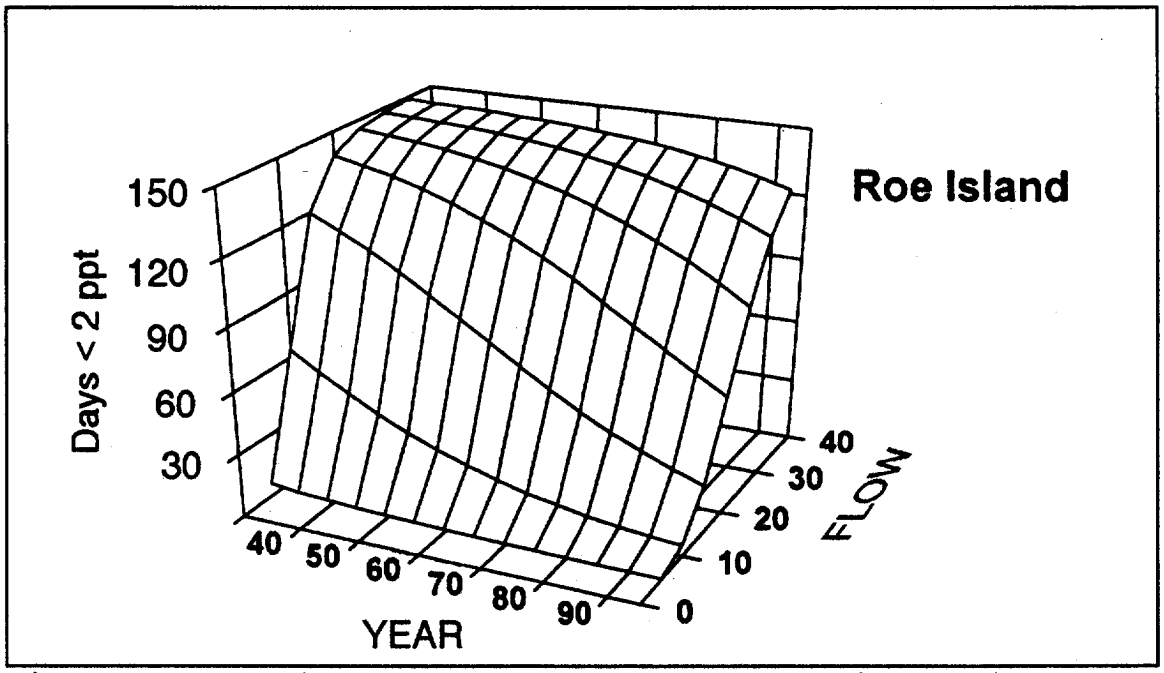

Figure 2. Predicted number of days of compliance with 2 ppt criteria during Feb-Jun period, showing relationship to (1) increasing level of development represented by calendar year and (2) unimpaired flow.

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Having adjusted the historical data to account for the effects of the level of development, EPA must still determine the appropriate reference period for defining the final criteria. The final criteria must adequately reflect conditions in the estuary at a time period during which the estuary attained the designated uses, regardless of the causes of degradation to the waterbody.

In the final rule, EPA is establishing Estuarine Habitat criteria that replicate the ''level of development'' existing in 1968. The intent of these criteria is to protect the Estuarine Habitat designated use to the same degree that these uses would have been protected under the level of development present in 1968.

EPA chose the 1968 level of development because the best available information indicates that at that time, salinity conditions in the Bay/Delta were adequate to protect the estuarine habitat. As explained in the Proposed Rule, EPA, NMFS, and USFWS have called for a level of protection equal to that which existed in the late 1960's and early 1970's. EPA believes that the fish population data summarized in the San Francisco Estuary Project's Status and Trends Report document the precipitous and unreversed decline of the most abundant species beginning in 1970. (Herbold et al. 1992). This downward trend is also apparent in the population data for winter run Chinook salmon. (Herbold et al. 1992).

In choosing a particular year, EPA is not suggesting that the particular hydrological conditions in 1968 are being replicated. Instead, the use of an individual calendar year appears to be a reasonable surrogate for the level of development for that period. As the graph in Figure 2 suggests, there would not be a substantial difference between number of days of meeting the 2 ppt salinity value in 1968 versus 1967 or 1969. EPA has chosen the 1968 value as a reasonable representation of the period in which the estuary was attaining its designated uses.

If the Estuarine Habitat criteria were stated on an annual basis as it was in

[22] In that this statistical procedure allowed the effect of the changing level of development to be controlled, the issue of the proper data set (i.e., group of reference years) to be included in the description of historical hydrological conditions essentially disappears. To take advantage of all appropriate historical data, in performing these computations EPA used data from the years 1930 (when accurate records were first available) to 1978 (when the hydrological conditions in the Delta were first substantially affected by the regulatory measures adopted by the State Board).

the Proposed Rule, the logistic equation corresponding to the 1968 line in Figure 1 would serve as the criteria's sliding scale correlating the number of days of meeting the 2 ppt salinity value with annual unimpaired flow. As described below, however, this annual sliding scale must still be transformed into monthly sliding scales.

(iii) *Moving to Monthly Compliance.*

EPA has also refined the final rule to restate the Estuarine Habitat criteria on a month-by-month basis, rather than as a single number of days of compliance covering the entire February to June period.

EPA received comments suggesting that the number of days of meeting the 2 ppt salinity value at Chipps and Roe Islands should be stated solely, or largely, in reference to the patterns of precipitation that could directly affect estuarine habitat during the period intended for protection. For example, criteria that are designed to protect conditions in the February–June period should reference only the unimpaired flows of February–June (or, possibly, January–June). Including precipitation in months outside of this February–June period could lead to inaccuracies in the criteria for February–June that could unnecessarily affect water project operations or inadequately protect the designated uses. This same problem could exist *within* the February–June period. For example, if in a given year the precipitation in February is substantial, but the following months are very dry, the overall period of February–June would be considered very dry and, using the sliding scale for the entire February–June period, the number of days of compliance with the 2 ppt salinity value at Chipps or Roe Island would be very low. This result may contradict the actual natural hydrological cycle, which under this scenario would have provided at least one high water period for the estuarine habitat uses.

A related issue raised by the comments and in the CUWA scientific workshops was the problem of how to develop compliance strategies for a given year based on a forecast of hydrological conditions expected during the following months. EPA agrees that this forecasting is unreliable, especially for the critical February and March months which are typically the months of most variable precipitation. Sliding scales such as Figure 1 (for Roe Island), which apply to the entire February to June period of protection, still require the project operators to forecast future hydrological conditions to meet the expected number of days of attainment with the 2 ppt criteria. For example, if February and March are wet, project operators have to forecast weather patterns for April to June to determine whether they should operate their projects to meet a substantial number of days of attaining the 2 ppt salinity value at Chipps or Roe Island (forecasting that the whole period will continue to be wet) or a lesser number of days (forecasting that the remaining months will be dry). Thus, the annual or five month approach described above and shown for Roe Island in Figure 1 would not address the issue of unreliable forecasts.

To address this uncertainty in forecasting long range hydrology, and to provide criteria that more closely reflect the natural hydrology actually affecting the estuarine habitat, EPA is in the final rule restating the Estuarine Habitat criteria on a month-by-month basis. That is, the final criteria define the required number of days of compliance for a particular month solely by reference to the hydrological conditions of the previous month. This approach more precisely ties the salinity conditions affecting Estuarine Habitat with natural hydrological cycles reflecting the time when the estuary attained its designated uses, and is therefore consistent with EPA's overall approach to protecting the Estuarine Habitat designated use.

Developing monthly sliding scales. EPA's analysis indicated that the required number of days of compliance with the 2 ppt criteria in a given month could be quite accurately predicted from logistic models using unimpaired flows of any of (a) the current month, (b) the previous month, (c) the previous two months, or (d) the previous and current month. Including the actual unimpaired flows of the current month, however, did not improve model performance and, in practice, the actual unimpaired flow of the current month cannot be known accurately until the month is over. EPA has, therefore, restated the criteria using the logistic equations described above, but only for one month at a time based on the preceding month's unimpaired flow.

For example, the measured unimpaired flow in January would be used to set the number of days of compliance with the 2 ppt criteria at the Chipps and Roe Island locations. Similarly, measured unimpaired flow in February is used to set March's requirement. This approach has been labeled the ''Previous Month's 8-River Index'' (PMI) approach. To make this approach work, the sliding scales exemplified (for Roe Island) in Figure 1 have been transformed into monthly sliding scales. These monthly logistic equations for both Chipps and Roe islands are shown graphically in Figure 3.

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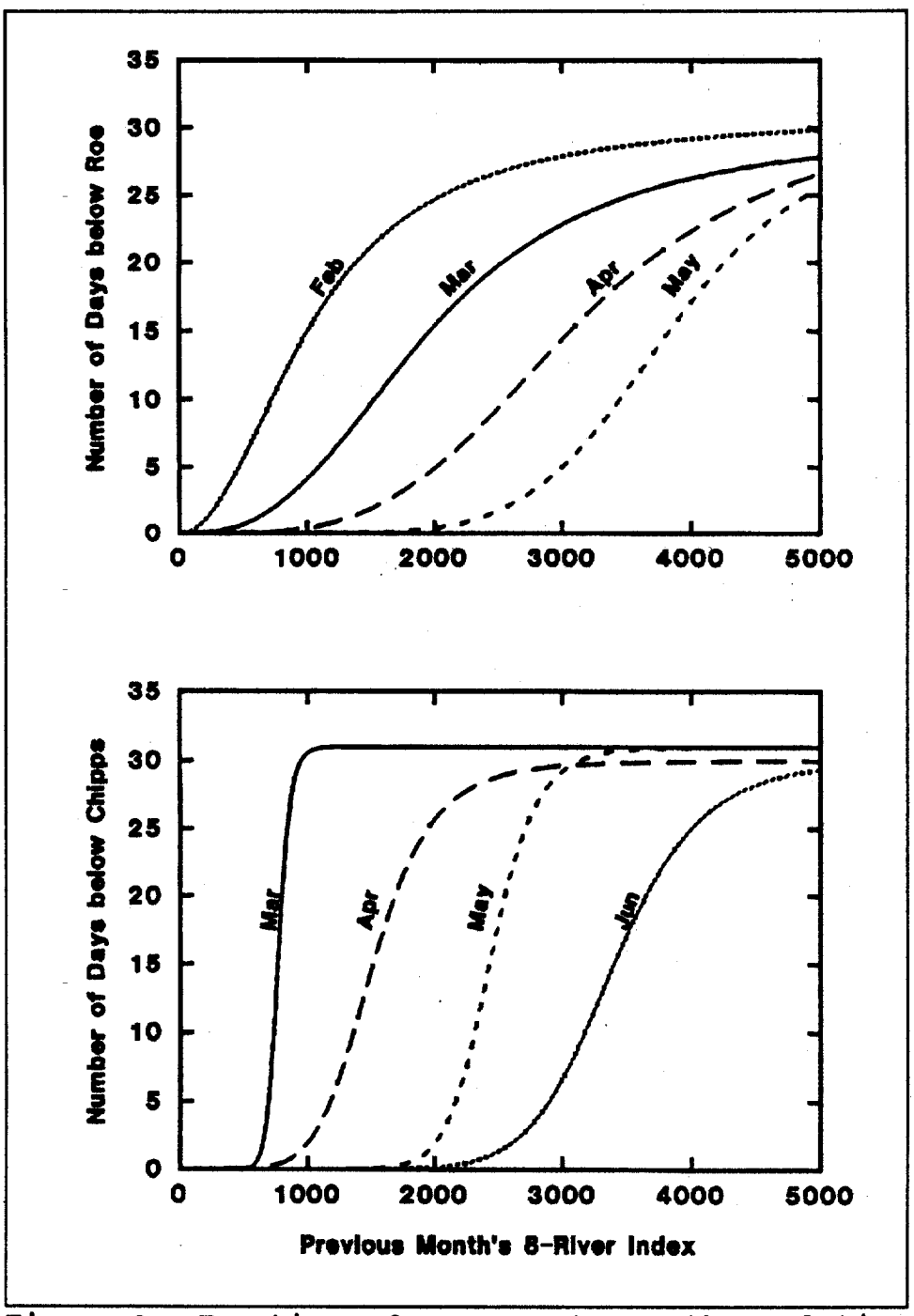

Figure 3 Equations for separate months relating previous month's unimpaired flow to current month requirement.

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Two technical revisions are being made to the criteria values generated by these monthly sliding scale equations. First, to facilitate compliance, the number of days resulting from the monthly equations will be rounded up or down to the nearest whole number. Second, at extremely low flows, the monthly equations include unjustified extrapolations beyond the existing data. For that reason, when the previous month's index is less than 500,000 acre-feet, the number of days of compliance required for the current month shall be zero.

Revising the Roe Island ''trigger'' for monthly compliance. As a result of the above changes to the Estuarine Habitat criteria, the ''trigger'' for the Roe Island location must be restated as a month-to-month trigger. The Proposed Rule stated, in effect, that if the salinity dropped below 2 ppt at Roe Island at any time during the February to June period due to uncontrolled hydrologic conditions, the Roe Island requirements were ''triggered'' for the remainder of the February to June compliance period. In the final rule, the ''trigger'' is evaluated on a monthly basis. If the 14-day moving average salinity at Roe Island falls below 2 ppt on any day during the last 14 days of a month, compliance with the Roe Island criteria would be ''triggered'' for the following month.

For example, assume that the sliding scale of unimpaired flow (PMI) for January indicates that the 2 ppt salinity value shall be attained for 18 days at Roe Island in February, *if* the Roe Island criteria is ''triggered.'' If the 14-day moving average salinity in the last part of January is below 2 ppt at Roe Island, the Roe Island criteria would in fact be triggered for 18 days in February. Assume then that the system is operated to meet the 18 days in February, but that a large storm in mid-February results in the salinities of less than 2 ppt at Roe Island for the entire month of February. This would ''trigger'' the Roe Island criteria in March. If the sliding scale, PMI-based calculation required 31 days of compliance at Roe Island in March in this scenario, compliance for April (for 13 days, for example) would also be triggered, since the 2 ppt would be met during the last 14 days of March. If April is a dry month, the 2 ppt criteria could be met for the required 13 days early in the month, the 14-day moving average salinity in the last half of April would never go below 2 ppt at Roe Island, and the Roe Island criteria would not be triggered for May at all.

Although somewhat complicated, this monthly triggering mechanism is essential to assure that the criteria applicable in a given month reflect the actual distribution of storm events throughout the February to June compliance period. As explained in more detail above, accounting for the natural hydrologic cycles in a manner reflecting the reference period assures protection of the designated uses without unnecessarily affecting water project operations.

(iv) *Alternative Measures of Attaining the Criteria.*

In the Proposed Rule, EPA indicated that it believed a State Board implementation plan that relied on the salinity-flow models, without making additional allowances for ''confidence intervals'', would adequately protect the designated uses. EPA's further review of the comments and continued discussions with the project operators has confirmed this belief.

In addition, EPA believes that the Estuarine Habitat use would be protected if the Estuarine Habitat criteria are directly measured as either a daily salinity value or as a 14-day moving average salinity value. Further, EPA's review of the new CCWD model correlating flow and salinity suggests that the Estuarine Habitat use would be protected at the Chipps and Roe Island monitoring sites if the modeled ''flow equivalent'' of the applicable 2 ppt criteria is provided. According to the CCWD model, the steady state flows that would satisfy these flow equivalent requirements are 29,220 cubic feet per second (cfs) for the Roe Island monitoring site and 11,400 cfs for the Chipps Island monitoring site (Denton, pers. comm.). This ''flow equivalence'' measure of attainment with the criteria would not be available at the Confluence monitoring site because of assumptions in the CCWD model about antecedent conditions in Suisun Bay.[23]

Accordingly, the State Board could adopt an implementation plan providing that project operators would attain the criteria in any one of three ways: (1) the daily salinity value meets the requirement, (2) the 14-day moving average salinity meets the requirement, or (3) at the Chipps and Roe Island monitoring sites, the system is operated on that day so as to meet the ''flow equivalent,'' using the CCWD model, of the stated salinity criteria. EPA notes that the available modeling data indicate that under most circumstances, the most efficient approach (in terms of water usage) to meeting the criteria would be to attain the specified salinity value rather than the alternative flow equivalent.

c. Revised Estuarine Habitat Criteria

Final estuarine habitat criteria reflecting the changes discussed above are shown below at 40 CFR 131.37(a)(1). These revised criteria provide the many equations necessary to define month-by-month sliding scales and, thereby, the applicable criteria.

For illustration purposes only, Table 2 presents representative examples of the required number of days of compliance in different months across a range of possible values of the PMI index of unimpaired flow.

PMI	Chipps Island					Roe Island (if triggered)			
	Feb	Mar	Apr	May	Jun	Feb	Mar	Apr	May
1000	.....	31	2	0	0	13	4	2	0
1250	.....	.....	7	0	0	17	7	4	0
1500	.....	.....	15	0	0	19	10	8	0
1750	.....	.....	21	0	0	21	13	11	0
2000	.....	.....	26	1	0	22	16	15	0
2500	.....	.....	29	16	1	24	20	21	2
3000	.....	.....	29	29	7	25	24	25	5
4000	.....	.....	30	31	25	26	27	28	18
5000	.....	.....	.....	.....	29	27	29	29	26

[23] That is, to make this finding that the ''flow equivalence'' would protect the designated use at the Chipps and Roe Island locations, EPA had to make assumptions in the CCWD model that the 2 ppt salinity value was actually being attained at the Confluence. Given that assumption, EPA cannot find that the ''flow equivalence'' at the Confluence is protective.

PMI	Chipps Island					Roe Island (if triggered)			
	Feb	Mar	Apr	May	Jun	Feb	Mar	Apr	May
6000	.....	.....	.....	.....	30	28	30	30	29

Table 2. Examples of required number of days of compliance for each month across a range of possible values of the 8–River Index for the prior month (PMI).

2. Fish Migration Criteria

a. Overview

(1) Importance of the Fish Migration and Cold Freshwater Habitat Criteria. The State's designated uses for the Bay/Delta include Cold Fresh-Water Habitat ''to sustain aquatic resources associated with a coldwater environment,'' and Fish Migration to ''[p]rovide[ ] a migration route and temporary aquatic environment for anadromous or other fish species.'' (1991 Bay/Delta Plan at 4–1). The migratory fish species associated with the cold fresh-water environment in the Bay/Delta are chinook salmon (Oncorhynchus tshawytscha) and steelhead trout (Oncorhynchus mykiss).[24]

[24] The State Board has designated both of these uses for the Bay/Delta estuary. However, in practice there is substantial overlap between them because many of the factors affecting the Cold Fresh-Water Habitat use also affect those anadromous fishes migrating through the Delta to the ocean. Because of this overlap, this rule will, in protecting Fish Migration, benefit the Cold Fresh-Water Habitat use as well.

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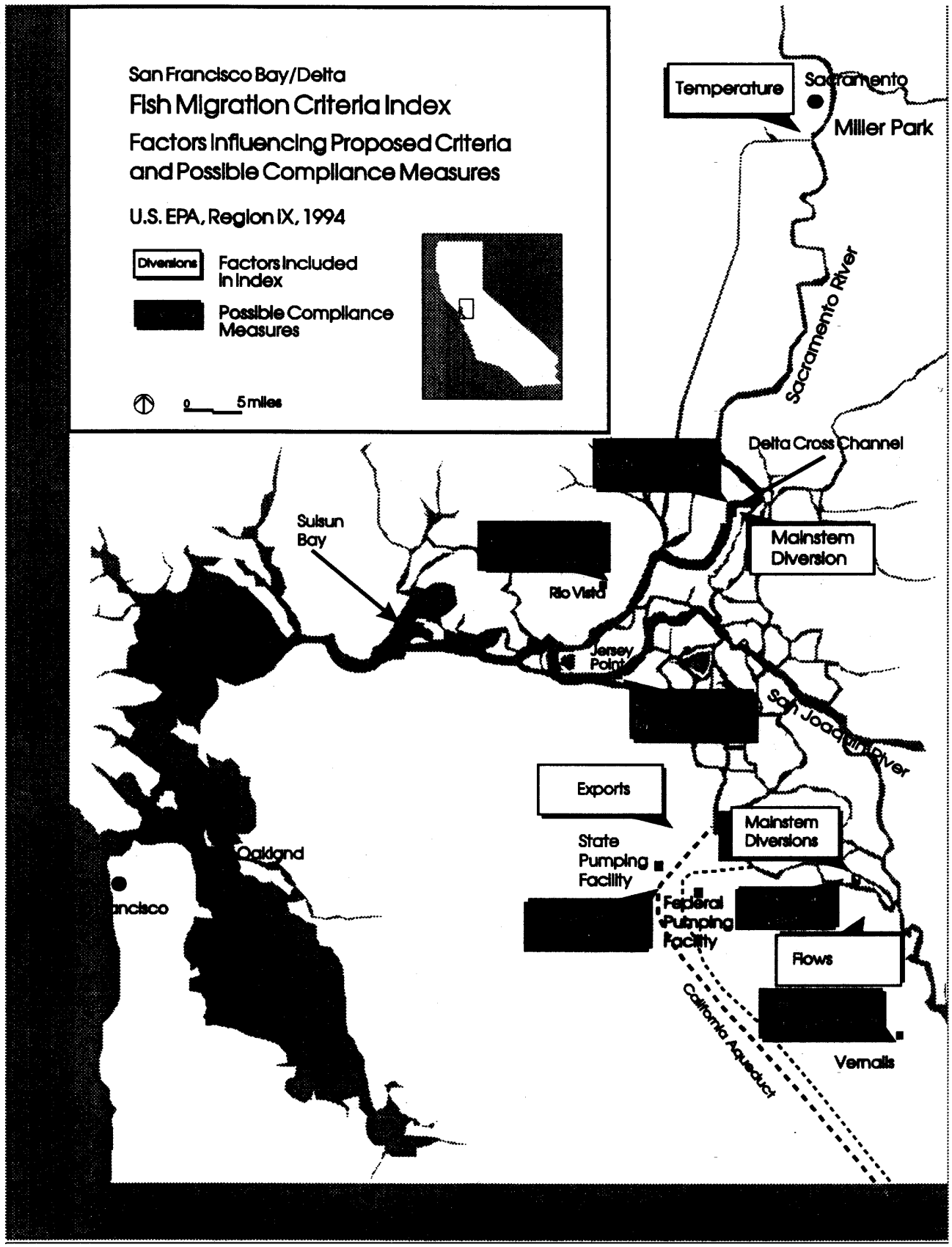

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Currently there are four distinct populations of salmon in the Sacramento/San Joaquin river systems, each named for the season of their migration upstream as adults. The fall-run population is now the most numerous. The San Joaquin River system supports only a fall-run population; the San Joaquin River spring-run became extirpated in the 1940's. The Sacramento River system still supports small winter-run, spring-run and late fall-run populations, but these populations have all declined dramatically in recent years (USFWS 1992a, WRINT–USFWS–7; California DFG 1992a, WRINT–DFG–14). The winter-run population is now listed as threatened under the ESA. The spring-run population has recently reached low enough levels to be recognized as a species of special concern by the State of California, and NMFS has recently included the spring-run in its status review of salmon on the northwest coast of the United States (59 FR 46808 (09/12/94)).

Steelhead trout are also cold fresh-water migratory fish within the Sacramento River System. They have suffered a 90 percent decline since the late 1960's, and are supported largely by hatchery production (CDFG 1992a, WRINT–DFG–14).

Salmon and steelhead migrating through the Delta to the ocean are subject to increased mortality when exposed to high temperatures and low flows and when diverted out of the main channels of the Sacramento and San Joaquin Rivers into less suitable habitat. Those fish diverted from the main river channels into the central and south Delta are also subject to increased mortality because of several factors including higher temperatures, increased predation and increased entrainment at the State and Federal pumping plants in the south Delta (USFWS 1992a).

State and federal legislators have recognized the serious threat to the continued existence of migratory fishes in the Bay/Delta. In 1988, the California State legislature mandated a restoration goal of doubling natural salmon and steelhead production by the year 2000, and required development of a plan to meet this goal. Salmon, Steelhead Trout, and Anadromous Fisheries Program Act; codified at Cal. Fish & Game Code § 6900 et seq. (West 1991). Also, the United States Congress recently enacted the Central Valley Project Improvement Act (CVPIA), which requires that a program be developed and implemented to make ''all reasonable efforts to ensure that * * * natural production of anadromous fish in Central Valley rivers and streams will be sustainable, on a long-term basis, at levels not less than twice the average levels attained during the period 1967–1991. * * *'' Central Valley Project Improvement Act § 3406(b)(1), P.L. 102–575.

(2) Proposed Rule. Many different factors affect the ability of salmon and steelhead to successfully migrate through the Delta to the ocean. These include water temperature, flow rates, diversions, operation of pumping facilities, and gate closures regulating the direction of water flows through the myriad channels and sloughs in the Delta. Clearly, any number of beneficial combinations of these factors could result in conditions that provide for successful migration and protection of the designated use. Accordingly, in formulating its Proposed Rule, EPA concluded that it would state its criteria generally, measuring the success of salmon in migrating through the Delta. That is, EPA would state goals that (1) called for a certain percentage of salmon to be able to survive their passage through the Delta, and (2) that could be achieved by any of a number of different management measures. In this way, the State Board would have maximum latitude to find combinations of management measures that would attain the salmon survival goal.

In order to quantify the success of migrating salmon in passing through the Delta, EPA relied on ''salmon smolt survival models'' developed by the USFWS, one for the Sacramento River and one for the San Joaquin River.[25] These salmon smolt survival models are mathematical equations stating the relationship between specific variables in the Delta (water flow rates, diversions into the central Delta, etc.) and salmon smolt survival.[26] To predict the effect of a particular set of management measures (for example, a specified minimum flow and a specified maximum export flow), EPA inserts the management measures into the model equation. The model equation then generates an ''index value'' representing the relative success of salmon migrating through the Delta while that set of management measures is being implemented.[27]

As its criteria, EPA proposed a set of index values representing successful salmon migration sufficient to protect the designated use. EPA established these target criteria index values by taking a set of USFWS recommendations of management measures that would protect the salmon resource, and translated (using the USFWS model equations) those protective management measures into index values. In other words, the criteria index values represented the level of salmon migration survival through the Delta that would occur if this particular set of protective management measures were adopted. The intent was not to mandate those particular management measures. Rather, it was to set a performance standard—measured by the criteria index value—for salmon survival. To attain the goal, the State Board would use either the specific management measures recommended by USFWS, or any other combination of measures that would yield the same level of survival of migrating salmon.

The Proposed Rule named its criteria index values ''salmon smolt survival index criteria.'' For each of the Sacramento and San Joaquin River systems, the criteria provided a salmon smolt survival index equation (*i.e.* a USFWS model equation) and a set of index values to be attained. The index equation for each river quantified and predicted the survival of salmon smolt migrating through the Delta.

The USFWS equations and EPA's Proposed Rule both ''scaled'' the index values to a scale of 0 to 1. This was done by dividing experimental release results by a constant of 1.8 (the highest release result). In the final rule, EPA is not ''scaling'' its criteria values. It is important to realize that criteria index values in the final rule are not actual survival estimates (such as a percentage of smolt surviving), but indices showing survival relative to other index values.[28]

In the Proposed Rule, the index values contained in the criteria varied according to the standard five water year types—each water year type had a

[25] A ''smolt'' is a salmon in the process of acclimating to the change from a fresh water to a salt water environment. This occurs when young salmon migrate downstream through the Delta to the ocean.

[26] These salmon smolt survival index equations were based in large part on the results of tagged-fish release and recapture experiments designed to measure and compare salmon smolt survival under a number of different physical conditions of varying migration pathways, water temperatures, flow rates, and rates of water exports from the Delta.

[27] There was some disagreement among the commenters on the Proposed Rule as to whether these USFWS models yield index values that are literally ''percentages'' of the salmon smolts surviving through the Delta. All parties appear to agree, however, that these index values do in fact represent the relative survival compared to other index values. This preamble and accompanying rule will generally refer to these values as index values rather than as percentages.

[28] For example, historically, the San Joaquin River index value has reached a number as high as 1.5 (which was attained in an experimental release at Jersey Point). For comparison, the average San Joaquin survival index value during low flow years is 0.09. This 0.09 index value represents approximately 5 smolt recoveries from a release of 50,000 fish at Mossdale, 55 miles upstream of the recovery site at Chipps Island.

particular index value to be attained.[29] The index values were to be attained by implementing management measures affecting the variables included in the index equations. For the Sacramento River, the index equation described a relationship between smolt survival and three variables: water temperature, water diversion out of the mainstem Sacramento River, and water export rates. For the San Joaquin, the variables were river flow rates, water diversion into the Upper Old River, and export rates.

The Proposed Rule included index values generally representing the modeled results of the management measures developed by the USFWS based on the work of the Delta Team of the Five Agency Chinook Salmon Committee.[30] These management measures consist of export limits, minimum flows, channel gate closures, etc., during critical periods in the year. The estimated effects of these management measures on smolt survival were calculated using the criteria index equations.[31] EPA concluded that these management measures, and the associated criteria index values, would lead to the protection of the designated Fish Migration use.

The resulting criteria index values were also consistent with the recommendations of the Interagency Statement of Principles signed by EPA, NMFS, and USFWS, which called for a level of protection for aquatic resources equivalent to the level existing in the late 1960's to early 1970's. To make this comparison, EPA compared its proposed criteria index values with the index values attained historically on the two river systems. See generally the discussion in the preamble to the Proposed Rule at 59 FR 824. The proposed Sacramento River criteria index values represented overall protection for the Fish Migration use at approximately the 1956–1970 historical level, whereas the proposed San Joaquin River criteria index values represented slightly better protection than the 1956–1970 historical level.

The Proposed Rule also relied on the criteria index equations to determine whether the criteria were being attained. In effect, attainment would be assumed if the State adopted an implementation plan with a set of measures (export restrictions, flow requirements, etc.) that, when computed in the index equations, resulted in the criteria index value.

(3) Final Criteria. EPA received substantial comment on its Proposed Fish Migration criteria. In addition, CUWA sponsored a number of scientific workshops to discuss the Proposed Rule, and EPA participated in these discussions. In response to the comments and scientific workshops, EPA developed a revised approach to the Fish Migration criteria, which was summarized in the documents made available to the public in EPA's Notice of Availability published in the **Federal Register** on August 26, 1994 (59 FR 44095).

The final rule maintains the fundamental approach of the Proposed Rule, but it has been revised in a number of ways to address several concerns. The major changes are:

(i) The methodology for establishing the criteria index values has been revised. Consistent with the discussion in the materials made available in the Notice of Availability, the criteria values on the Sacramento and San Joaquin River systems are described separately and the index values have been derived in different ways.

(a) On the Sacramento River, the criteria index values vary according to the water temperature at Miller Park. ''Ceiling'' and ''floor'' criteria index values are included to reflect the fact that at very high water temperatures, the Fish Migration use needs additional protection, and at very low water temperatures, temperature is unlikely to affect fish migration. The actual index values have been set to replicate the survival values that would be attained if the Delta Cross-Channel[32] were closed during the critical migration period. The Sacramento River tagged-fish release results indicate that, except in very high temperature periods, those periods in which the Delta Cross-Channel is closed provide aquatic conditions allowing for the protection of the Fish Migration designated use.

(b) On the San Joaquin River, the criteria index values vary according to unimpaired San Joaquin river flow. The actual index values have been set to approximately replicate the survival values that would be attained if a series of management measures (flow requirements, export restrictions, barriers, etc.) recommended by the USFWS based on the work of the Delta Team of the Five Agency Chinook Salmon Committee were implemented. The tagged-fish release results indicate that these or equivalent management measures are necessary to protect the Fish Migration designated use on the San Joaquin.

(ii) The criteria have been restated as sliding scales or continuous functions. As described in EPA's alternative formulation of the Fish Migration criteria referenced in the Notice of Availability, 59 FR 44095, and as in the case of the Estuarine Habitat criteria discussed above, stating the criteria index values with reference to the five water year types may create problems[33] in protecting the Fish Migration use. Accordingly, the final criteria index values are expressed as a continuous function.

(iii) Direct experimental measurements of salmon survival through the Delta will be used to estimate attainment of the criteria, instead of relying on estimates of attainment generated by the criteria index equations. This change allows the State Board more flexibility to develop implementation measures because it does not tie attainment of the criteria to the particular variables (exports, flows, etc.) included in the criteria index equations. This also transforms the final criteria into an explicit ''performance standard'', in which the criteria index values serve as the statement of desired protection for the Fish Migration use.

b. Detailed Discussion

(1) Proposed Rule

To protect the Fish Migration designated use, the Proposed Rule included ''salmon smolt survival index criteria.'' For each of the Sacramento and San Joaquin River systems, the criteria provided a salmon smolt survival index equation and a set of index values to be attained. The index equation for each river quantified and predicted the survival of salmon migrating through the Delta.

These index equations were developed by the USFWS (Kjelson, et al. 1989; USFWS 1992a, 1992b), and were based on the results of tagged-fish

[29] As stated above, the standard water year categories are wet, above normal, below normal, dry, and critically dry years.

[30] This interagency group consists of representatives from the USFWS, California DFG, California DWR, NMFS, and USBR. Its reports (Five Agency Delta Salmon Team, 1991a; 1991b) represent a consensus on the most effective and feasible implementation measures to protect downstream migrant salmon smolts in the Delta.

[31] That is, management measures were evaluated as to their effect on the variables included in the index equations, and the index equations were then computed to derive criteria index values. The result was criteria index values that reflect the effects on survival of the recommended management measures.

[32] The Delta Cross Channel is a controlled diversion channel between the Sacramento River and Snodgrass Slough. Water is diverted from the River through the Slough and then through natural channels for almost 50 miles southward to the State and Federal pumping plants.

[33] For example, if a mid-year change in water year types occurs, the Proposed Rule may have called for drastic changes in the flow regime, potentially leading to dewatering or washing away newly-spawned eggs.

release and recapture experiments measuring and comparing salmon smolt survival under a number of different physical conditions of varying migration pathways, water temperatures, flow rates, and rates of water exports from the Delta. On the Sacramento River, over the past 14 years, USFWS has performed a series of studies, releasing coded-wire tagged smolts at Sacramento and using recapture data to estimate an index of their survival to Chipps Island. Similarly, on the San Joaquin River, between 1982 and the present, the USFWS has conducted a series of experimental releases and captures of tagged salmon smolts in the San Joaquin River system, and has used the data collected in these experiments to develop a smolt survival index model for that basin (Brandes 1994).[34] EPA believes that the smolt survival indices from these releases do in fact represent the pattern of smolt survival through the Delta, and this belief was generally confirmed by the scientific workshops sponsored by CUWA (Kimmerer 1994b). As noted above, USFWS and the EPA Proposed Rule both ''scaled'' the index values by dividing experimental release results by 1.8.

In the Proposed Rule, the index values contained in the criteria varied according to the standard five water year types. The proposed criteria index values were stated in tabular form as in Table 3, below. The index values were to be attained by implementing management measures affecting the variables included in the index equations. For the Sacramento River, the index equation stated a relationship between smolt survival and three variables: water temperature, water diversion out of the mainstem Sacramento River, and water export rates. For the San Joaquin, the variables were river flows rates, water diversion into the Upper Old River, and export rates.

The Preamble to the Proposed Rule discussed in detail how the actual criteria index values in Table 3 were determined. To protect the designated uses, the Proposed Rule included index values representing the modeled results of the management measures proposed by USFWS based on the work of the Delta Team of the Five Agency Chinook Salmon Committee, with the exception of certain recommendations regarding the Georgiana Slough. The management measures consisted of export limits, minimum flows, channel gate closures, etc., during critical periods in the year. As explained in the preamble to the Proposed Rule (59 FR 825), EPA was concerned that the Delta Team recommendation to close the Georgiana Slough would have deleterious effects on the Delta smelt and other aquatic life in the central Delta, and possibly on adult salmon returning upstream. Thus, the management measures underlying the recommended criteria index values did not assume that the Slough would be closed. EPA concluded that these management measures, if implemented by the State, would lead to the protection of the designated Fish Migration use.

EPA then evaluated the effects of these management measures on the variables contained in the models, and calculated the criteria index values using the model's equations. The result was criteria index values that reflect effects on survival as a result of implementing the recommended management measures.

Although the criteria index values were set by reference to the protective management measures, the resulting criteria index values were also consistent with the recommendations of the Interagency Statement of Principles signed by EPA, NMFS, and USFWS, which called for a level of protection for aquatic resources equivalent to the level existing in the late 1960's to early 1970's. To make this comparison, EPA compared its proposed criteria index values with the index values attained historically on the two river systems. The historical index values were developed by the USFWS. *See* USFWS, 1992c (WRINT-USFWS–8); also 59 FR 824. The proposed Sacramento River criteria index values represented overall protection for the Fish Migration use at approximately the 1956–1970 historical level, whereas the proposed San Joaquin River criteria index values represented slightly better protection than the 1956–1970 historical level. Both sets of criteria index values represented better protection than the 1956–1970 historical period in drier years, and less protection in wetter years. These proposed criteria index values were intended to reflect more consistent smolt survival and help avoid situations where extraordinary measures would be necessary to preserve runs, particularly in the San Joaquin River tributaries.

TABLE 3.—PROPOSED SALMON SMOLT CRITERIA

Sacramento River		San Joaquin River	
Water year type	Criteria value	Water year type	Criteria value
Wet	.45	Wet	.46
Above Normal.	.38	Above Normal.	.30
Below Normal.	.36	Below Normal.	.26
Dry	.32	Dry	.23
Critical	.29	Critical	.20

Finally, the Proposed Rule also relied on the criteria index equations to determine whether the criteria were being attained. In effect, attainment would be assumed if the State adopted an implementation plan with a set of measures (export restrictions, flow requirements, etc.) that, when computed in the index equations, resulted in the criteria index value. This approach assumed that the criteria index equations included all of the important variables determining smolt survival and correctly stated the interrelationship of those variables, so that actual measurement of attainment would be unnecessary.

The final Fish Migration criteria reflect the following changes from the Proposed Rule: (i) the methodology for establishing the criteria index values has been revised, (ii) the criteria have been restated as sliding scales or continuous functions, and (iii) direct experimental measurements of salmon survival will be used to measure attainment of the criteria.

(i) Revised Method of Selecting Criteria Index Values

As discussed in the materials referenced in EPA's Notice of Availability (59 FR 44095), EPA has revised its approach to stating and developing the criteria index values used in the final criteria. The primary change in the final rule is that EPA has revised the underlying management measures used to generate the criteria index values. On the Sacramento River, available information indicates that closing the Delta Cross Channel during the spring migration period is the most important factor in the protection of the Fish Migration designated use, primarily because closing the Channel prevents migrating fish from being pulled into the inner Delta where survival is significantly lower. Accordingly, the criteria index values were based on tagged-fish release results for migration periods when the Delta Cross Channel was closed. Similarly,

[34] Since the Proposed Rule was published, and as described in the alternative formulation of the Fish Migration criteria made available in EPA's Notice of Availability (59 FR 44095), USFWS has developed a revised version of the San Joaquin River model. This model relates the survival of San Joaquin basin smolts migrating through the Delta to: (1) San Joaquin River flow at Vernalis, (2) proportion of flow diverted from the mainstem San Joaquin River, (3) exports, and (4) temperature at Jersey Point. The revised San Joaquin model structure overall is very similar to that of the Sacramento basin model. This revised model should be more useful than the previous version for analyzing alternative implementation measures.

EPA believes that on the San Joaquin River the management measures recommended by USFWS (with the minor adjustments described below) will protect the designated uses. Accordingly, the criteria index values for the San Joaquin were derived from the modeled values associated with these management measures.

(a) Sacramento River Fish Migration Criteria

On the Sacramento River, the criteria index values vary according to the water temperature at Miller Park at the time of the tagged fish release. ''Ceiling'' and ''floor'' criteria index values are included to reflect the fact that at very high water temperatures, the Fish Migration use needs additional protection, and at very low water temperatures, temperature is unlikely to affect fish migration. The actual index values have been set to replicate the survival values that would be attained if the Delta Cross-Channel were closed during the critical spring migration period. The Sacramento River tagged-fish release results indicate that, except in very high temperature periods, those periods in which the Delta Cross-Channel is closed provide aquatic conditions allowing for the protection of the Fish Migration designated use.

(I) *Using Temperature as the Independent Variable for the Criteria.* In the Proposed Rule, Sacramento River criteria varied according to water year types reflecting precipitation in the Sacramento River Basin. Using water year type as the ''independent variable'' in the criteria allowed EPA to match criteria index values with the natural variation in precipitation. Further analysis of the USFWS tagged-fish release studies suggests that temperature is a dominant factor influencing salmon smolt survival in the Sacramento River. Temperature at release alone is significantly related to salmon smolt survival (Letter from P. Fox to L. Hoag, California Urban Water Agencies, dated July 13th, 1994).

Because water temperature in the Delta is largely independent of management measures in the Delta (in that it varies naturally with ambient weather conditions), EPA will adopt final Fish Migration criteria that vary based on water temperature. That is, the criteria index values will call for higher smolt survival at lower water temperatures, and lower smolt survival at higher water temperatures. This variation in the criteria index values with temperature follows the pattern of the natural variability of temperature and survival existing on the Sacramento River during periods in which the Fish Migration designated use is attained.

Although it is generally adopting water temperature as the independent variable for the Sacramento River Fish Migration criteria, EPA is modifying the approach in two ways in order to better protect the designated use. First, at very high water temperatures (those above 72° F), measured smolt survival index values approach zero. These high temperature conditions are clearly not consistent with protection of the Fish Migration use. Protective measures should therefore be used to increase survival of smolts throughout this period, even at times of high temperature. To this end, USFWS has recommended additional management measures (primarily export restrictions) to restrict passage of fish into the warm waters of the central Delta and, thus, lower mortality of smolts as they pass through the Delta (USFWS 1992a). It is EPA's judgment that these measures should be used to reduce the serious degradation in migration conditions occurring during high temperature periods. EPA believes, therefore, that a ''floor'' to the Fish Migration criteria is appropriate so as to encourage efforts to protect salmon during these periods of high temperature. EPA has included such a ''floor'' at the 72° F temperature level in its final Sacramento River Fish Migration criteria.

Similarly, at lower temperatures, the smolt survival index values likely approach a maximum at some point. The highest survival index recorded (1.48) coincided with the lowest temperature at release recorded during salmon smolt survival experiments (61°F). Below this temperature, it is unlikely that lower water temperatures would lead to a substantially increased survival. In other words, once water temperature reaches the lower temperatures beneficial to smolt survival, additional decreases in the temperature would not be expected to significantly increase survival. This suggests that the Fish Migration criteria should include a ''ceiling'' value associated with those low temperatures. Otherwise, the criteria would state that continued lowering of water temperature should yield higher and higher survival. This result is unlikely to be valid. EPA is therefore placing a ''ceiling'' on the criteria index values corresponding to the 61°F level.

(II) *Establishing criteria values.* To set the actual criteria values, the final rule relies on the recommendation by USFWS that the Delta Cross Channel be closed at critical times during the spring salmon migration period (USFWS 1992a). Recent investigations by USFWS indicate that closing the Delta Cross Channel is the most important factor in the protection of smolts on the Sacramento River (USFWS 1992b). The historical experimental release results support this hypothesis, in that data points derived from periods when the Cross Channel was closed show a significant and consistent improvement in survival compared to periods when it is open (USFWS 1992b).[35]

Based on this beneficial relationship between survival and the closure of the Delta Cross Channel, EPA has concluded that criteria index values corresponding to a closed Delta Cross Channel (adjusted to provide a floor for high temperature periods) would reflect conditions protecting the Fish Migration designated use on the Sacramento River. Accordingly, the final rule adopts criteria index values, stated (as explained below) as a continuous function or line, to approximate[36] the experimental survival index values observed for Sacramento releases during periods in which the Channel is closed. The continuous function or line for these criteria index values can be stated as a simple linear equation (Index value = 6.96 − .092 * Fahrenheit temperature).

This approach to developing criteria index values addresses some of the concerns about the criteria index equations raised in the public comments and at the CUWA scientific workshops. Some commenters believed that the complexity and structure of the equations resulted in too much uncertainty about their statistical reliability. The revised approach used in the final rule reduces this problem because it sets the criteria index values using observed tagged-fish release results instead of modeled or computed values.

The final criteria index value line described above very closely approximates the line created by doubling the historical survival data measured at times that the Delta Cross Channel is open. These different lines, and the underlying data, are summarized in Figure 4. Although not intentional, the near-coincidence of the final criteria index value line and the doubling line provides an independent policy rationale for adopting this target index, in that the Central Valley Project

[35] This is particularly true for release studies at Sacramento. Release studies at Courtland (downstream of Sacramento) showed less dramatic improvement with the Cross Channel closed, suggesting that other factors such as those included in the USFWS model are also at work.

[36] Approximating this line was done through a standard least squares ''best fit'' computation.

Improvement Act mandates a ''doubling'' goal for anadromous fish.

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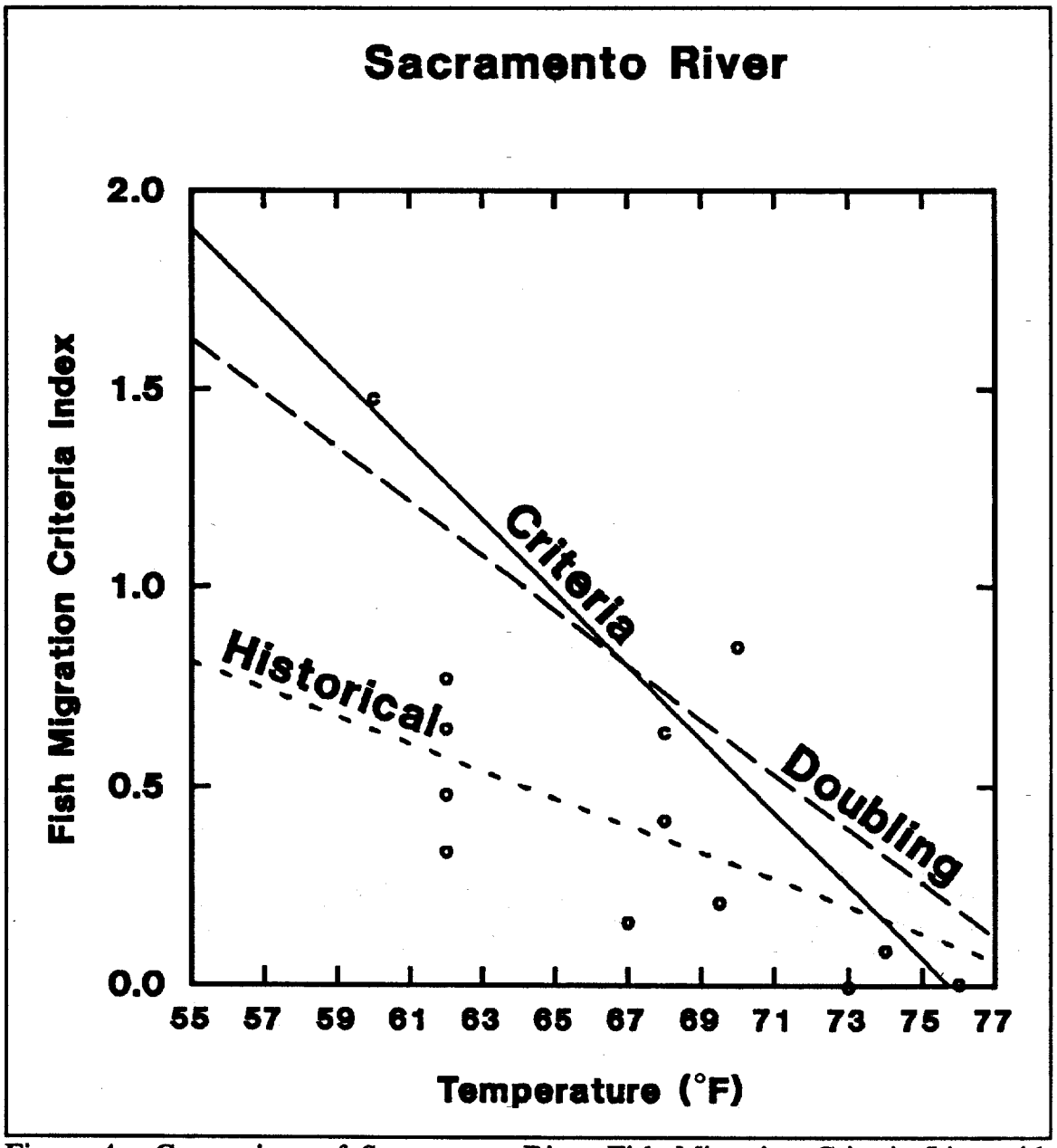

Figure 4: Comparison of Sacramento River Fish Migration Criteria Line with Historical Survival and Doubling of Historical Survival Lines

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Historical information confirms the validity of the final Sacramento River Fish Migration criteria, in that the criteria index values developed in this final rule are consistent with the modeled index values representing conditions in the late 1960's to early 1970's. As stated by EPA in the Proposed Rule, the level of protection on the Sacramento River during this historical period was consistent with the protection of the Fish Migration designated use.

(III) *Revised Sacramento Fish Migration Criteria.* The revised criteria (Sacramento River Fish Migration Criteria or SRFMC) are stated in reference to water temperature. As explained above, use of this linear equation appears inappropriate at both very high and very low temperatures, so the criteria must specify a ceiling on the index values at low temperatures and a floor for high temperatures. Incorporation of these conclusions and comments leads to the following Fish Migration criteria:

At temperatures below 61°F:
SRFMC=1.35

At temperatures between 61°F and 72°F:
SRFMC=6.96 − .092 * Fahrenheit temperature

At temperatures above 72°F:
SRFMC=0.34

In all cases, water temperature is the temperature at release of tagged salmon smolts into the Sacramento River at Miller Park.

These final criteria are shown in Figure 5. Note that the ''ceiling'' and ''floor'' values in the final rule differ somewhat from those included in the documents made available in EPA's Notice of Availability (59 FR 44095). The changes were made to correct computational errors in evaluating the applicable ''continuous function'' values for the 61°F and 72°F ceiling and floor levels.

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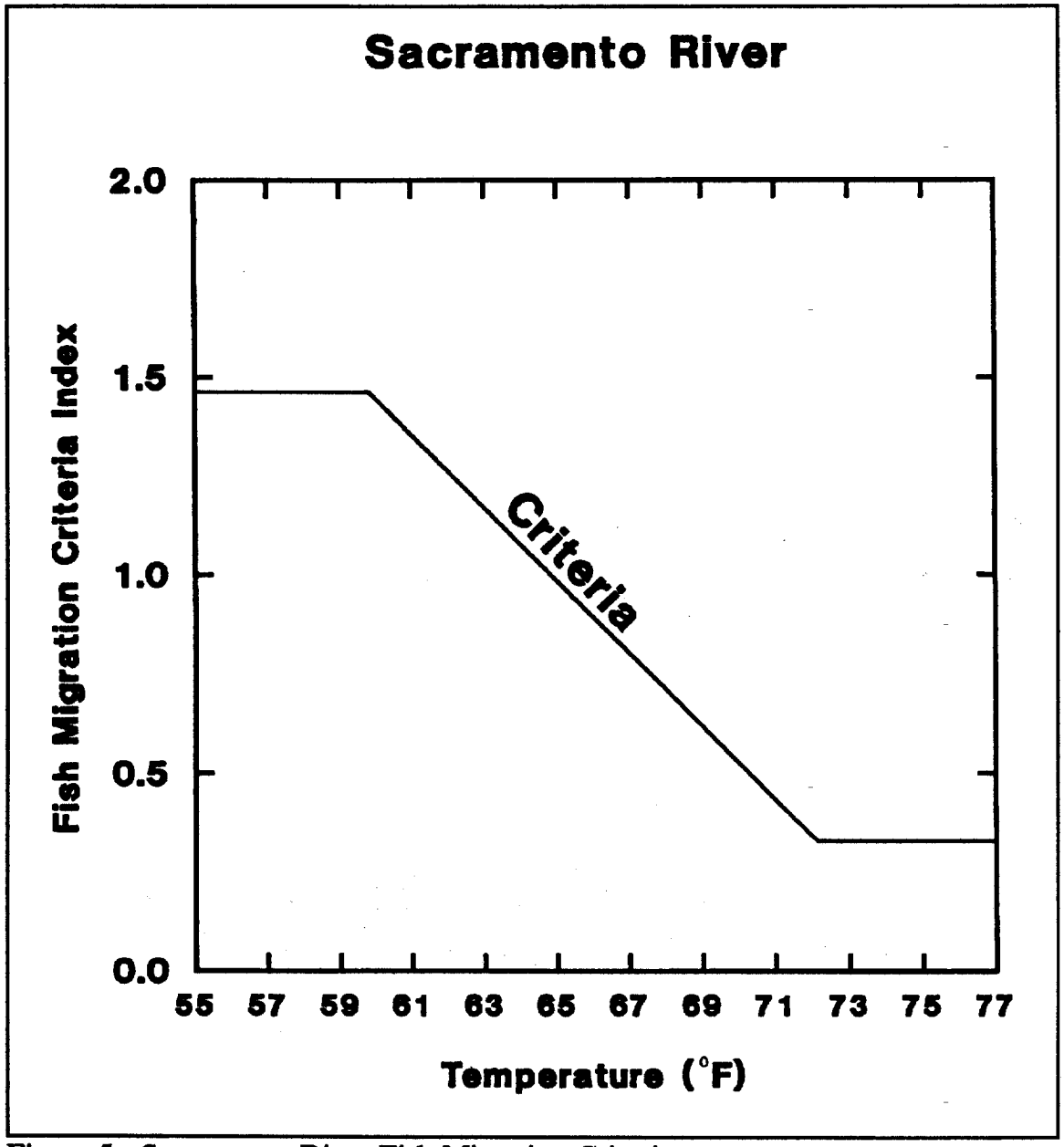

Figure 5: Sacramento River Fish Migration Criteria

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(IV) *Implementation.* On the Sacramento River, the criteria provide survival goals that vary based on the water temperature at the time of release of the tagged salmon smolts. EPA believes that the implementation plan developed by the State Board should provide for a sufficient number of fish releases each year to determine whether the criteria are being attained over a representative range of temperature conditions. EPA recognizes that there may be substantial variation in fish migration criteria values resulting from these experimental releases. Accordingly, the final rule provides that attainment can be measured using a three-year moving average (the current year and two preceding years). Three year periods should provide time to complete sufficient releases to determine whether the implementation measures are, on average, attaining the stated criteria values.

The State Board may consider using the USFWS Sacramento smolt survival model (that is, the model underlying the criteria index equations) to predict measures necessary to attain the criteria. There are a number of base conditions underlying both the tagged-fish release experiments and the USFWS models. For example, USFWS recommended a base Sacramento River flow to ensure that overall conditions do not deteriorate. The State should protect these base conditions as it develops an implementation plan.

Monitoring attainment of these criteria should focus on both within-year measures and across-year comparisons. During each year monitoring of salmon smolt survival should occur throughout the months of April, May and June with particular emphasis during times of temperature change or at times of change in water project operation. It is likely that this monitoring will reveal a large variability in survival at different times and under

different conditions within each year. EPA anticipates that at the time of the next triennial review enough monitoring data over a range of temperatures will be available for a preliminary determination of whether the State's implementation actions attain the criteria.

(b) San Joaquin River Fish Migration Criteria

On the San Joaquin River, the criteria index values vary according to unimpaired San Joaquin river flow. The actual index values have been set to approximately replicate the survival values that would be attained if a series of management measures (flow requirements, export restrictions, barriers, etc.) recommended by the USFWS were implemented. The tagged-fish release results indicate that these or equivalent management measures are necessary to protect the Fish Migration designated use on the San Joaquin.

(I) *Using Unimpaired Flow at Vernalis as the Independent Variable for the Criteria.* In the Proposed Rule, San Joaquin River criteria varied according to water year types reflecting precipitation in the San Joaquin River basin. Using the water year type as the ''independent variable'' allowed EPA to match the criteria index values with the natural variation in precipitation. Further analysis has confirmed that water flow at Vernalis shows a significant correlation with survival indices representing total survival through the Delta,[37] suggesting that criteria index values should vary with the natural hydrology. That is, the criteria index values should reflect higher survival during wetter years with more precipitation and lower survival during drier years. This variation replicates the natural hydrological cycles affecting Fish Migration through the estuary.

The Proposed Rule varied criteria index values according to the five water year types, and in that way reflected natural hydrological cycles. In the final rule, however, EPA is using the 60–20–20 unimpaired San Joaquin flow index[38] as a readily-available estimate of natural hydrology. When used in a continuous function (as described below), the 60–20–20 index allows a much more precise statement of the natural hydrology than the five water year categories.

(II) *Establishing Criteria Index Values.* To establish the actual values included in the San Joaquin River Fish Migration criteria, EPA first developed survival values associated with the implementation of management measures proposed by USFWS (USFWS 1992a). These USFWS measures include export limits at certain times, a barrier at Old River during April and May, and minimum flows at Vernalis, and are summarized in Table 5.[39] As indicated in the Proposed Rule, EPA believes that implementation of these management measures would provide conditions protecting the designated Fish Migration use.

Modifying management measures. As explained below, EPA has revised its assessment of some of the USFWS management measures (notably, those involving the Upper Old River barrier). Accordingly, the final rule used the following management measures: (1) A one month (April 15 to May 15), instead of USFWS's two month (April 1 to May 31), requirement for the Upper Old River barrier placement, (2) increased export restrictions (to 1500 cfs) during the time the Old River barrier is in place, (3) increased flow (to an average of 4000 cfs rather than USFWS's 2000 cfs) in critical years when the barrier is in place, and (4) flows and exports varying each year according to the 60–20–20 water year index, rather than using the USFWS proposal to vary measures by water year type. EPA's measures (stated as averages for each water year type) are also shown in Table 4.

EPA revised the management measures recommended by USFWS because recent discussions with USFWS and others, as well as information developed in hydrological modeling for the South Delta Barriers Project (California DWR 1993), raised concerns that an Upper Old River barrier might increase reverse flows in the central Delta. Such an increase has the potential to draw fish into poor habitat and to increase entrainment of fish at the project pumps. This is of particular concern for the threatened Delta smelt. Because the barrier is expected to provide greatly increased protection for migrating salmon smolts, EPA continues to believe, as it expressed in the Proposed Rule, that an Upper Old River barrier is an important implementation measure. However, in order to prevent an increase in detrimental central Delta reverse flows, EPA is revising the USFWS management measures to include only one month with the barrier in place, rather than the two months initially recommended by USFWS.[40]

[37] EPA considered water temperature at release, smolt size at release, and water flow at Vernalis as potential independent variables affecting survival. Based on the studies done to date, it appears that neither water temperature at release nor smolt size show a significant correlation with the smolt survival indices representing smolt survival through the San Joaquin Delta (P. Fox, Data summary presented at CUWA workshop on June 29, 1994). Note that results from upstream site releases (at Snelling and on the lower Stanislaus and Tuolumne Rivers) were included in this correlation between flow and survival index values in order to supplement data from wetter years. This approach assumed that the mortality between the upstream release sites and the downstream Mossdale, Dos Reis and Upper Old River release sites (all close together) is negligible. If incorrect, this assumption may bias the correlation downward, and survival through the Delta may have been better than the index indicates for those releases.

[38] The San Joaquin water year index (denoted the San Joaquin Valley Index in the final rule language) is the commonly-accepted method for assessing the hydrological conditions in the San Joaquin basin. It is also frequently referred to as the 60–20–20 index, reflecting the relative weighting given to the three terms (current year April to July runoff, current year October to March runoff, and the previous year's index) that make up the index.

[39] As explained above, the index values shown in Table 6 (both USFWS and EPA values) have been ''scaled'' by dividing by 1.8. This scaling allows a direct comparison with the Proposed Rule index values, which were also scaled. EPA's final criteria index values have not been scaled, to facilitate measurement of attainment through actual experiments as discussed below.

[40] As in the Proposed Rule, EPA assumed that exports would be reduced to no more than 1500 cfs while the barrier is in place, to help alleviate hydrological problems caused by the barrier. Minimum flows during the time the barrier is in place are assumed to be an average of approximately 4000 cfs during dry and critically dry years to provide an increased ratio of flows to exports in the lower San Joaquin, thereby further reducing potential problems caused by reverse flows. Management measures assumed in developing the criteria values also included export restrictions during the times in April and May when the barrier is not in place. These maximum export rates are: in critically dry years, 2000 cfs; dry years, 3000 cfs; below normal years, 4000 cfs; above normal years, 5000 cfs; and wet years, 6000 cfs.

TABLE 4.—SAN JOAQUIN MANAGEMENT MEASURES COMPARED

Alternative	Max Total CVP/SWP Exports in cfs	Barrier Upper Old River	Vernalis Flow	Index Values on San Joaquin
EPA	4/15 to 5/15 1500 4/1 to 4/15 & 5/16 to 5/31 W[1] 6000 AN 5000 BN 4000 D 3000 C 2000	4/15 to 5/15 All Year Types	4/15 to 5/5 Minimum CFS W 10000 AN 8000 BN 6000 D 4000 C 4000 Other flows from 4/1 to 5/31 same as DWRSIM run used by USFWS for D–1630	W .49[2] AN .35 BN .28 D .22 C .22 Avg = .33
USFWS	4/15 to 5/15 W 6000 AN 5000 BN 4000 D 3000 C 2000	4/1 to 5/31 All Year Types	4/15 to 5/15 Minimum CFS W 10000 AN 8000 BN 6000 D 4000 C 2000 Other flows from 4/1 to 5/31 same as DWRSIM run used by USFWS for D–1630	W .49 AN .41 BN .40 D .35 C .32 Avg = .41

[1] Many of the management measures in Table 4 vary by the water year category. Those categories are wet (W), above normal (AN), below normal (BN), dry (D) and critically dry (C).

[2] For comparison purposes, both EPA and USFWS index values have been scaled by dividing by 1.8. The final EPA criteria have not been scaled.

Criteria index values. Having arrived at this set of management measures that would protect the Fish Migration designated use (and not adversely affect the Delta smelt), EPA used the USFWS survival index equations to develop criteria index values across the potential range of hydrological conditions.[41] Note that, as distinguished from the Proposed Rule, EPA is including only the criteria index *values* as its final Fish Migration criteria. The Proposed Rule had also included the criteria index value *equations* in the criteria. By including only the goal or target index values in the final criteria, EPA is providing greater latitude to the State Board to develop a mix of management measures that attain the stated salmon survival.

Means of these modeled values for each water year type are shown in Table 4. To translate these discrete values into a continuous function (as discussed below), two lines of ''best-fit'' were created, one for the drier years (dry and critically dry) and one for the wetter years (wet, above normal, and below normal). By connecting these two lines, EPA created a continuous function to serve as the criteria index value line on the San Joaquin. This criteria index value line is shown in Figure 6.

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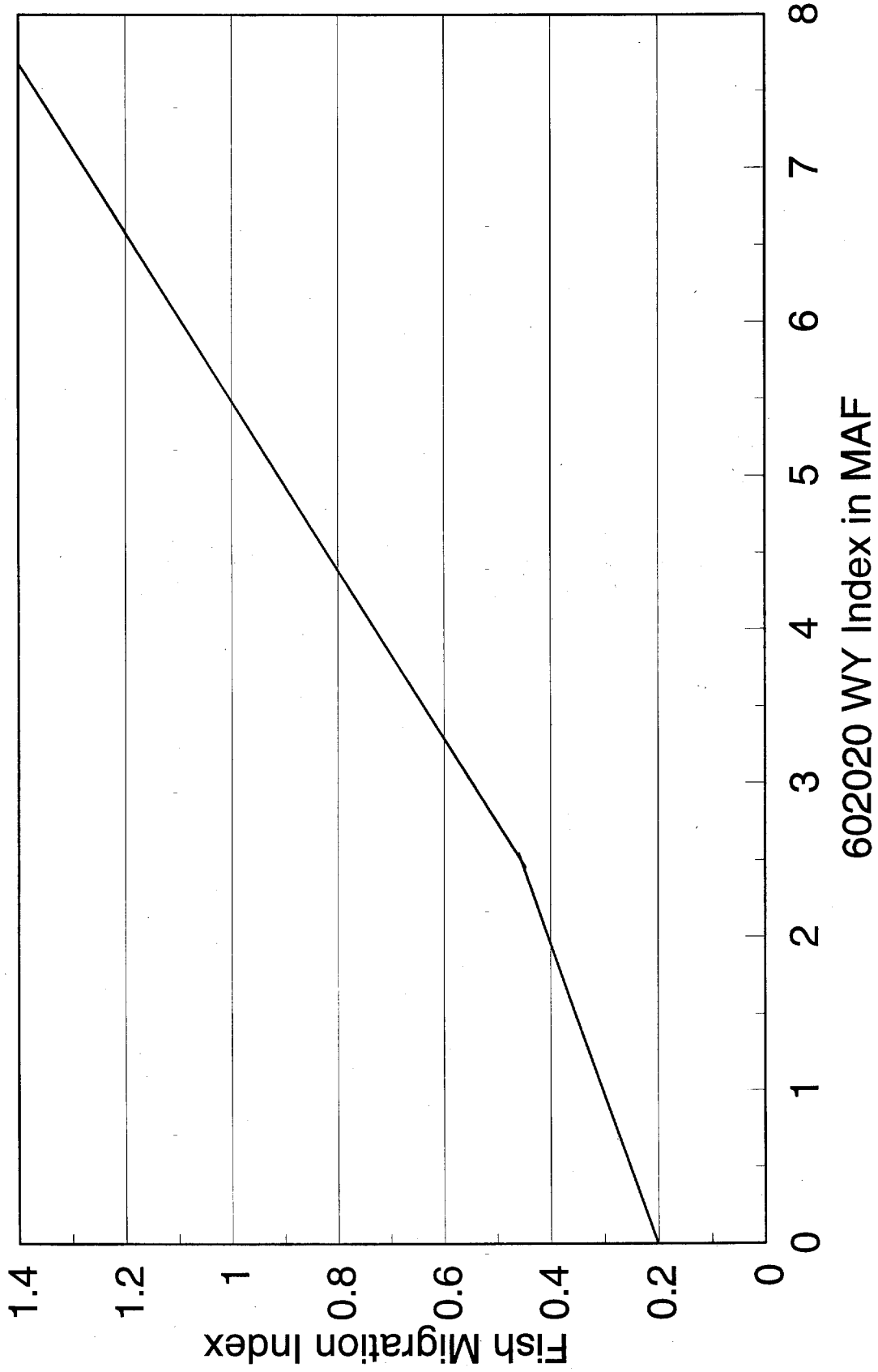
[41] The final Fish Migration criteria on the San Joaquin River do not vary by temperature (as they do for the Sacramento River) because experimental data from releases near the upstream edge of the Delta did not show a significant statistical relationship between survival and temperature at release (P. Fox, Data summary presented at CUWA workshop on June 29, 1994). In other words, on the San Joaquin River, temperature should not be used as the *independent* variable in the criteria. Nevertheless, temperature at Jersey Point is one of the factors included in the revised USFWS San Joaquin River model, and, as described above, that model was used in developing EPA's final criteria to gauge the probable effect of implementation measures on smolt survival. When computing modeled smolt survival, EPA assumed average water temperatures of 60 °F in April and 65 °F in May. These assumed values are averages from a set of temperature data at Jersey Point taken during the late 1950's and 1960's. The recent experimental release temperatures are within the range of this data.

Figure 6. San Joaquin Fish Migration Criteria



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Dry year v. wet year protection. These final criteria index values represent a larger relative increase in survival over current survival rates in dry and critical years (compared to wetter years) so as to protect salmon populations from declining to the critically low levels of recent years. The results from tagged-fish releases on the San Joaquin River show significantly different survival at high versus low flow conditions (USFWS 1992b; Brandes 1994). Most of the release studies have been performed at flows below 5,000 cfs, and it is clear from the relation between survival indices and experimental flow conditions that these conditions are very poor for smolt survival and are inadequate to protect the Fish Migration designated uses. The average survival index for these low flow conditions is 0.09, whereas these index values have attained values as high as 1.5 on the San Joaquin (a Jersey Point release).[42] Although there is less information at higher flows, the experimental results do indicate that survival has been substantially higher under these conditions. The average survival index at these higher flows is 0.48.

To address this relative difference in survival during high and low flow periods, EPA is adopting criteria index values reflecting a relatively larger improvement in survival in low flow years than in high flow years. That is, conditions for migrating fish in drier periods have been relatively worse, so the criteria index values applicable to the drier periods must reflect conditions that are relatively more improved in order to protect the Fish Migration designated use.

Although the final criteria call for relatively higher protection in drier years, it is also particularly important in the San Joaquin basin to protect salmon during periods of higher flow conditions. The years of higher flows have been the only times recently when the Fish Migration use has come close to being attained, and protection in these productive years is important for buffering the salmon population against permanent loss of salmon runs when conditions are poor. To address these special concerns across the spectrum of hydrological conditions, these final criteria index values, on average, increase wet year survival by a factor of 1.8 and critically dry year survival by a factor of 4.

EPA has considered the concerns expressed by some CUWA workshop participants about using the USFWS models to establish criteria index values. The CUWA workshop participants developed a consensus, based not on the USFWS-modeled values but on their independent scientific judgment, that an increase in measured survival index values of two to three times recently observed values would be appropriate in critical years (Kimmerer 1994b). As stated above, the CUWA workshop participants also endorsed relatively higher protection in drier years as opposed to wetter years (Kimmerer 1994b). EPA agrees with these scientific judgments, and believes that measured criteria index values in these ranges must be attained to protect the designated uses on the San Joaquin.

The criteria index values shown as a continuous function in Figure 6, even though developed with the assistance of the USFWS model, are wholly consistent with the findings of the CUWA workshop participants (Kimmerer 1994b). In addition, these target values are, on average, consistent with the historical 1956–70 average survival index for the more protective wetter years of that period (wet, above normal, and below normal water years) as calculated using the USFWS model (Brandes 1994). The target values are also consistent with the CVPIA goal of doubling anadromous fish populations. For comparison, the final criteria index value line is displayed in Figure 7 with the recent historical survival line (based on the tagged fish release results) and a line representing twice the recent historical survival line.

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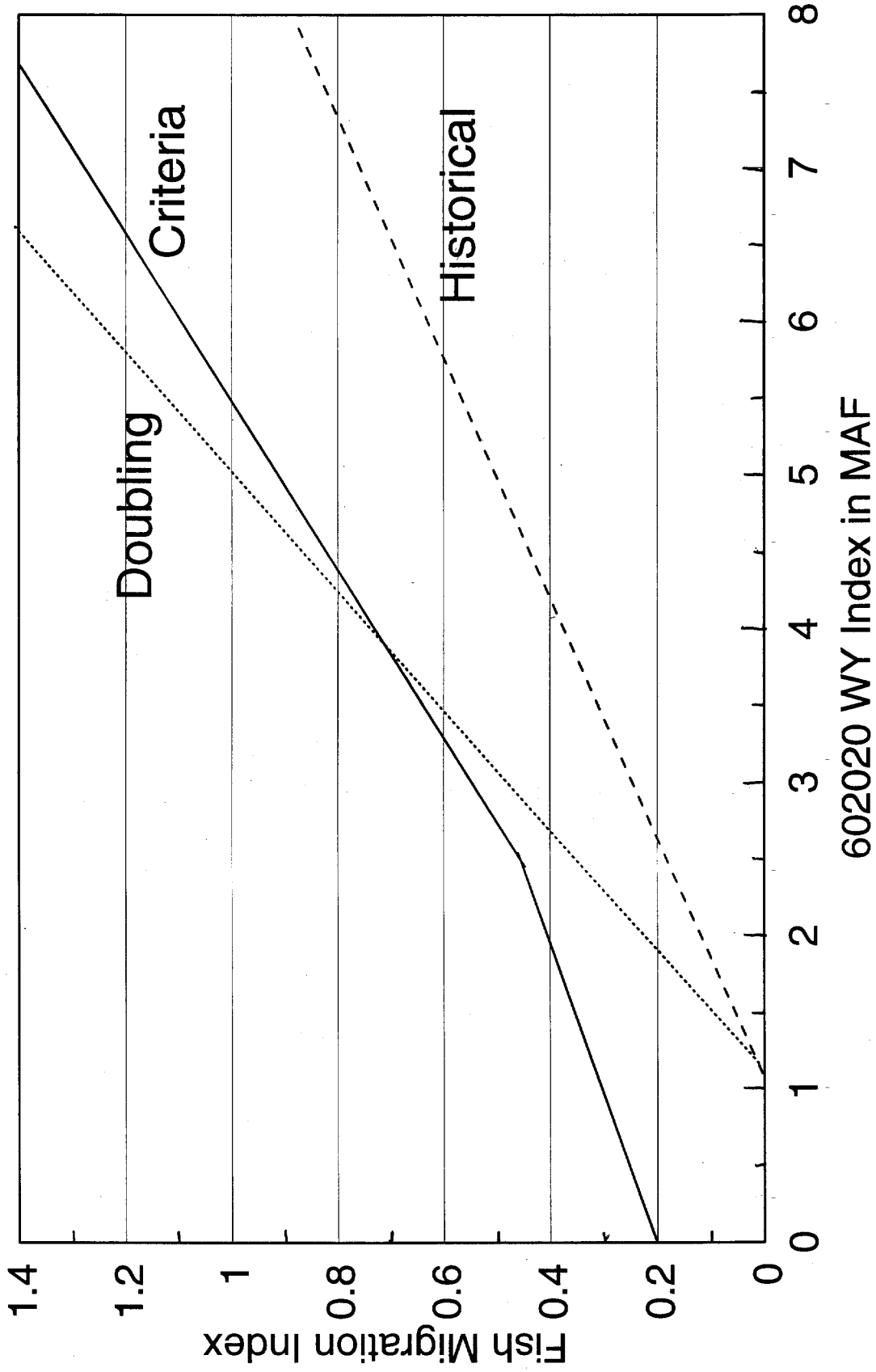
[42] These numbers are not ''scaled'', and are thus indices showing survival relative to other index values. The 0.09 average index value represents approximately 5 recoveries from a release of 50,000 fish at Mossdale, 55 miles upstream of the smolt recovery site at Chipps Island.

Figure 7. San Joaquin Fish Migration Criteria Compared with Historical Experimental Release Results and Release Results Doubled



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(III) Revised San Joaquin Fish Migration Criteria. The criteria index value line is being stated in the final rule as follows:

For years in which the SJVIndex is > 2.5:

SJFMI = (−0.012) + 0.184*SJVIndex

In other years:

SJFMI = 0.205 + 0.0975*SJVIndex

where SJFMI is the San Joaquin Fish Migration index, and SJVIndex is the 60–20–20 San Joaquin water year index in million acre feet (MAF).

These criteria are displayed graphically in Figure 6.

(IV) *Implementation of San Joaquin River Fish Migration Criteria.*

The following discussion is intended to assist the State Board's consideration of the issues involved in implementing these or similar, equally protective, criteria.

The San Joaquin River Fish Migration criteria provide an annual survival goal that varies depending on the 60–20–20 San Joaquin water year index. EPA anticipates that the State Board implementation plan would provide for a sufficient number of tagged fish releases to verify that the applicable criterion is being met in each year. EPA recognizes that there may be substantial variation in fish migration criteria values resulting from these experimental releases. Accordingly, the final rule provides that attainment can be measured using a three-year moving average (the current year and two preceding years). Three year periods should provide time to complete sufficient releases to determine whether the implementation measures are, on average, attaining the stated criteria values.

As stated above, the USFWS model is the best available model of salmon smolt survival through the Delta, and EPA encourages the State Board to use the recently revised USFWS San Joaquin model as guidance for setting implementation measures. Nevertheless, it is important to recognize that there may be constraints on the model's use. Further monitoring and experimental releases under the chosen implementation regime are essential to verify and refine the model, and will ensure that the smolts are actually surviving at the expected level. In addition, it will be particularly important to protect the base conditions assumed in the model, such as flows during the time the Upper Old River barrier is not in place, flows at Jersey Point, and temperature.

The expected criteria index values are unlikely to be achieved if these base conditions deteriorate.

One additional refinement to the implementation measures should be considered on the San Joaquin River. As discussed above, the Sacramento River criteria include a ceiling value on the maximum salmon smolt survival. This was included because there appears to be a point where incrementally lower temperatures do not significantly increase salmon smolt survival. In theory, there may be a similar point on the San Joaquin River where incrementally higher flows in very wet years do not yield significantly higher salmon smolt survival. Nevertheless, the existing data do not allow quantification of what those flow levels are. EPA is supportive of another mechanism for dealing with this issue. It is EPA's judgment that in very wet years (those in which the flows exceed 10,000 cfs during the relevant period) it may be appropriate to meet the flow requirements associated with the targeted Fish Migration criteria index solely through natural storm events and restricted diversions, and not by upstream reservoir releases. In other words, the implementation flows could be provided at these higher flow periods by natural hydrology rather than by reservoir releases. In this way, the natural ''flood events'' that appear to be so beneficial to the salmon would be protected, but the water supply system would not have to bear the water costs of generating artificial flood events through reservoir releases.

(ii) Use of Continuous Function

The second principal difference in the final criteria is to state the criteria as a ''continuous function'' or ''sliding scale.'' As discussed in EPA's alternative formulation of the Fish Migration criteria made available in the Notice of Availability, this approach replaces the Proposed Rule's statement of the criteria as single fixed index values for each of the five water year categories (59 FR 44095). The proposed approach did not account for the substantial differences in hydrological conditions *within* water year types. For example, an ''above normal'' water year type could range from a *wet* ''above normal'' year to a *dry* ''above normal'' year. Given the extreme variation of hydrological conditions in the Bay/Delta, these variations within each of the five standard water year types are substantial, and should be factored into the calculation of the applicable Fish Migration criteria index value. The continuous function approach addresses this problem by transforming the five discrete water year categories into a more precise equation (graphically, a single line or curve) correlating the Fish Migration criteria index value with each year's specific observed hydrological conditions. The continuous function approach provides the same degree of protection for the designated uses as the proposed approach using average survival values. However, the continuous function approach provides a more precise approximation of hydrological conditions and facilitates implementation and compliance. EPA explained the rationale for using the continuous function approach in more detail in the technical documents referenced in the Notice of Availability (59 FR 44095). The derivations of the actual continuous functions for the Sacramento and San Joaquin River systems are explained above.

(iii) Measuring Attainment Through Actual Test Results

The Proposed Rule relied on the criteria index equations to determine whether the criteria were being attained. In effect, attainment would be assumed if the State adopted an implementation plan with a set of measures (export restrictions, flow requirements, etc.) that, when computed in the index equations, resulted in the criteria index value.

Many commenters believed that reliance on the criteria index equations for this purpose was inappropriate because factors other than those implementation measures included in the model may affect smolt survival. To address this concern, in the final criteria, direct experimental measurements of smolt survival through the Delta will be used to estimate attainment of the criteria, instead of relying on modeled estimates. Survival is to be measured through tagged smolt release and recapture studies. This approach assures that factors significantly affecting survival will be reflected in survival measurements, even if they are not well described by the criteria index equations. This more direct approach gives the State greater latitude to develop implementation measures outside of the equation parameters. It also ensures that the implementation measures are actually providing the intended protection for the Fish Migration designated use.

(3) Fish Migration Criteria as Multispecies Protection

The Fish Migration criteria outlined above are based on protection measures required for a single run of salmon, the fall-run Chinook salmon. Some commenters questioned whether this approach conflicts with the habitat or multispecies approach recommended by the Club FED agencies in their

Agreement for Coordination on California Bay/Delta Issues signed September 20, 1993. As noted in the preamble to the Proposed Rule, EPA believes that the implementation measures likely to be adopted to meet the target criteria values in these Fish Migration criteria, when combined with the other Federal actions in the Delta protecting the endangered winter-run Chinook salmon, are fully consistent with the protection of a broad range of anadromous and migratory fishes in the Bay/Delta.

Juvenile spring-run salmon and steelhead move through the Delta during the same period as winter-run and fall-run salmon, and are expected to be protected in the Delta by measures protecting these other runs (CDFG 1990a). Species other than salmon and steelhead seasonally migrate into and out of the Delta for spawning and as juveniles. These species include striped bass, Delta smelt, longfin smelt, white and green sturgeon, American shad and Sacramento splittail. With the exception of temperature, the factors that lead to successful migration of salmon and steelhead smolts are also important for successful migration of the juveniles of these species into the lower embayments. Therefore, EPA's proposed Fish Migration criteria, although specifically addressing fall-run Chinook salmon, will also help protect migration of these other migratory species.

3. Fish Spawning Criteria

a. Proposed Rule

In California, striped bass spawn primarily in the warmer freshwater segments of the Sacramento and San Joaquin Rivers. Protection of spawning in both river systems is important to ensure the genetic diversity of the population as well as to increase the size of the overall striped bass population. The precise location and time of spawning appear to be controlled by temperature and salinity (Turner 1972a; Turner and Chadwick 1972). According to the California DFG, striped bass spawn successfully only in freshwater with electrical conductivities less than 0.44 millimhos[43] per centimeter electroconductivity (mmhos/cm EC), and prefer to spawn in waters with conductivities below 0.33 mmhos/cm. Conductivities greater than 0.55 mmhos/cm appear to block the upstream migration of adult spawners (Radtke and Turner 1967; SWRCB 1988; SWRCB 1991; CDFG 1990b, WQCP–DFG–4). As explained in more detail in the Preamble to the Proposed Rule, salinity does not appear to be a serious limitation on spawning on the Sacramento River. However, in the smaller and shallower San Joaquin River, migrating bass seeking the warmer waters encounter excessive upstream salinity caused primarily by runoff. This salinity can block migration up the San Joaquin River, thereby reducing spawning, and can also reduce survival of eggs (Farley 1966; Radtke 1966; Radtke and Turner 1967; Turner and Farley 1971; Turner 1972a, 1972b).

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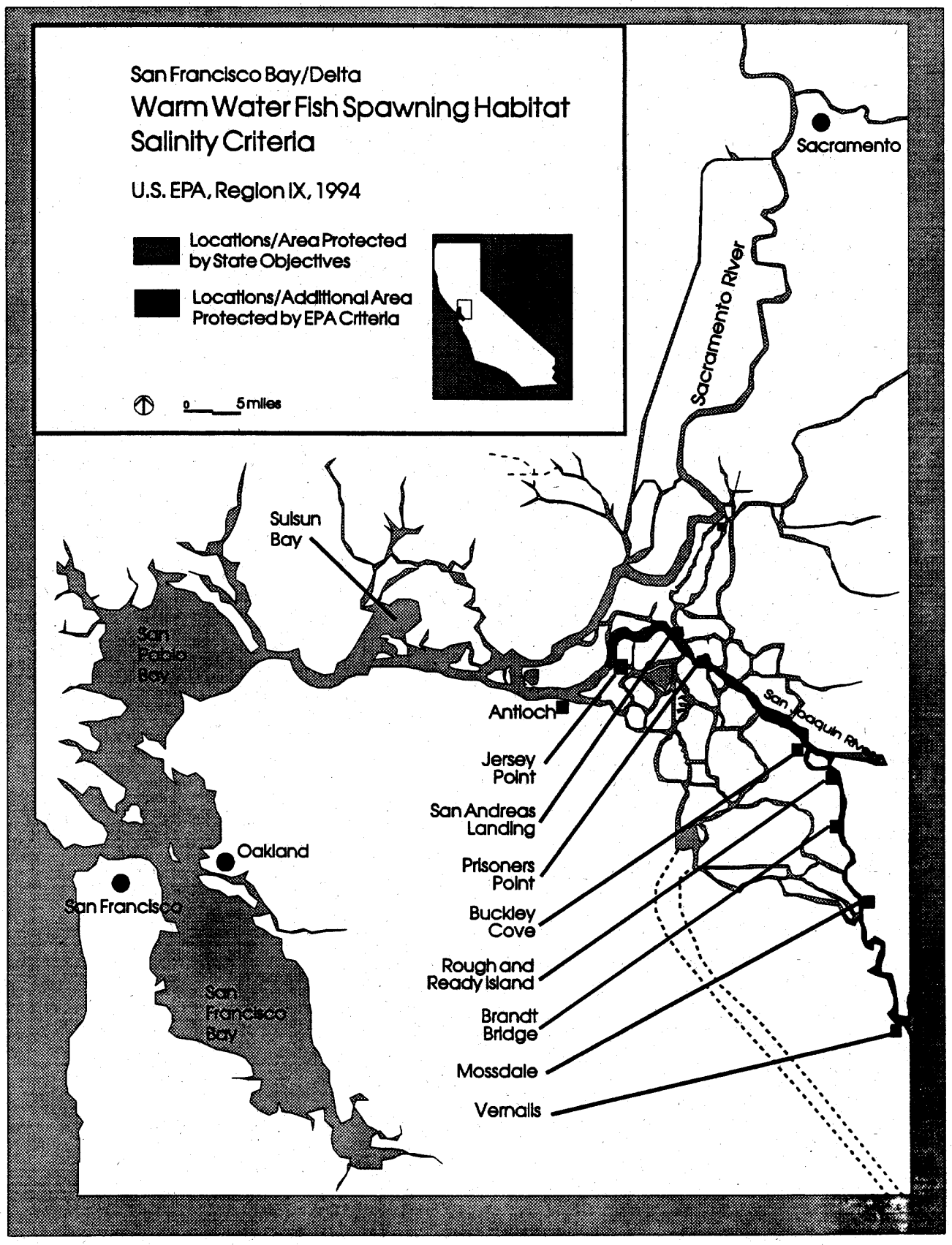
[43] Salinity conditions upstream in freshwater are generally affected by dissolved salts from upstream water runoff. The salinity content of freshwater is traditionally measured by its electroconductivity or specific conductance standardized to 25°C, and is expressed in terms of millimhos per centimeter electroconductivity (''mmhos/cm EC'') or micromhos per centimeter specific conductance. The Proposed Rule stated the Fish Spawning criteria in terms of mmhos/cm EC. In the final rule, EPA will state the criteria in terms of micromhos/cm specific conductance, so as to be consistent with EPA's published guidance. *See* 40 CFR Part 136, Table 1B—List of Approved Inorganic Test Procedures, Parameter 64. The Proposed Rule's term ''0.44 mmhos/cm EC'' is equivalent to the final rule's term ''440 micromhos/cm specific conductance''. EPA will continue using the ''0.44 mmhos/cm EC'' term in this preamble, so as not to confuse the interested public.



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The State Board's 1991 Bay/Delta Plan established objectives of 1.5 mmhos/cm EC at Antioch and 0.44 mmhos/cm EC at Prisoners Point in April and May. EPA disapproved these objectives, in part, because they are not adequate to protect spawning habitat in the reach farther upstream between Prisoners Point and Vernalis. EPA also disapproved the 1991 Bay/Delta Plan spawning criteria because they were not based on sound science. The State Board explained that the 1.5 mmhos/cm EC criteria at Antioch was intended to protect spawning habitat upstream of Antioch (near Jersey Point), not at the Antioch location itself. The State Board acknowledged that ''the use of 1.5 [mmhos/cm] EC at Antioch appears not to be generally appropriate, and proposed that a thorough review of this [criterion] be undertaken at the next triennial review'' (1991 Bay/Delta Plan, p. 5–32). EPA found this unproven approach of setting criteria downstream in hopes of attaining different criteria upstream deficient, and disapproved it.

In the Proposed Rule (40 CFR 131.37(b)), EPA proposed salinity criteria of 0.44 mmhos/cm EC in the lower San Joaquin River in the reach from Jersey Point to Vernalis in wet, above normal, and below normal water years. In dry and critical water years, EPA proposed the 0.44 mmhos/cm criteria for only the reach from Jersey Point to Prisoners Point.

b. Comments on Proposal and Final Criteria

EPA received a number of comments on its proposed Fish Spawning criteria. California DFG was generally supportive of the proposed criteria, but believed that the criteria would need to be supplemented by a range of additional management techniques in order to have any substantial benefit for spawning (California DFG 1994). Several parties noted that striped bass are an introduced predatory species, and that efforts to increase striped bass populations would work at cross-purposes with efforts to enhance other species such as salmon and Delta smelt (City and County of San Francisco Public Utilities Commission 1994; Bay/Delta Urban Coalition 1994; California Farm Bureau Federation 1994). Other commenters raised the possibility that extending the acceptable spawning habitat upstream could result in more striped bass being entrained at the State and Federal water project pumps in the southern Delta. (California DWR 1994). Finally, some commenters believed that emphasizing the striped bass as an individual species was inconsistent with the multiple species approach to habitat protection. (CUWA 1994a).

Although EPA believes there is some merit to each of these comments, EPA is not making any changes to the Fish Spawning criteria in the final rule stated at 40 CFR § 131.37(b). EPA believes there is substantial scientific evidence indicating that increased salinities in the designated reaches of the San Joaquin River do in fact have an adverse effect on fish spawning. This problem of increased salt loadings has been recognized by virtually all the parties (CUWA 1994b; ACWA 1994) and recommendations on how to address it have been developed by, among others, the San Joaquin Valley Drainage Program (SJVDP 1990).

The possibility that healthier populations of predatory fishes such as striped bass would adversely affect other species of concern needs to be considered in the context of the whole range of protective measures being developed for the fishery. The package of project management measures, water quality standards, and implementation programs being developed under the CWA, ESA, CVPIA, and counterpart State authorities are intended to address the entire Bay/Delta ecosystem. For that reason, EPA believes that healthier predatory species populations should not interfere with the protection of other species of concern. EPA further believes that, if the State Board adopts and/or implements these criteria, the State Board can address the impact of entrainment at the pumps in its implementation measures. Finally, EPA believes that salinity problems in the lower San Joaquin affect aquatic species other than the striped bass. Recent research findings of USFWS (Meng 1994) suggest that the spawning habitat for the Sacramento splittail (currently proposed for listing as threatened under the ESA) is also being adversely affected by increased salt loadings in the lower San Joaquin. Accordingly, these criteria are consistent with a multiple species approach.

EPA believes that clearly stating the salinity conditions necessary for protection of the designated fish spawning uses on the lower San Joaquin provides the foundation for implementation plans by the State Board and other regulatory agencies. EPA believes that these implementation plans should build upon the recommendations of the San Joaquin Drainage Program, to the end that compliance with these criteria can be effectively and efficiently achieved.

One change has been made to the final Fish Spawning criteria. In the Proposed Rule, the Fish Spawning criteria were stated with reference to the five standard water year types, with one criterion required for dry and critical dry water years and another criterion required for the remaining water year types. In the final rule, reliance on water year types is eliminated. Instead, deciding which of the two different criteria applies is made by reference to the San Joaquin Valley Index, the standard index of San Joaquin Valley flows. This change merely eliminates the unnecessary middle step of translating the San Joaquin Valley Index into the five water year types.

4. Suisun Marsh Criteria

The tidal wetlands bordering Suisun Bay are characterized as brackish marsh because of their unique combination of species typical of both freshwater wetlands and more saline wetlands. Suisun Marsh itself, bordering Suisun Bay on the north, is the largest contiguous brackish water marsh in the United States. These large tidal marshes are distinct from the approximately 44,000 acres of ''managed'' marshes in the Suisun Bay, which are currently diked and managed for waterfowl use and hunting. Approximately 10,000 acres of marshes, both along channels within Suisun Marsh and bordering Suisun Bay, are still fully tidal (Meiorin et al. 1991).

These tidal marshes provide habitat for a large, highly diverse, and increasingly rare ecological community. The recent ''Status and Trends'' reports published by the SFEP listed 154 wildlife species associated with the brackish marshes surrounding Suisun Bay (Harvey, et al. 1992), including a number of candidates for listing under the ESA. These include the Suisun song sparrow (*Melospiza melodia maxillaris*) and the Suisun ornate shrew (*Sorex ornatus sinuosus*), as well as the plants Suisun slough thistle (*Cirsium hydrophilum* var. *hydrophilum*), Suisun aster (*Aster chilensis* var. *lentus*), delta tule pea (*Lathyrus jepsonii*), Mason's lilaeopsis (*Lilaeopsis masonii*), and soft-haired bird's beak (*Cordylanthus mollis mollis*). These rare species are all found exclusively in tidally inundated marsh.

Recent studies indicate that increases in salinity caused by a combination of upstream diversions and drought have adversely affected the tidal marsh communities (Collins and Foin 1993). As salinity has intruded, brackish marsh plants which depend on soils low in salt content (especially the tules *Scirpus californicus* and *S. acutus*) have died back in both the shoreline marshes and in some interior marsh channel margins of the western half of Suisun Bay. These plants have been replaced by plants

typically growing in saline soils, especially cordgrass (*Spartina foliosa*). This has been associated with erosion of the marsh margins. In addition, tules in the upper intertidal zone have been replaced by the smaller and more salt tolerant alkali bulrush (*Scirpus robustus*). These changes have significantly affected available habitat for a variety of wildlife that nest and feed in these areas, including the Suisun song sparrow, marsh wren, common yellowthroat, black-crowned night heron, and snowy egret (Collins and Foin 1993; Granholm 1987a; 1987b). The loss of habitat for the Suisun song sparrow is of particular concern, since individuals of this species are found only in the already fragmented marshes bordering Suisun Bay, occupy an established territory for their lifetime, and depend on tall tules for successful reproduction and cover from predators (Marshall 1948).

There are currently no salinity criteria protecting the brackish tidal marshes of Suisun Bay, although there is some incidental protection provided by salinity criteria protecting the managed non-tidal marshes. EPA's approval of the 1978 Delta Plan criteria explicitly sought and received assurances from the State Board to develop additional criteria for the brackish tidal marshes and to protect aquatic life in the Suisun Marsh channels and open waters. Because these assurances have not been met, EPA, in its September 3, 1991 letter on the 1991 Bay/Delta Plan, disapproved the standards for Suisun Marsh and stated that the State Board should immediately develop salinity objectives sufficient to protect aquatic life and the brackish tidal wetlands surrounding Suisun Marsh.

In its Proposed Rule, EPA relied on the Estuarine Habitat criteria to protect the tidal wetlands bordering Suisun Bay, and did not propose separate standards in the Suisun Marsh. EPA's proposed criteria were developed to protect aquatic species and to provide salinity conditions similar to those in the late 1960's to early 1970's. Therefore, many of the aquatic species that inhabit the marsh channels would receive increased protection once the Estuarine Habitat criteria are implemented. In addition, the Estuarine Habitat criteria were designed to provide substantially better dry and critically dry year springtime conditions than the recent conditions that have caused adverse effects on the tidal marsh communities bordering Suisun Bay. EPA therefore concluded that these Estuarine Habitat criteria would lead to substantially improved conditions in the marshes.

In its Proposed Rule, EPA solicited comment as to whether the Estuarine Habitat criteria should be supplemented by additional criteria to fully protect the tidal marsh resources. For illustrative purposes, EPA included two possible narrative criteria in the Proposed Rule:

(1) ''water quality conditions sufficient to support high plant diversity and diverse wildlife habitat throughout all elevations of the tidal marshes bordering Suisun Bay''

(2) ''water quality conditions sufficient to assure survival and growth of brackish marsh plants dependent on soils low in salt content (especially *Scirpus californicus* and *Scirpus acutus*) in sufficient numbers to support Suisun song sparrow habitat in shoreline marshes and interior marsh channel margins bordering Suisun Bay.''

EPA received a number of substantive comments on this issue. The State Board and the California DWR opposed additional criteria, believing that any such criteria would be premature pending completion of a biological assessment in the marsh (SWRCB 1994; California DWR 1994). The California DFG recommended adoption of the numeric salinity criteria included in the Suisun Marsh Preservation Agreement signed by California DFG, California DWR, the USBR, and the Suisun Resource Conservation District in 1987 (California DFG 1994). Two environmental organizations, Natural Heritage Institute and the Bay Institute, recommended that additional standards be developed for the Suisun Marsh. Relying primarily on scientific studies that had been prepared and submitted to the State Board's D–1630 hearings (Jocelyn 1992, WRINT–NHI–12; Williams 1992, WRINT–NHI–18), these groups raised questions about whether the EPA Estuarine Habitat criteria would adequately protect the brackish marshes during January and February, or during a multiple year drought, and whether the Estuarine Habitat criteria would adequately protect the interior tidal channels of Suisun Marsh. In its comments, NHI recommended the adoption of numeric salinity criteria (NHI 1994). The Bay Institute recommended adoption of narrative criteria for the Marsh, and offered a detailed suggestion.

EPA believes that the available scientific information points strongly to the need for numeric criteria in the tidal marshes. Nevertheless, EPA does not believe there exists a sufficient scientific basis at this time to support Federal promulgation of numeric criteria for these marshes. EPA is hopeful that the biological studies being prepared at the request of the State Board will be completed soon, and that the State Board will expedite its review of this issue. Given the substantial delays in the completion of these studies, however, EPA does not believe it advisable to delay addressing the serious possibility of adverse impacts to the brackish tidal marshes. For these reasons, EPA is incorporating a narrative criterion applicable to the tidal (i.e., unmanaged) areas of the Suisun Marsh in the final rule.

To be consistent with EPA guidance, narrative criteria should include specific language about conditions that must exist to protect a designated use, and may include specific classes and species of organisms that will occur in waters for a given designation (USEPA 1990). The narrative criterion promulgated below by EPA includes language about important measures of biological integrity specific to Suisun Bay tidal marshes. Specific reference conditions are not included in the criterion; however, it is the intent of this criterion to reflect conditions equalling the level of protection existing in the Suisun Marsh in the late 1960's to early 1970's. As a result of the recent drought and continued high level of freshwater diversion from the estuary, recent conditions have deteriorated in the Suisun Marsh, as indicated by decreased habitat for the Suisun song sparrow and replacement of tules with *Spartina foliosa*.

In implementing this narrative criterion, the State Board should take care to protect the specific classes and species of organisms that are vulnerable to increasing salinity in the Suisun Marsh. Vulnerable species include those species that are presently listed under the Federal Endangered Species Act, including the salt-marsh harvest mouse *(Reithrodontomys raviventris)* and the California clapper rail *(Rallus longirostris obsoletus)*. Vulnerable species also include both those rare plants that are candidates for listing under the Federal Endangered Species Act (including Mason's *lilaeopsis (Lilaeopsis masonii)*, delta tule pea *(Lathyrus jepsonii)*, Suisun slough thistle *(Cirsium hydrophilum var. hydrophilum)*, Suisun aster *(Aster chilensis var. lentus)*, soft-haired bird's beak *(Cordylanthus mollis ssp mollis)*) and dominant plant species such as the tules *Scirpus acutus* and *S. californicus*, and the bulrush S. robustus. Animal species include Federal candidate species Suisun song sparrow *(Melospiza melodia maxillaris)*, California black rail *(Laterallus jamaicensis coturniculus)*, tri-colored blackbird *(Agelaius tricolor)*, saltmarsh common yellowthroat *(Geothylpis trichos sinuosa)*, Suisun

ornate shrew *(Sorex ornatus sinuosus)* and southwestern pond turtle *(Clemmys marmorata pallida).* Other vulnerable species include river otter *(Lutra canadensis),* beaver *(Castor canadensis),* nesting snowy egret *(Egretta thula),* nesting black-crowned night-heron *(Nycticorax ncyticorax),* ducklings of breeding ducks such as mallard *(Anas platyrhynchos),* gadwall *(Anas strepera)* and cinnamon teal *(Anas cyanoptera),* marsh wren *(Cistothorus palustris),* American bittern *(Botaurus lentiginosus),* Virginia rail *(Rallus limicola),* sora *(Porzana carolina),* and common moorhen *(Gallinula chloropus).*

EPA hopes that the measures taken to implement the Estuarine Habitat criteria will be sufficient to protect the fish and wildlife designated uses targeted by this narrative criterion. Nevertheless, in the event that continuing substantial adverse impacts on the brackish marsh habitat become evident before any possible revisions to the State's numeric criteria, this narrative criterion will provide a basis for State Board measures to address those adverse impacts.

D. Public Comments

Public hearings on the Proposed Rule were held in Fresno, California on February 23, 1994; in Sacramento, California on February 24, 1994; in San Francisco, California on February 25, 1994; and in Los Angeles, California on February 28, 1994. Over 120 people spoke at these four hearings. The public comment period closed on March 11, 1994. EPA received over 225 written comments on the Proposed Rule.[44]

Responses to the public comments have been prepared and are a part of the administrative record to this rulemaking. The public may inspect this administrative record at the place and time described above.

E. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because it raises novel policy issues arising out of the Federal coordination effort described above. This coordination effort, which calls for the integration of several Federal agencies and several different Federal statutes, is a unique and precedential approach to the implementation of Federal natural resources policy. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The following is a summary of the regulatory impact assessment (RIA) that has been prepared in compliance with Executive Order 12866. The full RIA is part of the administrative record to this rule, and is available for public review as described above.

Executive Order 12866 requires Federal agencies to assess the costs and benefits of each significant regulatory action they promulgate. The RIA addresses two interrelated regulatory actions. The first is the promulgation by EPA of water quality criteria for the Bay/Delta estuary under the CWA. The second is the USFWS designation of critical habitat for the Delta smelt under the ESA.

Need for Regulation

The Bay/Delta is the largest estuarine environment on the west coast of the Americas, encompassing 1,600 square miles and draining more than 40% of the water in California.

- The Bay/Delta estuary supports more than 120 species of fish and is a waterfowl migration and wintering area of international significance.
- The estuary supports 108 known species of fish, birds, mammals, reptiles, amphibians, invertebrates, and plants imperiled by habitat loss, including 25 species that are listed or are candidates for listing under the Endangered Species Act (ESA).
- The estuary is composed of numerous habitats valued for their recreational, scientific, educational, aesthetic, and ecological aspects; designated uses defined by the California State Water Resources Control Board include estuarine habitat, coldwater and warmwater habitat, fish migration, fish spawning, ocean commercial and sport fishing, preservation of rare and endangered species, shellfish harvesting, and wildlife habitat.
- As a result of habitat change and other human-induced impacts, the estuary's ability to support a diverse ecosystem with large populations of important commercial, recreational, and heritage species has declined. The 1980's and 1990's brought the number of indigenous species to extremely low levels. Declines in aquatic resources have led to curtailed fishing seasons, petitions for listing species under the ESA, and general concern about the health of the estuarine ecosystem.
- The principal benefit expected to result from this rulemaking is an increase in ecosystem health. A healthy Bay/Delta ecosystem will maintain aquatic species in populations of sufficient sizes to sustain recreational and commercial fisheries, as well as the uniqueness and diversity still present in the estuary.

The Bay/Delta estuary is also the hub of California's two major water distribution systems, the SWP operated by California DWR and the CVP operated by the USBR. Most of the water stored and transported by the CVP is used for agriculture; the CVP also supplies municipal and industrial water to portions of the Central Valley and San Francisco Bay Area. SWP water is primarily used for municipal and industrial uses and the production of agricultural crops. Development and operation of the water projects have contributed to losses in biological productivity in the Bay/Delta estuary by substantially altering the flow and salinity conditions to which the indigenous organisms are adapted.

The Bay/Delta estuary is subject to the water quality control jurisdiction of the State Board and two regional boards. Pursuant to requirements of the CWA, the State Board in 1991 adopted and submitted to EPA the 1991 Bay/Delta Plan containing water quality standards for the Bay/Delta estuary. EPA, finding that the 1991 plan did not provide for adequate protection of the designated fish and wildlife uses of the Bay/Delta estuary, disapproved provisions of the plan. In response to State Board's failure to revise the disapproved criteria, EPA published the proposed rule for

[44] The Bay Institute submitted identical comment letters generally supporting adoption of protective standards in the Bay/Delta from approximately 1,500 people. The total number of comments stated in the text counts these comments as a single comment.

establishing revised water quality criteria; these EPA criteria are the primary subject of the RIA.

Approach

The RIA analyzes a final rule that establishes four sets of federal criteria to protect the designated uses of the Bay/Delta estuary. The analysis focuses on the two sets of criteria with measurable water costs to Delta exporters:

- Salinity criteria protecting the estuarine habitat, and
- Fish migration criteria to protect fish migration in the estuary.

The other two criteria; salinity criteria to protect fish-spawning habitat on the lower San Joaquin river and narrative criteria to protect tidal wetlands surrounding Suisun Marsh, are not expected to result in actions that generate additional economic costs.

The primary method for implementing the criteria is to increase Delta outflow, and the analysis focuses on the effects of this approach. EPA recognizes that the State of California has sole authority to reallocate water rights in implementing these criteria. However, because the State has not yet developed a plan for implementation of the criteria, EPA considered the water supply and delivery impacts of the criteria using the following three implementation approaches that represent the range of options available to the State:

- Project Exporters-Only Approach:

—Generally represents implementation of D–1485, under which the SWP and CVP exporters are solely responsible for providing sufficient water supplies to attain the water quality criteria.

—Because of priority systems within the SWP and CVP, would concentrate responsibility for meeting the standards on water districts with junior water rights, which also bear responsibility for meeting requirements associated with the ESA. Municipal and industrial (M&I) users are priority users within the SWP system. In the CVP priority system, users of 27% of diversions are responsible for meeting 100% of the ESA requirements and water quality standards.

—Could result in effects on San Joaquin Valley agricultural water users, primarily in western Fresno and portions of Kern County and the urban areas supplied by Metropolitan Water District of Southern California (MWD) and Santa Clara Valley Water District (SCVWD).

- Sharing Approach:

—Would spread water supply impacts to more or potentially all of the water districts that divert water from the Sacramento and San Joaquin River systems, including areas of the Sacramento Valley, eastside San Joaquin Valley and urban areas of San Francisco and East Bay.

—Could be based on formulas using many criteria in assigning responsibility, such as diversions, depletions, damage caused by diversions, seniority and priority of water rights, beneficial and reasonable use, and economics.

—For the analysis, an illustrative formula was used where nonproject diverters and non-exporter CVP users share 20% of responsibility for meeting flow requirements necessary to achieve compliance with the criteria.

- Other Innovative Approaches:

—Could include combining shared implementation responsibility with a system of mitigation credits, a water supply cap, and a fund or fee system for purchasing water for environmental uses; policies for promoting a water market and/or a water bank are crucial.

Water Supply and Delivery Impacts

Short-term (1995) and longer term (2010) impacts of the Project Exporters-Only and Sharing Approaches were analyzed through comparison with baseline conditions consisting of current conditions that exist in the absence of the criteria, estimated for a range of hydrological conditions represented in the 71-year hydrologic record for the Delta. Water supply costs are commonly reported using two conventions: the average of 71 years and the ''critical period'', which represents conditions experienced in the drought period of the 1930s.

The analysis estimated the incremental (i.e. new) water supply and delivery impacts of the criteria over those associated with D–1485 and the recent (1992–1994) winter-run salmon requirements. These impacts reflect the effects of a package of federal actions under several laws designed to comprehensively protect the Bay/Delta ecosystem. The entire package of actions and requirements have been extensively coordinated to achieve significant improvements in the Bay/Delta ecosystem.

Both the incremental water supply impacts, as well as the recent Endangered Species Act impacts can be illustrated in the following table:

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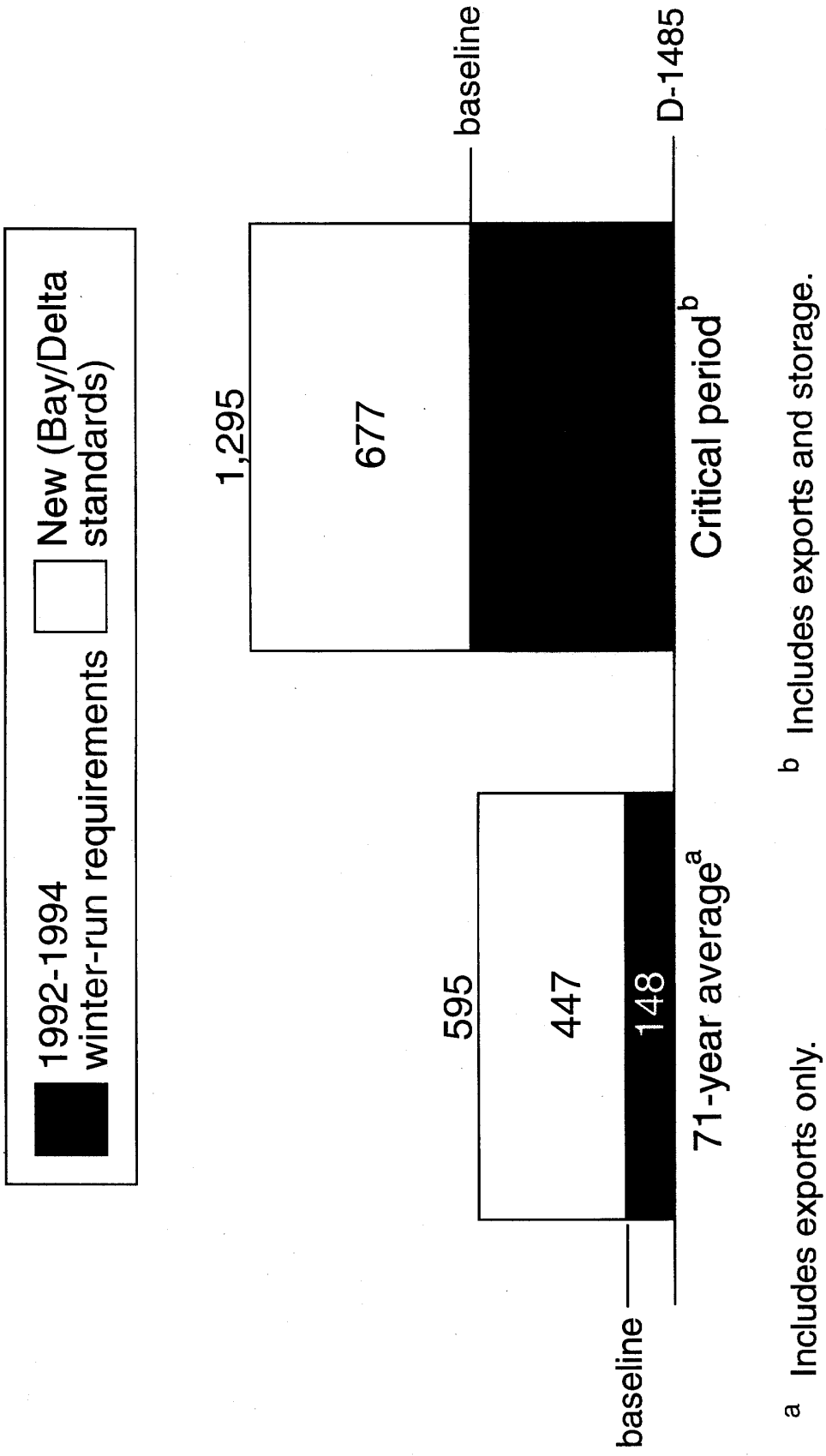
RIA TABLE 1

Water Supply (TAF)



[a] Includes exports only.

[b] Includes exports and storage.

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Water delivery impacts are the changes in water volumes available to different users and depend on seniority of water rights and priority systems within affected water delivery systems, such as the SWP and the CVP.

Costs

The State's implementation plan will substantially affect the magnitude and distribution of the costs of regulatory actions. In the agricultural sector, economic welfare costs would consist primarily of changes in producers' surplus (net operating revenues accruing to farmers). In the urban sector, economic welfare costs would take the form of consumers' surplus losses to the residential sector resulting from developing higher cost replacement supplies and consumer costs of water supply shortages. The following are key results of the cost analysis:

• Water transfers can greatly reduce impacts on affected agricultural and urban areas. Water transfers to urban areas through waterbank programs are common and considered likely in the short-run. Although, increased agriculture-to-agriculture water transfers are not expected in the short-run, they can theoretically decrease impacts considerably.

• Urban project contractors water supplies would not be affected in most years, even without sharing.

—MWD's supplies are affected in 11% of years, SCVWD supplies are affected in 25% of years.

• With water transfers available in dry years, the cost associated with the regulations is estimated to be $4.3 million on average and $15.8 million during dry water years for the Project-Exporters Only scenario. Without water transfers or waterbanks, costs increase significantly; the combined cost of water shortages and replacement water supplies to project users is estimated to be $28.3 million on average years and $165.3 million during dry years.

• Agricultural impacts would be small relative to agricultural value in the Central Valley but would be concentrated in agricultural areas with low-seniority water rights in portions of Fresno and Kern counties.

—Under the Project-Exporters Only scenario and assuming no increase in water transfers, economic welfare losses to agriculture are estimated to average $27 million annually, weighted over all hydrological conditions. However, impacts in the driest 10% of years account for economic costs of $43 million.

—If the State's implementation plan is based solely on seniority of water rights and existing contractual arrangements, impacts will be concentrated in geographic subareas of Fresno and Kern counties. Cumulative impacts are an important consideration in these areas—the impacts of environmental requirements associated with the ESA and the CVPIA are already concentrated in these subareas. However, the State's implementation plan may be based on many criteria, including economics.

• The Sharing Approach would have an important cost-reducing effect, especially in dry years if transfers are limited, in comparison with the Project Exporters-Only Approach.

—Economic welfare costs to agriculture would be reduced by sharing the responsibility of environmental requirements with all diverters. Overall, economic welfare losses would be reduced by approximately $0.5 million for average years and more than $5.5 million in dry years.

—A net gain in economic welfare to urban areas would also result from sharing. Overall economic losses would be reduced by approximately $10.5 million in average years and $54.0 million in dry years when transfers are limited.

• Over the long term, costs are not estimated to substantially increase, even with increasing demand resulting from population growth and decreased groundwater availability.

A summary of these costs is shown below in RIA Table 2.

RIA TABLE 2.—SUMMARY OF ECONOMIC WELFARE COSTS

[In millions of dollars]

	Average expected value	Dry Years
Agriculture: [1]		
• No increase in water transfers	28	43
• Sharing/no increase in transfers	27	37
• Increased transfers	10–18	NA
Urban: [2]		
• Dry year transfer	4	16
• No dry year transfer	28	165
• Sharing/no dry year transfer	18	111

Note: Total impacts are less than the sum of agricultural and urban impacts in the case of agricultural-to-urban transfers. In cases in which there are no agricultural-to-urban transfer, total impacts equal the sum of agricultural and urban impacts.

[1] Transfers are from agriculture to agriculture.

[2] Transfers are from agriculture to urban users.

Benefits

Important benefits of the water quality regulations include the following:

• Biological productivity and health for many estuarine species are expected to increase.

• The decline of species is expected to be reversed and the existence of species unique to the Bay/Delta, such as Delta smelt, winter-run chinook salmon, longfin smelt, and Sacramento splittail, will be protected.

• Populations of a variety of estuarine species are expected to increase; although the extent of the population increases has not been determined for all species, the increases are anticipated to benefit the recreational and commercial fisheries.

• Costs associated with further declines in the estuary will be avoided. The most important avoided cost is associated with further declines in the recreational and commercial fisheries industry including further closures affecting the 200 million dollar industry, with possible future actions needed to protect species from extinction. Other avoided costs include government costs associated with crop deficiency payments; agricultural drainage costs; and costs associated with potential reductions in property values.

The ecological benefits of improved Bay/Delta estuary conditions are expected to generate approximately $2–21 million annually in net economic benefits to commercial and recreational fisheries and have associated employment gains of an estimated 145–1,585 full-time equivalent jobs annually. The federal package of actions to protect the estuary, of which EPA's criteria are a part, will also produce the benefit of increased certainty regarding water supplies from the delta; this allows for more informed water management planning and investments.

Conclusions

The following general conclusions can be drawn regarding the results of the RIA:

• Although urban water supplies are are not affected in most years, however, minimizing urban costs largely depend on the availability of water through transfers and a drought water bank.

• Under the Project-Exporters Only approach to implementation (i.e., status-quo), agricultural impacts are concentrated only in certain areas of Fresno and Kern Counties. This concentration of impacts is magnified by these areas bearing the responsibility for Endangered Species requirements. This concentration of impacts is the

result of historic water rights arrangements and may be attenuated through the water rights phase.

- Benefits of ecosystem protection, which could not be estimated in the analysis, are expected to substantially exceed the use benefits to commercial and recreational fisheries. These nonuse or intrinsic values, which include benefits to the public for improved ecosystem health and for avoiding the extinction of species and closures of fisheries, are difficult to estimate accurately because they are nonmarginal.
- Substantial reductions in economic costs—for the same level of benefits—resulted from the sharing scenario analysis, particularly when transfers are limited. For urban areas, the economic benefits of dry year transfers are large, even when compared to the benefits of sharing.
- Although a fully developed water market is not likely, it could theoretically reduce economic costs to very low levels. Innovative implementation plans (purchase funds, fees, tradeable responsibility) that take advantage of these potential efficiencies may be the most cost-effective solution.

Given both the monetary estimates and the information on ecological benefits that is not calculated in monetary terms, EPA believes that the benefits are commensurate with the costs. Cost-effective implementation of the criteria will result in a healthy ecosystem and fisheries resources coexisting with a strong agricultural sector.

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) EPA generally is required to conduct a final regulatory flexibility analysis (FRFA) describing the impact of the regulatory action on small entities as part of a final rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a FRFA. Although EPA is providing the certification here, it is nevertheless including a discussion for public information of possible effects to small entities that could result from State Board implementation of today's rule.

Today's rule establishes ambient water quality criteria that are unique in that implementation of these criteria is solely dependent upon actions by agencies other than EPA. Until actions are taken to implement today's criteria (or equally protective state criteria meeting the requirements of the CWA), there will be no economic effect of this rule on any entities—large or small. For that reason, and pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I hereby certify that this rule itself will not have a significant economic impact on a substantial number of small entities.

Discussion

Although EPA is certifying that this rule will not have a significant economic impact on a substantial number of small entities, and therefore is not required to prepare a FRFA, it is nevertheless presenting this discussion to inform the public of possible economic effects of state implementation of the criteria promulgated today on small entities. By so doing, EPA intends to inform the public about how such entities might be affected by the State's implementation. The focus of the discussion is on small farms, and our analysis shows that there will be no significant economic effect on a substantial number of them. Additionally, as described elsewhere in the RIA, impacts on the urban sector, while speculative, are expected to be limited. Accordingly, EPA believes there will be no significant economic impact on a substantial number of small entities as a result of the State's implementation of these criteria.

This discussion first provides a profile of small entities—in this case small farms—to determine whether or not they will be affected by State Board actions designed to attain the criteria set forth in this rulemaking. EPA investigated information by geographic area using the U.S. Small Business Administration's definition. Information used includes acreage and gross value per acre.

Small entities that may be primarily affected by the State's implementation of EPA's rule are small farms (as discussed in the RIA, the primary economic impacts of implementation of these criteria are expected to fall on the agricultural sector; impacts on the urban sector are expected to be limited). Small farms are defined by the U.S. Small Business Administration as farms with annual sales of less than $500,000. Small farms account for 93% of all farms and 53% of all cropland (including unharvested pastureland) in California. The remaining 7% of California farms, which have annual sales of more than $500,000, account for 74% of the value of farm products sold (Jolly 1993). Unfortunately, no survey information is available by subgeographic area and value per operator to assist in determining whether or not State Board action implementing this rulemaking could affect small farms. As discussed in the RIA, impacts may be concentrated in the subgeographic areas of the San Joaquin Valley—particularly the westside of Fresno County, including Westlands Water District and Kern County. This analysis uses the worst case scenarios from the RIA in assuming concentrated and, possibly, not insignificant impacts in these areas. These assumptions include: no increase in water transfers and the most status-quo implementation plan selected by the State of California. As discussed in the RIA, innovative implementation plans could reduce all agricultural impacts.

Due to the lack of survey information, two commonly reported measures—gross value per acre and acreage per farm—were used to develop an indication of whether or not these subgeographic areas contain small farms, by the SBA definition. The first commonly reported indicator of farm size is acreage.

EPA used two measures of farm size by acreage in the San Joaquin Valley, derived from the 1987 Census of Agriculture. The first measure, average farmland per operator, includes the average amounts of cropland; rangeland; wooded lands; and lands in buildings, roads, and ponds managed by each farm operator in the San Joaquin Valley. The average amount of farmland per operator in the San Joaquin Valley is 341 acres, varying from 266 acres in non-westside areas to 1,834 acres in the Westlands Water District. The second measure of farm size, irrigated land per operator, includes the average amount of cropland, excluding rangelands and wooded lands, managed by each farm operator. The average amount of irrigated land per operator in the San Joaquin Valley is 165 acres, ranging from 114 acres in non-westside areas to 1,113 acres in the Westlands Water District. These data suggest that some agricultural districts contain very few small farms, while others are largely composed of smaller farms.

These measures of farm size may be distorted by characteristics of the data compiled in the 1987 Census of Agriculture. Because of the way farm operators are defined and counted within the census, the number of truly separate farm operations within the San Joaquin Valley may be lower than the census reports. Thus, the amount of farmland and irrigated land per separate farm operation is probably higher than reported. Additionally, farming is not the principal occupation for many farm operators. In the San Joaquin Valley, 44% of the operators included in the census reported that farming was not

their principal occupation (Archibald 1990). These operations, which could include hobby farms, are probably much smaller than commercial operations. Therefore, the average size of commercial operations is likely much larger than reported. These data limitations make it difficult to assess the true proportion of the farm industry represented by small commercial farms.

The other measure used to develop an indication of whether or not small farms are affected is average gross revenue per acre. This information was obtained from the USBR and the same data is used in the RIA. As discussed previously, the areas where impacts may be concentrated are primarily the westside of the San Joaquin Valley, especially Westlands Water District and Kern County. Values of $1100–$2300 an acre are indicated by this data. These estimates are further confirmed by the average value of $1413 an acre found in a recent University of California report (Carter 1992.) Thus using the range of values for gross revenue per acre and the more conservative definition of irrigated land per acre for the Westside, farms average approximately $600,000 –$1,120,000. This does not meet the SBA definition. In addition, average farm size in the Westlands Water District is much larger, leading to average estimates over $1 million per operator. In Kern County, however, gross revenue per acre averages $1863 and therefore to meet the SBA definition a farm would have to be unusually small (under 270 acres.) These estimates indicate that a substantial number of small entities would not be substantially affected.

The farms in the CVP area (westside Fresno County) are subject to the U.S. Department of Interior 960-acre limitation on farm size for the receipt of subsidized water. Although the degree of compliance with this limitation is in question, a recent legal settlement by the U.S. Department of Interior will increase the enforcement of this acreage limitation. Using the measures of average gross revenue per acre, farms that approach the acreage limitation are not considered small farms using the SBA definition.

Type of small farm by crop type was also investigated to provide another indication of farms potentially affected by State Board action. As discussed in the RIA, State Board action consistent with this rulemaking would likely result primarily in field and forage crop displacement. In 1987, small farms produced 40% of all irrigated hay and field crops harvested and 30% of all nonfeedlot cattle sales in the state (U.S. Dept. of Commerce 1989). Approximately 80% of the irrigated hay and field crops and 50% of nonfeedlot cattle are raised in the Sacramento Valley and San Joaquin Valley counties (U.S. Dept. of Commerce 1989). Such cattle production is the principal use of irrigated pasture in California. These percentages are substantially lower than the overall percentage of cropland in small farms. In other words, large farms (i.e., farms with annual sales exceeding $500,000) account for a disproportionate share of the production of the crops and livestock that might be displaced by the projected water supply reductions.

While these measures indicate that the State's implementation of the criteria in this rule will not affect a substantial number of small farms, given that the measure was developed from averages, there will exist in every irrigation district some small farms. Westlands Water District reports that 125 farms are 320 acres or less (a 320 acre farm grossing $1400-$1500 an acre would meet the SBA definition of a small farm.) Thus, without survey information, we cannot completely conclude that all small farms would not be affected by State Board action.

The RIA conducted for this rulemaking indicates that if previous implementation procedures are followed, impacts may be concentrated in geographic subareas. The State does have implementation flexibility to spread the impacts to a greater geographic area. This would have two offsetting impacts in relationship to farm size. First, the impacts overall will be decreased so that impacts would be less concentrated in subregions, possibly to insignificant levels. Second, however, in spreading the impacts more broadly, the State will be spreading it to areas with small farms.

Within irrigation districts with project water, junior water rights and little access to groundwater, even the State may have little implementation authority to assess or minimize impacts by farm size. A Stanford University study explains:

Most farmers receive their water from a local district (generally an irrigation, water, or water storage district) or from a mutual water company * * * local districts have considerable discretion over the acquisition, allocation and pricing of water. The nature and limits of the discretion, however, vary among districts depending on the laws under which the district was formed, any special legislation unique to a district, and a district's local rules and regulations. (Center for Economic Policy Research 1992.)

G. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875, 58 FR 58093 (October 28, 1993), we have involved state, local, and tribal governments in the development of this rule. In addition to the substantial participation by state and local governments and local agricultural and municipal water districts in the public commenting process, several activities have been carried out since the publication of the Proposed Rule. These include:

(1) The State of California and the Federal government (represented by the EPA, the Department of the Interior, and the Department of Commerce) have negotiated and this past summer signed a Framework Agreement laying out the institutional processes and mechanisms to be used to coordinate state and Federal activities affecting water quality and water development in the Bay/Delta. The Framework Agreement specifically included (a) a process for Federal and state adoption of water quality standards meeting the requirements of state and Federal law, (b) a structure and process for technical coordination of the state and Federal regulatory activities affecting operation of the state and Federal water projects in the Bay/Delta (the SWP and the CVP), and (c) a process for developing a Federal-state partnership for long term planning for water resources in California. Many of the steps envisioned in the Framework Agreement have already been accomplished. The Framework Agreement explicitly called for the final Federal promulgation of a water quality rule, which is being accomplished in this rulemaking.

(2) EPA has held a number of workshops with representatives of the municipal and agricultural water districts to discuss the Proposed Rule and the accompanying draft economic analysis. Further, EPA has participated in additional workshops sponsored by the California Urban Water Agencies (CUWA) to discuss CUWA's scientific comments on the Proposed Rule.

(3) As envisioned by the Framework Agreement, the State Board has held a series of workshops to assist in developing revised State water quality standards meeting the requirements of the CWA. EPA has participated in these workshops and, in accordance with the State Board's processes, has presented the State Board options for possible standards that would meet the requirements of the CWA.

(4) EPA has worked closely with the California DWR to ascertain the

probable water supply impacts of its Proposed Rule, and has continued to work with California DWR to explore mechanisms for reducing water supply impacts of protective standards. As explained in the Preamble to the final rule, many of these mechanisms have been incorporated into EPA's final rule.

(5) EPA has worked closely with representatives of a coalition of CUWA and of agricultural water agencies to consider alternative standards and measures that would meet the requirements of the CWA.

(6) EPA has continued to meet with the State Board and other State officials, both at the staff and policy levels, to discuss ways to attain protection of the Bay/Delta resources in a way that meets the requirements of the CWA and is consistent with the State's roles in water quality and water development planning.

H. Paperwork Reduction Act

This rule places no information collection activities on the State of California and, therefore, no information collection request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

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List of Subjects in 40 CFR Part 131

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control, Water quality standards, Water quality criteria.

Dated: December 14, 1994.

Carol M. Browner,

Administrator.

40 CFR part 131 is amended as follows:

PART 131—[AMENDED]

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 131.37 is added to read as follows:

§ 131.37 California.

(a) *Additional criteria.* The following criteria are applicable to waters specified in the Water Quality Control Plan for Salinity for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, adopted by the California State Water Resources Control Board in State Board Resolution No. 91–34 on May 1, 1991:

(1) *Estuarine habitat criteria.* (i) *General rule.* (A) Salinity (measured at the surface) shall not exceed 2640 micromhos/centimeter specific conductance at 25 °C (measured as a 14-day moving average) at the Confluence of the Sacramento and San Joaquin Rivers throughout the period each year from February 1 through June 30, and shall not exceed 2640 micromhos/centimeter specific conductance at 25 °C (measured as a 14-day moving average) at the specific locations noted in Table 1 near Roe Island and Chipps Island for the number of days each month in the February 1 to June 30 period computed by reference to the following formula:

Number of days required in Month X = Total number of days in Month X * $(1-1/(1+e^{K})$

where K = A + (B*natural logarithm of the previous month's 8-River Index);

A and B are determined by reference to Table 1 for the Roe Island and Chipps Island locations;

x is the calendar month in the February 1 to June 30 period;

and e is the base of the natural (or Napierian) logarithm.

Where the number of days computed in this equation in paragraph (a)(1)(i)(A) of this section shall be rounded to the nearest whole number of days. When the previous month's 8-River Index is less than 500,000 acre-feet, the number of days required for the current month shall be zero.

Table 1. Constants applicable to each of the monthly equations to determine monthly requirements described.

Month X	Chipps Island		Roe Island (if triggered)	
	A	B	A	B
Feb	–[1]	–[1]	–14.36	+2.068
Mar	–105.16	+15.943	–20.79	+2.741
Apr	–47.17	+6.441	–28.73	+3.783
May	–94.93	+13.662	–54.22	+6.571
June	–81.00	+9.961	–92.584	+10.699

[1] Coefficients for A and B are not provided at Chipps Island for February, because the 2640 micromhos/cm specific conductance criteria must be maintained at Chipps Island throughout February under all historical 8-River Index values for January.

(B) The Roe Island criteria apply at the salinity measuring station maintained by the U.S. Bureau of Reclamation at Port Chicago (km 64). The Chipps Island criteria apply at the Mallard Slough Monitoring Site, Station

D–10 (RKI RSAC–075) maintained by the California Department of Water Resources. The Confluence criteria apply at the Collinsville Continuous Monitoring Station C–2 (RKI RSAC–081) maintained by the California Department of Water Resources.

(ii) *Exception.* The criteria at Roe Island shall be required for any given month only if the 14-day moving average salinity at Roe Island falls below 2640 micromhos/centimeter specific conductance on any of the last 14 days of the previous month.

(2) *Fish migration criteria.* (i) *General rule.*

(A) *Sacramento River.* Measured Fish Migration criteria values for the Sacramento River shall be at least the following:

At temperatures less than below 61°F: SRFMC = 1.35

At temperatures between 61°F and 72 °F: SRFMC = 6.96–.092 * Fahrenheit temperature

At temperatures greater than 72 °F: SRFMC = 0.34

where SRFMC is the Sacramento River Fish Migration criteria value. Temperature shall be the water temperature at release of tagged salmon smolts into the Sacramento River at Miller Park.

(B) *San Joaquin River.* Measured Fish Migration criteria values on the San Joaquin River shall be at least the following:

For years in which the SJVIndex is > 2.5: SJFMC = (−0.012) + 0.184*SJVIndex

In other years: SJFMC = 0.205 + 0.0975*SJVIndex

where SJFMC is the San Joaquin River Fish Migration criteria value, and SJVIndex is the San Joaquin Valley Index in million acre feet (MAF)

(ii) *Computing fish migration criteria values for Sacramento River.* In order to assess fish migration criteria values for the Sacramento River, tagged fall-run salmon smolts will be released into the Sacramento River at Miller Park and captured at Chipps Island, or alternatively released at Miller Park and Port Chicago and recovered from the ocean fishery, using the methodology described in this paragraph (a)(2)(ii). An alternative methodology for computing fish migration criteria values can be used so long as the revised methodology is calibrated with the methodology described in this paragraph (a)(2)(ii) so as to maintain the validity of the relative index values. Sufficient releases shall be made each year to provide a statistically reliable verification of compliance with the criteria. These criteria will be considered attained when the sum of the differences between the measured experimental value and the stated criteria value (i.e., measured value minus stated value) for each experimental release conducted over a three year period (the current year and the previous two years) shall be greater than or equal to zero. Fish for release are to be tagged at the hatchery with coded-wire tags, and fin clipped. Approximately 50,000 to 100,000 fish of smolt size (size greater than 75 mm) are released for each survival index estimate, depending on expected mortality. As a control for the ocean recovery survival index, one or two groups per season are released at Benecia or Pt. Chicago. From each upstream release of tagged fish, fish are to be caught over a period of one to two weeks at Chipps Island. Daylight sampling at Chipps Island with a 9.1 by 7.9 m, 3.2 mm cod end, midwater trawl is begun 2 to 3 days after release. When the first fish is caught, full-time trawling 7 days a week should begin. Each day's trawling consists of ten 20 minute tows generally made against the current, and distributed equally across the channel.

(A) The Chipps Island smolt survival index is calculated as:

$SSI=R\div MT(0.007692)$

where R=number of recaptures of tagged fish

M=number of marked (tagged) fish released

T=proportion of time sampled vs total time tagged fish were passing the site (i.e. time between first and last tagged fish recovery)

Where the value 0.007692 is the proportion of the channel width fished by the trawl, and is calculated as trawl width/channel width.

(B) Recoveries of tagged fish from the ocean salmon fishery two to four years after release are also used to calculate a survival index for each release. Smolt survival indices from ocean recoveries are calculated as:

$OSI=R_1/M_1\div R_2/M_2$

where R_1=number of tagged adults recovered from the upstream release

M_1=number released upstream

R_2=number of tagged adults recovered from the Port Chicago release

M_2=number released at Port Chicago

(*1*) The number of tagged adults recovered from the ocean fishery is provided by the Pacific States Marine Fisheries Commission, which maintains a port sampling program.

(*2*) [*Reserved*]

(iii) *Computing fish migration criteria values for San Joaquin River.* In order to assess annual fish migration criteria values for the San Joaquin River, tagged salmon smolts will be released into the San Joaquin River at Mossdale and captured at Chipps Island, or alternatively released at Mossdale and Port Chicago and recovered from the ocean fishery, using the methodology described in paragraph (a)(2)(iii). An alternative methodology for computing fish migration criteria values can be used so long as the revised methodology is calibrated with the methodology described below so as to maintain the validity of the relative index values. Sufficient releases shall be made each year to provide a statistically reliable estimate of the SJFMC for the year. These criteria will be considered attained when the sum of the differences between the measured experimental value and the stated criteria value (i.e., measured value minus stated value) for each experimental release conducted over a three year period (the current year and the previous two years) shall be greater than or equal to zero.

(A) Fish for release are to be tagged at the hatchery with coded-wire tags, and fin clipped. Approximately 50,000 to 100,000 fish of smolt size (size greater than 75 mm) are released for each survival index estimate, depending on expected mortality. As a control for the ocean recovery survival index, one or two groups per season are released at Benicia or Pt. Chicago. From each upstream release of tagged fish, fish are to be caught over a period of one to two weeks at Chipps Island. Daylight sampling at Chipps Island with a 9.1 by 7.9 m, 3.2 mm cod end, midwater trawl is begun 2 to 3 days after release. When the first fish is caught, full-time trawling 7 days a week should begin. Each day's trawling consists of ten 20 minute tows generally made against the current, and distributed equally across the channel.

(B) The Chipps Island smolt survival index is calculated as:

$SSI=R\div MT(0.007692)$

where R=number of recaptures of tagged fish

M=number of marked (tagged) fish released

T=proportion of time sampled vs total time tagged fish were passing the site (i.e. time between first and last tagged fish recovery)

Where the value 0.007692 is the proportion of the channel width fished by the trawl, and is calculated as trawl width/channel width.

(C) Recoveries of tagged fish from the ocean salmon fishery two to four years after release are also used to calculate a survival index for each release. Smolt survival indices from ocean recoveries are calculated as:

$OSI=R_1/M_1 \div R_2/M_2$
where R_1=number of tagged adults recovered from the upstream release
M_1=number released upstream
R_2=number of tagged adults recovered from the Port Chicago release
M_2=number released at Port Chicago

(*1*) The number of tagged adults recovered from the ocean fishery is provided by the Pacific States Marine Fisheries Commission, which maintains a port sampling program.

(*2*) [*Reserved*]

(3) *Suisun marsh criteria.* (i) Water quality conditions sufficient to support a natural gradient in species composition and wildlife habitat characteristic of a brackish marsh throughout all elevations of the tidal marshes bordering Suisun Bay shall be maintained. Water quality conditions shall be maintained so that none of the following occurs: Loss of diversity; conversion of brackish marsh to salt marsh; for animals, decreased population abundance of those species vulnerable to increased mortality and loss of habitat from increased water salinity; or for plants, significant reduction in stature or percent cover from increased water or soil salinity or other water quality parameters.

(ii) [Reserved]

(b) *Revised criteria.* The following criteria are applicable to state waters specified in Table 1–1, at Section (C)(3) (''Striped Bass—Salinity : 3. Prisoners Point—Spawning) of the Water Quality Control Plan for Salinity for the San Francisco Bay—Sacramento/San Joaquin Delta Estuary, adopted by the California State Water Resources Control Board in State Board Resolution No. 91–34 on May 1, 1991:

Location	Sampling site Nos (I–-A/RKI)	Parameter	Description	Index type	San Joaquin Valley Index	Dates	Values
San Joaquin River at Jersey Point, San Andreas Landing, Prisoners Point, Buckley Cove, Rough and Ready Island, Brandt Bridge, Mossdale, and Vernalis.	D15/RSAN018, C4/RSAN032, D29/RSAN038, P8/RSAN056, -/RSAN062, C6/RSAN073, C7/RSAN087, C10/RSAN112	Specific Conductance @ 25 °C	14-day running average of mean daily for the period not more than value shown, in mmhos.	Not Applicable	>2.5 MAF	April 1 to May 31.	0.44 micromhos.
San Joaquin River at Jersey Point, San Andreas Landing and Prisoners Point.	D15/RSAN018, C4/RSAN032, D29/RSAN038	Specific Conductance.	14-day running average of mean daily for the period not more than value shown, in mmhos.	Not Applicable	≤2.5 MAF	April 1 to May 31.	0.44 micromhos.

(c) *Definitions.* Terms used in paragraphs (a) and (b) of this section, shall be defined as follows:

(1) *Water year.* A water year is the twelve calendar months beginning October 1.

(2) *8-River Index.* The flow determinations are made and are published by the California Department of Water Resources in Bulletin 120. The 8-River Index shall be computed as the sum of flows at the following stations:

(i) Sacramento River at Band Bridge, near Red Bluff;

(ii) Feather River, total inflow to Oroville Reservoir;

(iii) Yuba River at Smartville;

(iv) American River, total inflow to Folsom Reservoir;

(v) Stanislaus River, total inflow to New Melones Reservoir;

(vi) Tuolumne River, total inflow to Don Pedro Reservoir;

(vii) Merced River, total inflow to Exchequer Reservoir; and

(viii) San Joaquin River, total inflow to Millerton Lake.

(3) *San Joaquin Valley Index.* (i) The San Joaquin Valley Index is computed according to the following formula:

$I_{SJ}=0.6X+0.2Y$ and $0.2Z$
where I_{SJ}=San Joaquin Valley Index
X=Current year's April–July San Joaquin Valley unimpaired runoff
Y=Current year's October–March San Joaquin Valley unimpaired runoff
Z=Previous year's index in MAF, not to exceed 0.9 MAF

(ii) *Measuring San Joaquin Valley unimpaired runoff.* San Joaquin Valley unimpaired runoff for the current water year is a forecast of the sum of the following locations: Stanislaus River, total flow to New Melones Reservoir; Tuolumne River, total inflow to Don Pedro Reservoir; Merced River, total flow to Exchequer Reservoir; San Joaquin River, total inflow to Millerton Lake.

(4) *Salinity.* Salinity is the total concentration of dissolved ions in water. It shall be measured by specific conductance in accordance with the procedures set forth in 40 CFR 136.3, Table 1B, Parameter 64.

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Tuesday
January 24, 1995

Part III

Environmental Protection Agency

40 CFR Part 51, et al.

Low Emission Vehicle Program for the Northeast Ozone Transport Region; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52 and 85

[FRL–5141–8]

RIN–2060–AF15

Final Rule on Ozone Transport Commission; Low Emission Vehicle Program for the Northeast Ozone Transport Region

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: At the request of the Northeast Ozone Transport Commission (OTC), EPA is announcing today its final determination that reduction of new motor vehicle emissions throughout the Northeast Ozone Transport Region (OTR) is necessary to mitigate the effects of air pollution transport and to bring nonattainment areas in the OTR into attainment (including maintenance) of the national ambient air quality standard for tropospheric ozone (smog). This will assist OTR states in their efforts to reduce ozone pollution to the level necessary to protect public health. EPA today approves the recommendation of the OTC and promulgates a rule under sections 184 and 110 of the Clean Air Act (the Act) that requires emission reductions from new motor vehicles in the OTR equivalent to the reductions that would be achieved by the OTC Low Emission Vehicle (OTC LEV) program.

States would be relieved of their obligations under this requirement if EPA were to find that all automakers had opted into an acceptable LEV-equivalent new motor vehicle program. EPA believes that such a program, which would be far better than OTC LEV, could be agreed upon and adopted in the near future. States' obligations under this requirement could also be met by a state's revision of its state implementation plan to include the OTC LEV program. Today's action gives states additional flexibility by also allowing a state the option of adopting a set of measures that would achieve certain emission reductions needed to prevent the state's adverse pollutant transport impacts.

EPA is also promulgating a final rule today determining ''model year'' for purposes of section 177 and part A of title II of the Act, as that term is applied to on-highway motor vehicles.

DATES: The regulations to be codified in 40 CFR parts 51 and 52 are effective February 15, 1995. The regulations to be codified in 40 CFR part 85 are effective February 23, 1995.

ADDRESSES: Materials relevant to this final rule are contained in EPA Air Docket No. A–94–11, located at the Air Docket (LE–131) of the EPA, room M–1500, 401 M Street SW., Washington, DC 20460, tel. (202) 260–7548. Interested parties may inspect the docket between the hours of 8 a.m. to 5:30 p.m., Monday through Friday except on federal holidays.

FOR FURTHER INFORMATION CONTACT: Mike Shields, Office of Mobile Sources, US EPA, 401 M Street, SW., Washington, DC 20460, tel. (202) 260–7757.

SUPPLEMENTARY INFORMATION:

I. Outline and Introduction

This final rule preamble is organized into the following sections:

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2. Advanced Technology Vehicles
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A. Introduction

In today's action, EPA takes a significant step towards the goal of reducing smog in the heavily populated northeast region of the country. The northeast has some of the most severe smog pollution in the country—pollution reaches levels much higher than are healthy. Ground-level ozone, the main harmful ingredient in smog, is produced by the combination of volatile organic compounds (VOCs) and nitrogen oxides (NO_X).[1] The chemical reactions that create smog take place while the pollutants are being blown through the air by the wind, which means that smog can be more severe miles away from the source of pollution than it is at the source.

Ground-level ozone causes health problems because it damages lung tissue, reduces lung function, and sensitizes the lungs to other irritants. Scientific evidence indicates that ambient levels of ozone not only affect people with impaired respiratory systems, such as asthmatics, but healthy adults and children as well. Exposure to ozone for six to seven hours at relatively low concentrations has been found to reduce lung function significantly in normal, healthy people during periods of moderate exercise. This decrease in lung function is often accompanied by such symptoms as chest pain, coughing, nausea, and pulmonary congestion.

Though these effects are not as well established in humans, animal studies

[1] In the upper atmosphere, or stratosphere, ozone occurs naturally and forms a protective layer, which shields us from the sun's harmful ultraviolet rays. However, in the lower atmosphere, or at ''ground level,'' man-made ozone can cause a variety of problems to human health, crops and trees.

have demonstrated that repeated exposure to ozone for many months can produce permanent structural damage in the lungs and accelerate the rate of lung function loss, as well as the lung aging period. Each year ground-level ozone is also responsible for several billion dollars worth of agricultural crop yield loss. It also causes noticeable foliar damage in many crops and species of trees. Studies also indicate that current ambient levels of ozone are responsible for damage to forests and ecosystems.

As part of efforts to reduce harmful levels of smog, today's action approves the recommendation of an organization of northeastern states that EPA require all the northeastern states to adopt the California car program to reduce significantly the pollution emitted by new cars and light-duty trucks. This requirement could be met either by state adoption of the California car program or by having a nationwide alternative car program in effect that would achieve emissions reductions at least equivalent to what the California car program would achieve. Motor vehicles are a significant cause of smog because of their emission of VOCs and NO_X. EPA has projected that, without the California car (or an equivalent) program in the northeastern states, highway vehicles will account for approximately 38% of NO_X and 22% of VOC anthropogenic (man-made) emissions in 2005. EPA currently estimates that VOC emissions should be reduced by approximately 95 tons per day and NO_X emissions by approximately 195 tons per day as a result of today's action.[2]

Since smog travels across county and state lines, it is essential for state governments and air pollution control agencies to cooperate to solve the problem. This is particularly true in the densely-populated northeast—for example, the smog that causes health problems in New York City is the result, in part, of cars driven in Pennsylvania, Maryland and elsewhere in the northeast. Through the Ozone Transport Commission (OTC), the northeastern states have made major strides in developing region-wide strategies for achieving healthy air quality. Today's action, a further step in implementing the OTC's region-wide approach, is necessary for the region to attain and maintain healthy air quality.

Although EPA believes that the northeastern states cannot achieve healthy air quality unless their neighbors within the northeast adopt the California car program or a nationwide program is in effect, today's action gives the states much flexibility in filling this need. Today's action sets broad requirements that states must meet, but otherwise gives states as much flexibility as the Clean Air Act allows in structuring and implementing their motor vehicle programs. EPA will continue to work with the states to help develop and establish California car programs that work well regionally. Furthermore, EPA continues to support the efforts of parties who are working on a possible new nationwide approach to decreasing emissions from motor vehicles and believes such a nationwide program could be superior to region-wide adoption of the California car program. Such a nationwide program could relieve states of having to respond to today's SIP call. Finally, if an individual state achieves sufficient emission reductions from programs other than a new motor vehicle program (and other than the broadly practicable measures discussed later in this notice), that state will be allowed to do so instead of adopting the California car program.

B. LEV-Equivalent Program

Concurrently with processing the OTC recommendation, EPA has explored the possibility of a LEV-equivalent program.[3] As explained below, EPA believes the OTC LEV program will provide significant benefits and is necessary to help the northeast achieve air quality goals. Nonetheless, as EPA stated in the SNPRM and at numerous public meetings, EPA believes that a LEV-equivalent program could provide far greater environmental and public health benefits to the OTR and the nation, and do so more efficiently than would the OTC LEV program. Under the Clean Air Act, however, such a program can only be achieved by agreement of the relevant parties—it cannot be imposed unilaterally by EPA or the states. In an effort to develop a LEV-equivalent program, EPA and the parties have been involved in intensive and open discussions, particularly under the Clean Air Act Advisory Committee's Subcommittee on Mobile Source Emissions and Air Quality in the Northeast States that EPA established in August 1994.

EPA believes that a LEV-equivalent program would have significant advantages when compared to OTC LEV. First, a LEV-equivalent program would achieve the same or greater emission reductions for the OTR. Two factors are primarily responsible for the emissions equivalence. The LEV-equivalent program would provide for earlier introduction of Transitional Low Emission Vehicles (''TLEVs'') in the OTR than would be required under the OTC LEV petition. Also, 2001 and later model year vehicles that are originally purchased outside the OTR and then move into the OTR will be approximately 70% cleaner for in-use VOC and NO_X emissions than the incoming vehicles (*i.e.*, Tier I vehicles) under the OTC LEV program. Second, the LEV-equivalent program would provide significant environmental and public health benefits for the rest of the country. Third, by requiring vehicles to meet the same tailpipe standard in both California and the rest of the country, and by harmonizing the other California and federal emission standards, the program could streamline the process for certifying a vehicle for sale, reduce auto manufacturers' testing and design costs, and provide other efficiencies in the marketing of automobiles. Fourth, the parties could use their resources to make the program succeed rather than continuing the resource-intensive battle that has been waged over the past few years between the states and the auto industry over the OTC LEV program.

EPA urges the parties to continue their efforts to reach an agreed-upon program. The effective date of today's SIP call is February 15, 1995. By giving states a full year to submit their SIP revisions after the effective date, this action allows the parties, particularly the states, to focus on the voluntary agreement for the next 45 days without simultaneously starting whatever legislative and regulatory action is necessary to adopt OTC LEV in case a LEV-equivalent program does not materialize. When states do begin legislative efforts, EPA urges them to structure their authority so that an approved alternative program can be adopted and implemented nationwide.

The alternative program under discussion contemplates using federal rulemaking to establish the program. In light of the significant progress that has already been made in developing an

[2] These emissions estimates are based on the most accurate data currently available. The Agency continues to analyze emissions data and modeling assumptions.

[3] In this notice, a ''LEV-equivalent program'' is an alternative voluntary nationwide program that would achieve emission reductions from new motor vehicles in the OTR equivalent to or greater than would be achieved by the OTC LEV program and that would advance motor vehicle emission control technology. This definition is based on comments EPA received and discussions at meetings of the Clean Air Act Advisory Committee's Subcommittee on Mobile Source Emissions and Air Quality in the Northeast States that indicated that the alternative voluntary federal program that the interested parties are discussing would have an advanced technology component.

alternative program, EPA believes it is appropriate to initiate an expedited rulemaking process on the conventional car portion of a LEV-equivalent program, as described below. Although EPA cannot act unilaterally to impose a LEV-equivalent program, EPA believes that, in light of the parties' continuing efforts to reach agreement, it is time to start to develop the regulatory structure that the parties have discussed to implement an agreement. EPA intends to propose and take comment on the voluntary new motor vehicle emission program described below. EPA also intends to propose that the entire alternative program is environmentally superior to OTC LEV because the alternative is at least environmentally equivalent to OTC LEV in the OTR and it has additional environmental benefits for the rest of the nation.

Before issuing such a proposal, EPA will seek the advice and recommendations of the Clean Air Act Advisory Committee and Subcommittee that have been addressing these issues. Although many of these issues, particularly those that would be raised by the conventional car portion of the program, have already been discussed in numerous **Federal Register** notices and public meetings, EPA believes it is important to allow people and states who have not participated in this process to date an opportunity to be heard on the specific provisions of a potential new, nationwide motor vehicle emission program.

The LEV-equivalent program under discussion has two major components—a cleaner car to be sold nationwide and advanced motor vehicle pollution control technology. In the following subsections, EPA describes the nationwide cleaner car, the advanced technology program currently under discussion, the possible methods for enforcing a LEV-equivalent program, the criteria for finding that such a program would be an acceptable alternative for OTC LEV, and how an acceptable LEV-equivalent program would affect a state's obligations under today's action.

1. Cleaner Conventional Cars and Light-Duty Trucks

The first component of a LEV-equivalent program would be requirements for cleaner conventional cars and light-duty trucks that ultimately would result in nationwide sales of cleaner new motor vehicles. Starting with the 2001 model year, all new cars and light-duty trucks sold outside California would meet the California Low Emission Vehicle (LEV) standard. These vehicles would have up to 66% lower in-use VOC and 73% lower in-use NO_X tailpipe emissions than vehicles meeting the federal Tier I Standards. Prior to the nationwide introduction of this vehicle, auto manufacturers would phase in cleaner cars and light-duty trucks in the OTR according to a schedule that would accomplish emission reductions in the OTR equivalent to the following schedule:

40% TLEVS[4] for model years 1997–2000
30% LEVs for model year 1999
60% LEVs for model year 2000
100% LEVs for model years 2001 and later

EPA cannot promulgate regulations requiring manufacturers to meet these standards prior to model year 2004 (*see* section 202(b)(1)(C) of the Act). Nonetheless, EPA can establish a voluntary program that would not apply to manufacturers until they opted into the program; then, once an auto manufacturer opted in, the voluntary standards would be implemented in a way that would be indistinguishable from mandatory standards.

In establishing such a program, several issues need to be addressed other than the tailpipe standards and phase-in schedule. EPA will seek comment on how to establish a banking and trading program, what exemptions should apply to small volume manufacturers, the extent to which federal standards (other than tailpipe standards) can be harmonized with California standards to reduce testing and design costs, how to incorporate California's on-board diagnostics system requirements, what process and timing are appropriate for allowing auto manufacturers to opt in, and other issues that would arise under the voluntary program.

2. Advanced Technology Vehicles

In the second component, auto manufacturers, utilities, and state and federal governments would commit to work together to further the development of advanced technology to control motor vehicle emissions. Representatives of the states and auto companies have been meeting independently and as a working group of a Subcommittee of the Clean Air Act Advisory Committee to develop an advanced technology component of a LEV-equivalent program. At this point in the discussions, they do not anticipate that EPA would take regulatory action to adopt the advanced technology component. Attachment A to this preamble is a current draft discussion paper of their ideas on the Advanced Technology Vehicle (ATV) component of a LEV-equivalent program. The parties have not yet reached agreement on this component.

3. Enforcement of a LEV-Equivalent Program

Given constraints imposed by Congress in the Clean Air Act, a LEV-equivalent program cannot be instituted without the consent of the auto manufacturers and the OTC states. The auto manufacturers must agree to any tailpipe regulations other than the current federal program or the California program. EPA is precluded by section 202(b)(1)(C) from modifying the mandatory tailpipe standards prior to model year 2004. States are precluded by sections 177 and 209 from adopting any program other than the California program. Thus, the only route left to a LEV-equivalent program is one in which the auto manufacturers voluntarily agree to additional regulation. The auto manufacturers have said that, in principle, they could agree to a voluntary program if it avoided the need to comply with OTC LEV in the OTC states. The OTC states, therefore, would have to agree not to require compliance with OTC LEV if the auto manufacturers were complying with a voluntary federal program.

EPA has suggested that a combination of EPA regulations, consent decree(s), and a memorandum of understanding could be used in combination to create an enforceable LEV-equivalent program. EPA anticipates that a memorandum of understanding may be necessary or appropriate to outline the general structure and some specifics of the LEV-equivalent program. EPA intends to propose that the cleaner conventional car component would be embodied in EPA regulations that would be issued after an expedited notice-and-comment rulemaking was completed. EPA suggests that the regulations be supplemented by a consent decree addressing obligations not in the regulations and providing additional assurance that the regulatory obligations will remain in effect. The states and automakers have discussed embodying the advanced technology vehicle component in a memorandum of understanding and a consent decree.

EPA intends to propose that it has statutory authority to promulgate the voluntary standards under sections 202(a) and 301(a) of the Clean Air Act. Section 202(a)(1) directs the Administrator to prescribe standards for control of air pollutant emissions from motor vehicles. EPA's prescription of

[4] TLEV stands for transitional low emissions vehicle, which is cleaner than cars required by federal law.

voluntary, as well as mandatory standards, is consistent with this authority under section 202(a)(1). Section 202(b)(1)(C) prohibits the Administrator from changing the emission standards (Tier I standards) established in section 202(g), (h) and (i) prior to model year 2004. However, this prohibition against EPA setting new mandatory standards does not negate EPA's authority to establish emission standards with which manufacturers may voluntarily comply. In addition, section 301(a) authorizes the Administrator to promulgate regulations necessary to carry out her functions under the Act. The voluntary standards discussed above would fall within the Administrator's duty to implement the broad air pollution reduction purposes of the Act, and specifically to control air pollution from motor vehicles.

4. Criteria for an Acceptable LEV-Equivalent Program

EPA is not determining in today's action what criteria an alternative program would need to meet for EPA to find that the program is an acceptable alternative to the OTC LEV program. EPA would determine the necessary criteria for equivalence as a part of any rulemaking that established or reviewed such an alternative program. However, EPA believes that one criterion that a LEV-equivalent program must meet is that it must have VOC and NO_X emissions reductions in the OTR equivalent to those that would be achieved by the OTC LEV program.[5] Based on EPA's current analysis, a version of which was in a notice of data availability published on October 24, 1994 (59 FR 53395), EPA intends to propose that the alternative program described above meets this equivalence requirement.

In addition, an acceptable alternative program must be enforceable. A finding of enforceability would have to include a showing that the program, once in effect, would remain in effect. Therefore, today's action regarding the LEV-equivalent program is based on the assumption that automobile manufacturers would not be allowed to use ''off-ramps''[6] to exit from the program. The OTC has also stated that the advancement of motor vehicle emission control technology is one of the criteria an alternative program must meet.

5. State Obligations if an Acceptable LEV-Equivalent Program is in Effect

Today's action recognizes that, if an acceptable LEV-equivalent program were in effect, then states would not be required to adopt OTC LEV regulations and submit them as a SIP revision. Under today's rule, if EPA were to determine later through rulemaking that a LEV-equivalent program was acceptable and were to find that it was in effect, states would not be obligated to adopt the OTC LEV program as long as the LEV-equivalent program stayed in effect. For example, if all the automakers opted into a LEV-equivalent program that did not allow them to opt out, states would not have to undertake the legislative and regulatory process necessary for adoption of the OTC LEV program. If something happened to disrupt or void the LEV-equivalent program, states would then be required to adopt OTC LEV because today's action would still make states responsible for ensuring that there were provisions for emission reductions from new motor vehicles.

In the SNPRM, EPA had raised the issue of whether states would need to adopt OTC LEV regulations if a LEV-equivalent program were in effect. Under one approach, states would adopt an OTC LEV program that allowed auto manufacturers the option of complying with a LEV-equivalent program instead of the OTC LEV standards; thus, OTC LEV would be in place as a ''back stop'' in case something happened to the LEV-equivalent program. For example, if a LEV-equivalent program allowed manufacturers to opt out if a state adopted the California LEV program, then the other states could not be assured that they would achieve the necessary reductions from a LEV-equivalent program. Therefore, states would need to have OTC LEV in place so that it would replace the LEV-equivalent program if that program were no longer in effect. EPA believes that, under certain circumstances, the ''back stop'' approach wastes state resources by requiring a rulemaking process for a program that should never be used. Thus, under today's rule, states could be relieved of the obligation to adopt OTC LEV if EPA determined in a later rulemaking that a LEV-equivalent program was an acceptable alternative to OTC LEV and found that the program was in effect.

C. Procedural Background

The OTC submitted a recommendation to EPA on February 10, 1994, that EPA require all states in the OTR to adopt an OTC LEV program. EPA extensively reviewed the background for this rulemaking in its September 22, 1994, supplemental notice of proposed rulemaking (SNPRM). *See* 59 FR at 48664–48667. This review included a description of the statutory scheme in which the rulemaking arises, a description of the ozone transport region provisions of the Clean Air Act, background regarding the OTC's development of the OTC LEV program, and a summary of EPA's actions in response to the OTC's recommendation. This background is not repeated in its entirety here, and the reader is referred to the SNPRM for further detail.

EPA has moved quickly to resolve the very complicated issues that the OTC's recommendation raises and has provided maximum opportunity for public participation. After receiving the OTC's recommendation on February 10, 1994, the Agency quickly published a notice announcing receipt of the OTC's recommendation, identifying its major elements, and briefly presenting EPA's framework for a process to respond and an approach for analyzing the issues. *See* 59 FR at 12914 (March 18, 1994). As announced on April 8, 1994, EPA held two days of public hearings on May 2–3, 1994, in Hartford, Connecticut. *See* 59 FR at 16811.

Before the public hearing and pursuant to section 307(d) of the Clean Air Act, EPA published a notice of proposed rulemaking (NPRM) that contained extensive information about EPA's approach to addressing the recommendation. *See* 59 FR 21720 (April 26, 1994). This notice detailed EPA's analytic framework for a decision and identified the central issues EPA was considering. EPA explained in the NPRM that the rulemaking procedures of section 307(d) would apply to any approval or partial approval of the recommendation, since those procedures are an excellent vehicle for ensuring an open, public process. *See* 59 FR at 21724. In the NPRM, EPA proposed in the alternative to approve, disapprove, or partially approve and partially disapprove the OTC recommendation.

After publication of EPA's proposal and the two days of initial public hearings, EPA held an additional series of three public ''roundtable'' meetings in Pennsylvania, New Hampshire, and New York. EPA held these meetings to provide specific analysis of the issues through interactive discussion among the various interested parties and members of the public. *See* 59 FR 28520 (June 2, 1994). At the end of these

[5] The vehicle types subject to a LEV-equivalent program would need to be the same vehicle types (or a subset thereof) that would be subject to OTC LEV. Thus, emission reductions from heavy-duty trucks could not be used to assess the equivalence of a LEV-equivalent program.

[6] An ''off-ramp'' is a provision allowing manufacturers to opt out of an alternative program if a certain trigger-event occurs, for example, if a state implemented a LEV program.

meetings, EPA extended the public comme organized public discussion of issues raised and resolved in this rulemaking. In addition to sharing their views in many public hearings and meetings, interested parties provided voluminous written comments on EPA's April 26 and September 22 proposals. These comments and other documents relevant to the development of this final rule are contained in the public docket for this rulemaking. The Agency has fully considered all of this information in developing today's final rule. EPA's responses to significant comments are contained in detailed response-to-comments documents that are contained in the public docket. Interested parties should consult those documents for EPA's response to the comments it received.

EPA has structured this final rule to follow the analytic framework that the Agency used in the NPRM and SNPRM. As explained above, rather than repeating the entire discussion in the SNPRM, EPA is adopting much of the rationale provided in the SNPRM as the statement of basis and purpose supporting today's final action. For this reason, this final rule notice summarizes and references much of the discussion in the SNPRM, and elaborates where needed to clarify or modify EPA's proposed rationale in light of the comments EPA received or to address issues left unresolved in the SNPRM. Although this notice and the SNPRM contain EPA's responses to some comments, the response-to-comments documents provide detailed responses to all other relevant, significant comments received. In addition to relying on this notice and the response-to-comments documents as the statement of basis and purpose for today's action, EPA is also relying for its statement of basis and purpose on the detailed explanations in the SNPRM, except where indicated otherwise in this final rule notice or the response-to-comments documents, or where statements in the SNPRM are inconsistent with statements in the final rule notice or response-to-comments documents.

II. Description of Action

EPA today is making the factual finding that emissions reductions from new motor vehicles equivalent to the reductions that would be achieved by the OTC LEV program are needed throughout the OTR to bring certain OTR nonattainment areas into attainment (including maintenance) by their applicable attainment dates. Based on that finding, EPA today is issuing to each of the states in the OTR a finding that its SIP is substantially inadequate to meet certain requirements insofar as the SIP would not currently achieve those emission reductions. There are two possible ways to achieve these emission reductions and thereby cure this SIP inadequacy—state adoption of the OTC LEV program or establishment of an acceptable LEV-equivalent federal motor vehicle program. By virtue of today's findings of SIP inadequacy, unless an acceptable LEV-equivalent program is in effect, EPA is today finding the OTC LEV program necessary to achieve timely attainment (including maintenance) in certain nonattainment areas and therefore is requiring each OTC state to cure the inadequacy within one year by adoption of the OTC LEV program and submission of it as a SIP revision. However, if EPA issues a rule determining that a LEV-equivalent new motor vehicle program is acceptable and issues a finding that all the automakers have opted into that program nationwide, then the states would be relieved of their obligation to adopt OTC LEV.

As an alternative to achieving emission reductions from new motor vehicles, states could submit adopted measures sufficient to fill the gap in emission reductions that EPA identifies in today's rule as required to prevent adverse transport impacts on downwind attainment. By filling the gap in emission reductions between the measures EPA has identified in this notice as potentially broadly practicable measures and the amount necessary to prevent adverse transport impacts downwind, the state would demonstrate that it was unnecessary to adopt new motor vehicle controls for transport reasons.

EPA is approving the OTC's LEV recommendation based on the determination under sections 184(c) and 110(a)(2)(D) of the Act that the recommended LEV program is necessary throughout the OTR to bring certain OTR nonattainment areas into attainment by the applicable attainment dates, unless an acceptable LEV-equivalent program is in effect, and that the recommended LEV program is otherwise consistent with the Act. Approval of the OTC recommendation requires EPA to issue the finding of SIP inadequacy described above and to require states to respond within one year with SIP revisions requiring the OTC LEV program, unless an acceptable LEV-equivalent program is in effect. Independent of section 184, but based on the same factual finding of necessity, EPA also is requiring the actions described above under its SIP call authority in section 110(k)(5)[7] on the basis that the SIP for each state in the OTR is substantially inadequate to meet the requirements relating to pollution transport in section 110(a)(2)(D) and to mitigate adequately the interstate pollutant transport described in section 184.[8]

EPA's SIP call does not require states in the OTR to adopt California's Zero Emission Vehicle (ZEV) production mandate, but leaves this choice to each state's discretion. EPA has determined that section 177 of the Act allows states to adopt the California LEV program without adopting the ZEV mandate.

Finally, EPA is issuing regulations defining the term ''model year'' for purposes of section 177 and part A of title II of the Act, as that term applies to on-highway motor vehicles. The regulations provide that model year will apply on an engine family-by-engine family basis. This regulatory action codifies long-standing EPA guidance on this definition and should clarify the applicability of the two-year lead-time requirement in section 177.

III. Statutory Framework for the SIP Call

As mentioned above, authority for today's SIP call is premised both on EPA's approval of the OTC recommendation under section 184(c) and on EPA's independent authority under sections 110(a)(2)(D) and 110(k)(5), which would support such an action even in the absence of an OTC recommendation.[9] For reasons described in the response-to-comments

[7] Section 110(k)(5) authorizes the Administrator to require the state to revise the SIP as necessary to correct the deficiency whenever she finds that a SIP for an area is substantially inadequate to mitigate adequately the interstate pollutant transport described in sections 176A or 184 or to otherwise comply with any requirement of the Act.

[8] Section 110(a)(2)(D) requires that SIPs contain adequate provisions to prevent emissions within the state that contribute significantly to nonattainment in, or interfere with maintenance by, any other state.

[9] In addition, EPA believes it has authority to approve the OTC's recommendations under section 176A, the general transport commission provision of the CAA. For the reasons described in the response-to-comments documents accompanying this final action, which include the fact that the OTC refers to section 176A in its own by-laws, EPA believes that the Northeast OTC is a section 176A transport commission as well as a section 184 transport commission. As a consequence, EPA believes that, notwithstanding the fact that the OTC's recommendations themselves do not explicitly refer to section 176A, it may treat the OTC's recommendations as section 176A requests with recommendations, as well as section 184 recommendations, and act on them accordingly. References in this notice to EPA's analysis of and conclusions on the OTC petition under section 184 are intended to reflect also EPA's analysis of and conclusions on the petition treated as a request with recommendations under section 176A.

documents, EPA disagrees with comments claiming that EPA lacks such authority because the section 184 process is invalid under the United States Constitution, because section 110 does not authorize EPA to require states to adopt specific measures, or because an EPA SIP call requiring state regulation of emissions from new motor vehicles violates sections 177, 202, and 209 of the Act.

A. Section 184

EPA described the provisions of section 184 in detail in both the NPRM and SNPRM. *See* 59 FR at 21722–21724 and 59 FR at 48668. Section 184(c) explicitly provides that the Administrator is to review the OTC's recommendations to determine whether the control measures in the recommendations are necessary and otherwise consistent with the Act, and is to approve, disapprove, or partially disapprove and partially approve such recommendations. Upon approval, the Administrator is to issue to affected states a finding under section 110(k)(5) that the SIP for such state is inadequate to meet the requirements of section 110(a)(2)(D), and that each such state is required to revise its SIP to include the approved measures within one year after the finding is issued.

In the SNPRM, EPA addressed comments from both the auto manufacturers and the Natural Resources Defense Council (NRDC) regarding the validity of the section 184 scheme under the United States Constitution. Various other commenters also submitted comments on the constitutional questions. EPA has fully considered the comments and believes that section 184 is consistent with the Constitution, as discussed in the response-to-comments documents.

B. Section 110

EPA is interpreting section 110 of the Act to provide that it grants the Agency independent authority to issue today's SIP call, apart from any authority provided by section 184, for the reasons given below and in the SNPRM, 59 FR at 48667–48670 (col. 1), and further explained in detail in the response-to-comments document accompanying this final action. Section 110(a)(2)(D) requires that SIPs include adequate provisions prohibiting sources in the state from contributing significantly to nonattainment or interfering with maintenance in any other state. If EPA finds that a SIP is ''substantially inadequate to * * * mitigate adequately interstate pollutant transport * * * or to otherwise comply with any requirement of this Act,'' including section 110(a)(2)(D), section 110(k)(5) requires EPA to issue a SIP call requiring the state to adopt the SIP revisions necessary to correct the inadequacy.

As proposed in the SNPRM, EPA concludes that sections 110(a)(2)(D) and (k)(5) authorize it to find at any time that a SIP is inadequate due to pollution transport. EPA believes that emissions reductions from new motor vehicles equivalent to those achieved by the OTC LEV program are necessary throughout the OTR to bring all of the OTR states into attainment (including maintenance) of the ozone NAAQS by their respective attainment dates; that, unless an acceptable LEV-equivalent program is in effect, OTC LEV is necessary because it is the only currently available method of achieving these reductions; that the states' SIPs are inadequate to the extent they do not provide for the emissions reductions from new motor vehicles equivalent to those achieved by the OTC LEV program; and that, unless EPA issues a finding that all automakers have opted into a LEV-equivalent program that EPA has determined by rule to be acceptable, the states must adopt the OTC LEV program to correct the deficiency within one year of the effective date of the finding of inadequacy, and that waiting to make this finding may compromise the states' ability to achieve the reductions by the time they are needed for timely attainment and maintenance thereafter. As discussed in the SNPRM, EPA concludes that, as it has done in the past, it may require submission of specific SIP measures pursuant to section 110(k)(5). Finally, as discussed in the SNPRM, EPA believes that it should find the states' SIPs inadequate only insofar as they do not contain the emissions reductions from new motor vehicles equivalent to those achieved by OTC LEV program because those reductions depend on vehicle fleet turnover, which will take an unusually long time to generate the needed emissions reductions.

EPA is basing today's final action in part on this independent authority under section 110, and it believes certain aspects of its explanation in the SNPRM merit elaboration. First, where EPA has found a measure to be necessary to prevent states from contributing significantly to other states' nonattainment, EPA concludes that section 110(k)(5) authorizes the Agency to find SIPs inadequate to the extent that they do not contain that measure. In this case, however, both EPA's SIP call under section 110(k)(5) and its necessity finding under section 184 are qualified by the assumptions EPA made in conducting the necessity analysis. Because EPA assumed for purposes of its analysis that certain measures were not potentially practicable for all areas in the transport region and thus excluded such measures from consideration, the states' obligation under the SIP call could be met (1) by obtaining the necessary reductions from new motor vehicles through adoption of OTC LEV or through an alternative new motor vehicle program that achieved equivalent emissions reductions, or (2) by adopting alternative measures that will provide sufficient emission reductions to fill the gap in emission reductions needed to prevent significant transport impacts on downwind attainment, which would demonstrate that OTC LEV is not in fact necessary in that state.

Second, EPA continues to support the conclusions described in the SNPRM regarding the scope of this SIP call, 59 FR at 48669. The OTC LEV program is distinctive and warrants a finding under section 110(k)(5) that these SIPs are deficient insofar as they do not provide for emissions reductions from new motor vehicles equivalent to those achieved by that program. Model year 1999 and later vehicles will remain on the road until well after the attainment deadlines throughout the northeast. Failure to require that they meet LEV emissions standards will constitute an irrevocable loss in emissions reductions until those vehicles are replaced many years later. Therefore, it is important that the tighter LEV standards apply to these new vehicles if the reduced emissions will be necessary to achieve and maintain the NAAQS later.

A general finding of SIP inadequacy is not yet warranted. EPA recognizes the close connection between states' planning to address transport and their planning for reductions to ensure timely attainment. The November 15, 1994, deadline for states to submit modeled attainment demonstrations has now passed. However, of the states in the OTR that have submitted SIPs, none purports to provide for the emissions reductions needed to bring downwind states into attainment and continue maintenance of the ozone standard.[10] Especially in such circumstances, EPA continues to believe that it has authority under section 110(k)(5) to find that the states' current SIPs are substantially inadequate for lack of a pollution

[10] In the SNPRM, EPA incorrectly stated that the Act creates no deadline for submission of SIPs demonstrating compliance with section 110(a)(2)(D), and inadvertently omitted language it had drafted to explain that section 172(b), read in conjunction with section 172(c)(7), does establish a deadline for such SIPs for nonattainment areas. That date too has now passed.

control measure that must be adopted and implemented in the near term for the state to achieve fully the emissions reductions necessary to mitigate transport adequately. However, while the states' failure merits even closer EPA oversight of these states' progress in SIP development, EPA believes that a general finding of SIP inadequacy is not yet warranted. While, for the reasons described above, EPA is drawing an exception with respect to a finding of SIP inadequacy based on the absence of a LEV program from these SIP, EPA still believes it should generally allow states the first opportunity to address transport and their attainment demonstrations together in their forthcoming SIP revisions before the Agency exercises its SIP-call authority more broadly to address non-LEV deficiencies.

Even though the attainment demonstrations are now overdue, states are in the process of incorporating many additional control measures into their SIPs for purposes of meeting their obligations and are actively working to adopt regional strategies to address transport. In fact, as discussed in greater detail below, after publication of the SNPRM the OTC states signed a Memorandum of Understanding to adopt stringent controls on NO_x emissions from stationary sources that will apply region-wide throughout the OTR. EPA will continue to track the states' progress in adopting control measures to achieve the necessary reductions in time for downwind states to meet their attainment deadlines and to maintain the NAAQS thereafter, and if those efforts prove insufficient, EPA may consider making a more comprehensive finding of SIP inadequacy if other measures are lacking.

C. Consistency of EPA Action With Sections 177, 202 and 209 of the Act

EPA reaffirms its initial determination and rationale that its decision is consistent with sections 177, 202 and 209. *See* 59 FR 48670–48671. As discussed in the SNPRM, section 202(b)(1)(C) only precludes the Agency from promulgating national standards under section 202 that modify certain specified standards prior to model year 2004. This is not a general prohibition against all EPA action relating to the control of emissions from motor vehicles. In acting under section 184 and section 110, however, EPA is not imposing mandatory federal standards. Rather, EPA is requiring the states to exercise their own independent authority under section 177 to promulgate *state* regulations relating to the control of emissions from motor vehicles. That state authority is not limited by section 202(b)(1)(C). Thus, this action relies not on EPA's authority under section 202 (which would be limited by section 202(b)(1)(C)), but on EPA's authority under sections 110 and 184, to mandate state action that would otherwise be discretionary.

Some commenters note that EPA is requiring states to act under section 177 in a manner that would otherwise be up to the discretion of the state.[11] However, as discussed above, sections 110 and 184 give the Administrator authority to impose ''additional control measures'' (*i.e.,* measures over and above those required under other provisions of the Act) on states. Moreover, section 110(a)(2)(D) requires SIPs to contain provisions prohibiting ''any source or other type of emissions activity'' from emitting air pollution that interferes with attainment or maintenance in other states. This language is sufficiently broad to include motor vehicles. There is no indication that section 184 is limited in effect to stationary sources or that state standards for automobiles were excluded from the ''additional control measures'' that EPA could require under section 184.

IV. Basis for Requiring OTC LEV or a LEV-Equivalent Program

EPA's explanation of the proposed basis for approval of the OTC LEV recommendation comprises the primary subject of the SNPRM. *See* 59 FR at 48671–48694. This detailed explanation is not repeated here. Rather, the following discussion references many of the portions of the SNPRM on which EPA is relying for today's action. In addition to these references and a summary, this discussion only addresses changes to and elaborations upon EPA's explanation of its basis for action. In addition to the rationale set forth in this notice and the response-to-comments documents, EPA is also relying on the SNPRM as the basis for today's SIP call, except as otherwise explained in the response-to-comments documents or in this preamble, or where the SNPRM is inconsistent with those documents. EPA bases its requirement for states to adopt the OTC LEV program on its determinations that the emissions reductions that the program achieves are necessary to bring certain nonattainment areas into attainment (including maintenance) of the ozone standard by the dates applicable under Subpart 2 of Part D of Title I of the Clean Air Act; that, unless an acceptable LEV-equivalent program is in effect, OTC LEV is necessary because there is no other currently available method of achieving these reductions from the same sources; and that requiring the OTC LEV program is consistent with other requirements of the Act. The basis for each of these determinations is described in detail in subsections A and B of this section of the notice.

A. Necessity

EPA's conclusion that the emission reductions achieved by the OTC LEV program are necessary to bring certain nonattainment areas in the OTR into attainment (including maintenance) of the ozone standard by their applicable dates is based on a series of statutory interpretations and factual determinations. As set forth in detail below, EPA is interpreting the ''necessary'' standard in section 184(c)—as well as the ''significant contribution'' and ''interference'' tests of section 110(a)(2)(D) read in conjunction with section 184(c)(5)—as authorizing the Agency to find ''necessary'' any potentially broadly practicable measure that, in light of the availability of other potentially broadly practicable measures, is needed to bring the downwind areas into timely attainment. EPA next analyzes the full magnitude of emission reductions needed for serious and severe nonattainment areas in the OTR to attain the standard, and the degree to which various sections of the OTR upwind of those respective nonattainment areas contribute to their nonattainment. From that analysis EPA concludes that 50–75% NO_X reductions from every portion of the OTR lying to the south, southwest, west and northwest of each of the serious and severe OTR nonattainment areas, as well as 50–75% VOC reductions from the portion of the OTR lying in or near (and upwind of) each of those nonattainment areas, are needed to bring each of those respective nonattainment areas into attainment by their respective attainment dates.

EPA then analyzes the potentially broadly practicable pollution control measures (other than emission standards for new motor vehicles) to determine whether they would achieve the necessary emission reductions; EPA concludes that they would not and that a significant shortfall would remain. Based on that conclusion, EPA finds that new motor vehicle tailpipe emission reductions are necessary to help fill that shortfall, and that, unless an acceptable LEV-equivalent program is in effect, the OTC LEV program is the

[11] This is likely to be true for any actions ordered under section 184 or 110. EPA would not need the authority of section 110 and 184 to require states to promulgate standards already required by law.

only program currently available to achieve those reductions, and hence that the OTC LEV program is necessary. EPA then concludes that the trading and migration of vehicles within the OTR provide a basis for requiring that the OTC LEV program be adopted even in the few portions of the OTR not upwind of a serious or severe nonattainment area in order to ensure that the necessary emission reductions from the various upwind portions of the OTR contributing significantly to those downwind nonattainment problems are actually achieved. Based on those findings, EPA then concludes that, unless an acceptable LEV-equivalent program is in effect, the OTC LEV program is necessary in every portion of the OTR to bring the serious and severe ozone nonattainment areas of the OTR into attainment by their respective attainment dates.

Finally, EPA concludes that it may interpret section l84's reference to attainment to incorporate maintenance of the ozone standard. EPA relies on that interpretation, on EPA's treatment of the OTR petition as resting also on the provisions in section 176A, and on EPA's independent authority under sections 110(a)(2)(D) and (k)(5) to address the interference of upwind states with maintenance of the standard by downwind states. Based on these, EPA concludes that it may and should make the same necessity and SIP inadequacy findings described above and approve the OTC recommendation, not only to assure timely attainment in the OTR's serious and severe nonattainment areas, but also because such reductions are necessary for those and certain other areas to maintain the ozone standard.

1. Legal Interpretation of Necessity

EPA discussed its interpretation of the ''necessary'' standard under sections 184(c) and 110(k)(5) in the SNPRM. *See* 59 FR at 48671–48675. EPA then proposed, under section 110(a)(2)(D), that contributing emissions are ''significant,'' at least where EPA finds that controlling the emissions is necessary to bring any downwind area into attainment. EPA also proposed that contributing emissions ''interfere'' with downwind maintenance, at least where controlling the emissions is necessary for downwind areas to maintain the NAAQS. In particular, the Agency believes that the ''necessary'' standard requires the Agency to evaluate the emissions reductions needed and then determine whether potentially reasonable and practicable alternative measures could be adopted instead of the OTC LEV program to achieve the needed reductions. *Id*. There are two different types of alternative measures that could affect a finding that OTC LEV is necessary. First, an alternative that achieves the same or greater emissions reductions from the same emissions sources (here, new motor vehicles) may render the OTC LEV program unnecessary. There are limited opportunities to develop an alternative to the OTC LEV program that would achieve the same or greater reductions from new motor vehicles. This is because section 202 bars EPA modification of the Tier I standards prior to model year 2004, and the states cannot, under sections 177 and 209, adopt standards other than the California standards. As discussed in the introduction to this notice and below, EPA has worked to explore the possibility of an alternative program to achieve equivalent reductions from new motor vehicles that would be consistent with these provisions. Such a program is not currently available to the OTC states. However, if EPA were to determine through rulemaking that a LEV-equivalent program is acceptable and to find that all the automakers had opted into the program, then states would not be required to adopt OTC LEV as long as the LEV-equivalent program remained in effect.

Second, certain alternative measures that are sufficient in the aggregate to achieve the necessary reductions without further reductions from new motor vehicles could likewise render the OTC LEV program unnecessary.

EPA's interpretation is consistent with its approach to interpreting the ''necessary'' standard under section 211(c)(4)(C) of the Act. *See* 59 FR at 48672. The interpretation certified by Congress under that section provides that measures are necessary if no other measures that would bring about timely attainment exist, or ''if other measures exist and are technically possible to implement, but are unreasonable or impracticable.'' Similarly, EPA is concluding here that alternatives are available if they are at least potentially reasonable and practicable for application across the OTR, as well as sufficient to achieve the necessary reductions. Also, EPA's necessity determination and its SIP call are both subject to any state's ability to demonstrate, through adoption of alternative measures that EPA cannot currently find potentially practicable for all OTR areas, that the OTC LEV program is not in fact necessary to bring the downwind states into attainment (including maintenance), and thereby to prevent a significant contribution from that state to nonattainment in another and to prevent interference with maintenance in a downwind state.

EPA must make any determination of the need for additional control measures in the context of factual uncertainty regarding issues such as whether measures are potentially broadly practicable, the amount of reductions needed, and the amount of reductions that particular measures will achieve in fact. EPA is making its determination based on the best information currently available. As explained in the SNPRM and elaborated upon in the response-to-comments documents, EPA believes that it should apply a general policy of resolving these uncertainties in favor of the public and the environment.

EPA noted in the SNPRM that the states' attainment plans were due two months later, and that the work the states had accomplished in assembling their attainment plans did not indicate that the OTC LEV program would be unnecessary to address the transport problem. *See* 59 FR at 48673. EPA has now received SIP submissions under section 182 (b)–(d), concerning attainment and rate-of-progress, that were due by November 15, 1994 from only a few of the states in the OTC. Of those received, none purports to achieve NO_X or VOC reductions sufficient to account for contributions to nonattainment problems further downwind. This further confirms that EPA should act now based on the best available information.

EPA discussed in its NPRM and SNPRM whether section 184, together with the legislative history, support giving ''deference'' to the OTC's recommendation regarding the necessity of the OTC LEV program, and EPA explicitly requested comment on that issue. *See* 59 FR at 21726–21727 and 59 FR at 48672. EPA has now considered the issue of deference to the OTC in light of the comments received and does not believe that the OTC, *per se*, deserves any special deference. EPA believes, however, that when states submit a request to EPA that EPA take specific action to implement section 110(a)(2)(D), whether under section 110(k)(5) alone or under sections 176A or 184, EPA should pay close attention to that request and consider it and any recommendations it makes carefully. EPA believes that this is appropriate in light of the fundamental role that states have historically played in implementing title I of the CAA and the expertise that states bring to bear on air pollution problems. In reviewing any such request from states, EPA remains obligated to consider independently all of the factual information available in determining whether any program

recommended by the states is necessary. In any event, in this instance, EPA's independent review of all the relevant factual information fully supports the conclusion that the OTC LEV program is necessary, and EPA has not accorded the OTC's recommendation deference in approving it.

2. Emission Reductions from OTC LEV or a LEV-Equivalent Program are Needed

(a) Magnitude of Reductions Needed for Attainment in 2005. The SNPRM contains EPA's detailed analysis of available modeling information regarding the magnitude of reductions needed for attainment in the serious and severe nonattainment areas in the OTR. *See* 59 FR at 48673–48675. EPA's conclusion is that NO_X emission reductions of 50% to 75% from a 1990 baseline emissions inventory are needed throughout the OTR to reach attainment of the ozone NAAQS in those serious and severe areas. EPA further concludes that VOC emissions reductions of 50% to 75% from a 1990 baseline emissions inventory are needed in and near (and upwind of) the Northeast urban corridor for attainment in the serious and severe areas. Some parts of the OTR may need reductions closer to the upper end of the range and other parts closer to the lower end, based on the emissions level in the particular area and the geographic location of the area.

As explained in the SNPRM, 59 FR at 48674, the 50% to 75% reductions are needed from a 1990 baseline emissions inventory, assuming that all growth in emissions since 1990 must be neutralized in addition to achieving these percentage reductions. The estimated target level of emissions implied by this percentage reduction will not vary over time, though the growth that must be neutralized will steadily increase. EPA derived this conclusion from extensive modeling studies that are described in the SNPRM but are not repeated here. *See* 59 FR at 48675.

EPA reviewed in detail the atmospheric modeling tools used to analyze the need for and effectiveness of various strategies, and the studies that had been completed at the time of the SNPRM. *See* 59 FR at 48674. These tools include the Regional Oxidant Model (ROM) and the Urban Airshed Model (UAM), which differ principally in the size of the modeling domain and the resolution of information about subunits in the photochemical grid. EPA also explained that the relationship between ROM and UAM modeling involves an iterative process. ROM applications provide boundary conditions (i.e., the conditions of the ambient air at the upwind boundary of each of the UAM domains) for UAM analysis, and UAM analyses provide information about strategies that can be input for further ROM modeling to yield more refined boundary conditions for further UAM analysis.

The states' obligation to submit attainment demonstrations (due November 15, 1994) involves the use of UAM modeling to demonstrate that the adopted control measures will achieve attainment for their own nonattainment areas. As indicated above, only a few of the OTR states have submitted any of this information, including UAM modeling, and none has submitted the complete UAM modeling. As indicated in the SNPRM, EPA does not expect the UAM modeling to be completed in the near future. EPA does not believe it is appropriate to wait for the UAM attainment demonstrations (which have since become overdue) to reach a conclusion here. This is because ROM is the more important modeling tool for assessing transport and is sufficient to support certain key conclusions with respect to transport. Also, the OTC LEV and the LEV-equivalent programs depend on time for vehicle turnover to achieve reductions and delay could cause necessary reductions to be irrevocably lost. Current information justifies action now to avoid the very high risk of losing necessary reductions while awaiting further technical information from the states that is already overdue.

(b) Contribution Analysis

As described in more detail in the response-to-comments documents, EPA continues to rely on the ROM studies described in the SNPRM—the ROMNET and Matrix studies—to support its conclusions concerning transport and the amount of emissions reductions needed across the region for the serious and severe nonattainment areas in the Northeast corridor to attain. In the SNPRM, EPA examined the degree to which transport contributes to the ozone problem in each of those areas. *See* 59 FR at 48675–77. EPA acknowledged that it is enormously complicated to determine which reductions are needed for any specific area to avoid causing ozone exceedances downwind. The analysis depends on regional, urban, and wind trajectory modeling information and monitoring data, as well as information on controls assumed in the web of downwind areas and other upwind areas. In the SNPRM, EPA noted that the OTC relied on ROM studies and trajectory analyses to determine the extent to which upwind areas contribute to exceedances downwind throughout the OTR. EPA continues to believe that these studies support its conclusions.

In the SNPRM, EPA also reviewed studies in which EPA examined surface winds and aloft winds data during the relevant times. As stated in the SNPRM, this information indicates that transport results in a large cumulative impact of emissions and ozone transported by surface winds from the south and southwest of each of the nonattainment areas along the Northeast urban corridor, and that transport also results from ozone and emissions transported by winds aloft from far to the west and northwest of each of the nonattainment areas along the corridor. EPA continues to believe that these studies support its conclusions.

More specifically, wind trajectory data support the conclusion that the following areas contribute to nonattainment and maintenance problems in the OTR, in the following manner (other areas may contribute as well): The Washington, D.C. nonattainment area—encompassing part of Virginia, the District of Columbia, and part of Maryland—is to the south-southwest of the Baltimore, Maryland, nonattainment area, and thus, according to wind trajectory data, ozone and emissions from those areas travel with the surface winds to contribute to the nonattainment problem in Baltimore. The Baltimore area itself, as well as the rest of Maryland, is to the south, southwest, or west of the Philadelphia, Pennsylvania nonattainment area, which includes parts of Pennsylvania, Delaware and New Jersey; thus ozone and emissions from Maryland contribute to that nonattainment problem. Ozone and emissions from western Pennsylvania, and western and northern Maryland, contribute to the Philadelphia problem as well. Ozone and emissions from the Philadelphia area contribute to the New York City area which lies to the northeast. Ozone and emissions from western and northern Pennsylvania and northern New Jersey, and the southern and western portions of upstate New York—which are to the west and northwest of the New York City area—also contribute to the nonattainment problem in that area, which comprises parts of New York, northern New Jersey, and southern Connecticut. The New York City area is to the southwest of Providence, Hartford, and Boston, and thus ozone and emissions from the New York City area contribute to those areas' problems. Ozone and emissions from upstate New York and northern Pennsylvania, which lie to the west and

northwest, also contribute to the problems in Hartford, Providence and Boston. Connecticut, Rhode Island, western Massachusetts, Vermont, and central and southern New Hampshire also contribute to the Boston problem, by virtue of lying to the southwest, west or northwest of Boston. By virtue of lying to the southwest of Portsmouth, New Hampshire, the states of Connecticut, Rhode Island, and Massachusetts contribute to Portsmouth's nonattainment problem. Western and northern New York State, Vermont, and central and southern New Hampshire lie to the west and northwest of the Portsmouth nonattainment area, and thus also contribute to the Portsmouth problem. The Boston area, as well as New Hampshire, Vermont, and New York State, lie to the southwest or west of Maine, and thus contribute to nonattainment and maintenance problems in Maine.

Recently, and too late for inclusion in the rationale of the SNPRM, three additional studies have become available, described below. These new studies confirm the conclusions indicated by the previous studies.

EPA has completed a modeling analysis for the OTC to examine the potential impacts of region-wide NO_X-oriented control strategies in portions of the eastern United States.[12] The pertinent purposes of this analysis were (1) to identify whether a set of alternative regional controls would reduce ozone transport into and along the Northeast ''Urban Corridor'' to below 120 ppb, and (2) to examine the incremental benefits, in term of ozone reductions in the Corridor, from the application of control strategies within the Corridor only and within the entire OTR. For this analysis, the ''Urban Corridor'' is defined as the contiguous serious and severe ozone nonattainment areas extending from Washington, DC, through Baltimore, Philadelphia, New York City, and New England to southern New Hampshire.

For the analysis EPA used ROM (*see* 59 FR at 48674), a photochemical grid model covering the eastern half of the United States and southeastern Canada. Model simulations were performed for two meteorological episodes: July 1–15, 1988 and July 13–21, 1991. The July 1988 period was a severe and widespread ozone episode in most sections of the modeling domain. During the July 1991 period, high ozone concentrations were limited to the Midwest and Northeast. Meteorological weather patterns were quite favorable for large-scale ozone and precursor transport into and along the Urban Corridor during both episodes.

EPA modelled several scenarios simulating very significant emission reductions (on the order of 35–40% for NO_X and VOC) in the OTR. These scenarios included, among others, reductions from combinations of measures, including the Clean Air Act-mandated control programs, a 0.15 lb/MMBtu NO_X limit, an additional ''corridor control package,'' and LEV. None of these emission reduction combinations was sufficient to reduce ozone levels to below 0.12 ppm throughout the region. Specifically, even with the most effective combination of measures, several areas, including the New York City area and parts of New England, were not in attainment by the year 2005. Specifically in New England, even the most effective combination of these measures did not result in attainment in the Boston area and parts of Connecticut and Rhode Island by the year 2005. Because emissions are lower in 2005 than in 1999 (the attainment year for serious areas in the OTR), it is a reasonable extrapolation from this data that an even greater nonattainment problem remained in 1999, and that a maintenance problem in these areas is to be expected. This provides additional support to EPA's conclusions from the SNPRM that very large emission reductions will be required throughout the OTR to bring all areas into attainment.

EPA also used ROM to examine the impact on air quality of a region-wide OTC LEV program applied in addition to a Clean Air Act 2005 base case scenario and a 0.15 lb/MMBtu NO_X program in the OTR. Given that, due to fleet turnover, reductions from the OTC LEV program would be only partially achieved by 2005, EPA's ROM analysis found the incremental improvements in ozone levels due to application of the OTC LEV program (reductions of 3–6 ppb in daily maximum ozone levels) to be relatively large. EPA found this incremental improvement from OTC LEV most evident when the LEV results are compared with the results of simulating the impact of a ''corridor control strategy'' that would result in similar emission reductions.

A further discussion of this recent model analysis is included in the response-to-comments documents.

New York State reached conclusions that support the studies described above, after applying the Urban Airshed Model (UAMIV) to the modeling domain being used in the New York and Connecticut ozone attainment demonstrations.[13] These studies utilized the CALMET procedure for generating meteorological inputs to UAM. Consequently, resulting wind fields and mixing heights differed from those used in the ROM analyses and in earlier UAM studies conducted by the same investigators. New York State's most recent UAM study shows that it would be impossible to demonstrate attainment unless large reductions in regional ozone transported into the domain were realized. In this UAM study, it is shown that a local strategy reflecting 75% reduction in VOC and 25% reduction in NO_X combined with an upwind regional strategy reflecting 75% reduction in NO_X and 25% reduction in VOC would be necessary to attain the NAAQS throughout the New York UAM domain. These results add credence to the ROM matrix findings and results from ROM simulations performed for the OTC, which came to similar conclusions.

In the New York UAM analysis, both large VOC and large NO_X reductions were effective in reducing peak ozone concentrations, with the VOC controls being somewhat more so. However, predicted reductions in ozone were more extensive over a larger area when NO_X was reduced by large amounts. This latter finding with the UAM is consistent with ROM analyses that suggest that large NO_X reductions will be needed to reduce regional transport to at or below 120 ppb of ozone. As noted above, the New York UAM analyses to date are consistent in predicting that large reductions to incoming regional ozone (through control of ozone precursors) will be needed to demonstrate attainment further downwind with the UAM.

The New York UAM analysis uses more refined, localized meteorological estimates (CALMET), instead of coarser ROM meteorology, as well as the updated interim regional inventory, rather than 1985 National Acid Precipitation Assessment Program emissions. This study is close to what New York is expected to use for its attainment demonstration and rate-of-progress SIPs; thus, the study is particularly helpful.

Finally, EPA performed studies designed to determine the extent to which improved air quality in recent years is due to meteorological fluctuations compared to reduced VOC

[12] *See* ''Summary of EPA Regional Oxidant Model Analyses of Various Regional Ozone Control Strategies'', November 28, 1994.

[13] *See* Kuruvilla, John et. al., ''Modeling Analyses of the Ozone Problem in the Northeast'', prepared for U.S. EPA, CA No. X819328–01–0, EPA document no. EPA–230–R–94–108, 1994.

emissions.[14] These studies, discussed in more detail in the response-to-comments documents, included the development and application of a statistical procedure for normalizing apparent ozone air quality trends to account for confounding meteorological factors. The studies concluded that after meteorology is normalized, there has been a downward trend in ozone concentrations of 1–2% per year, from 1981 through 1993 (the end date of the studies). EPA then conducted a ROM test that examined the impact on ozone levels of the reduction in VOC and NO_X emissions between 1988 and 1991. ROM predicted a decrease in ozone levels that matched the decrease observed in the meteorological studies. EPA views these studies as confirmation of the validity of the ROM model's estimates.

For its conclusions, EPA relies on (1) the initial ROM studies showing that 50–75% NO_X reductions (from 1990 levels) from the OTR as a whole are needed to bring the serious and severe nonattainment areas into attainment by 2005; (2) the wind trajectory analysis supporting the conclusion that locations lying anywhere from the south through northwest of each of those nonattainment areas must contribute that level of NO_X reductions in order for each of those nonattainment areas, respectively, to attain; and (3) the subsequent ROM, NY UAM and meteorological studies confirming the results of the initial ROM and wind-trajectory analysis. Based on these, EPA concludes that 50–75% NO_X reductions from the 1990 levels in each state (or, in the case of Virginia, the portion of the state) in the OTR will be needed in order for each of the serious and severe areas from Baltimore northeast through Portsmouth, New Hampshire to attain the standard. In addition, based on the same analyses, EPA concludes that 50–75% VOC reductions from the 1990 levels are needed in and near and (upwind of) those nonattainment areas in order for each of those areas—including the portions of the Washington, Philadelphia, New York, Providence and Portsmouth areas just downwind and across state lines from those nearby upwind VOC sources—to attain the standard by their respective attainment dates.[15] The need for this large level of reductions, coupled with the wind trajectory data, form the basis for EPA's conclusions that virtually every area within the OTR contributes directly to a nonattainment or maintenance problem in a downwind state in the OTR.

(c) Analysis of Inventory and Options for Control Measures

The next step in EPA's analysis is to assess the options available for achieving the necessary reductions in NO_X across the OTR and in VOCs in and near the Northeast Corridor of the OTR, which is discussed in more detail in the SNPRM. *See* 59 FR at 48677–48684. For this step, EPA first assessed the best available information about the inventory of emissions across the OTR and then considered various potential control measures to reduce emissions by the necessary amount. In its analysis, EPA considered options that are at least potentially reasonable and practicable across the entire OTR (referred to herein as ''potentially broadly practicable'' measures). In other words, EPA has not considered options that, while perhaps potentially practicable to some extent in some locations, would be impracticable if applied to their full extent throughout the OTR.[16]

i. Inventory Analysis

EPA relied on the 1990 interim regional inventory used for ROM and UAM analyses and projected emissions growth to estimate NO_X and VOC emissions in 2005 (the attainment deadline for severe areas, except for the New York-New Jersey-Connecticut area with the slightly later deadline of 2007). EPA projected that highway vehicles will account for approximately 38% of the total NO_X inventory and 22% of the total VOC inventory in 2005, indicating that substantial motor vehicle controls would have to be an important part of a workable compliance plan for the OTR. EPA projected the gasoline-powered light-duty vehicle component of the inventory (the vehicle types that would be subject to the OTC LEV program) to constitute 28% of total NO_X emissions and 19% of total VOC emissions in the 2005 inventory.

ii. Analysis of Options for Control Measures Without More Stringent New Motor Vehicle Standards

To identify and evaluate the full range of potentially broadly practicable control options, EPA first analyzed the impact of measures explicitly required by the Act, using the same ROM modeling tools used to assess the overall magnitude of reductions needed in the OTR. The Agency then analyzed other options to fill the shortfall in emissions reductions, including a stringent limit on NO_X emissions, measures EPA included in proposed Federal Implementation Plans (FIPs) for three areas in California, and measures listed in compilations of NO_X and VOC control measures prepared by EPA and the State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials (STAPPA/ALAPCO). Recognizing uncertainties in various aspects of its analysis and EPA's authority to resolve those uncertainties in favor of health and environmental protection, EPA concludes that no combination of such measures would be sufficient to achieve the necessary amount of reductions without more stringent standards applicable to new motor vehicles.

EPA identified in the SNPRM the array of measures applicable to stationary and mobile sources under the Act, and described its modeling of the impacts of these measures on ambient ozone levels in the OTR. EPA calculated that application of these controls would achieve reductions by 2005 in the OTR of 20% for NO_X and 37% for VOCs from the 1990 baseline inventory, and concluded from ROM studies modeling the impacts of these measures that this level of reductions would be insufficient.

As explained in the SNPRM, EPA must account for problems in calculating the impact of control measures, including imperfect enforcement, control equipment malfunctions, and operating and maintenance problems. Accounting for such problems through a ''Rule Effectiveness'' factor diminishes the emissions reductions that one could expect if all sources could fully comply with rules at all times. *See* 59 FR at 48682. EPA noted that it had applied Rule Effectiveness considerations in calculating the overall impact of the Act-mandated controls for the ROM studies and for mobile sources within the MOBILE emissions model. *See* 59

[14] *See* Briefing, ''Urban Ozone Trends Adjusted for Meteorology''; *See also* Cox, William M. and Chu, Shao-Hung, ''Meteorologically Adjusted Ozone Trends in Urban Areas: A Probabilistic Approach'', Atmospheric Environment, Vol. 27B, No. 4, pp. 425–434, 1993.

[15] For example, VOC sources in the northern Virginia portion of the Washington nonattainment area contribute to nonattainment in the Maryland portion of that area, and VOC sources in the New Hampshire portions of the Boston nonattainment area contribute to nonattainment in the Massachusetts portion of that area.

[16] EPA believes that whether such measures—particularly those involving local land-use, highway, or mass transit infrastructure changes—are practicable to some extent in individual areas depends on a consideration of local factors that can be conducted only by state and local citizens and governments. For that reason, EPA cannot itself either determine or assume that those measures are practicable to some extent in any particular area. As described elsewhere in this notice, however, EPA has left states the flexibility to demonstrate that such measures are indeed practicable and hence might close any emissions reductions shortfall so as to render emission reductions from new motor vehicles unnecessary.

FR at 48679 n.36 and 48682. However, EPA did not apply Rule Effectiveness values in calculating the impacts of other control measures, thereby making these measures overly optimistic.

In addition to the Act-mandated controls, EPA also examined the impact of a region-wide limit on NO_X emissions of 0.15 lbs/MMBtu (the ''0.15 NO_X standard'') for boilers, gas turbines, and internal combustion engines with a capacity of at least 250 MMBtu/hr. EPA calculated that this level of control would achieve a 15% reduction in inventory-wide NO_X emissions from a 2005 projected baseline, after application of other controls mandated in the Act. Together with the mandatory measures, this would achieve a total NO_X emissions reduction in the OTR of 32% from 1990 baseline levels.

EPA explained in the SNPRM that it evaluated the 0.15 NO_X standard as representing the maximum emissions reduction from large stationary sources that is not clearly unreasonable or impracticable. *See* 59 FR at 48679. By this EPA explained that it did not mean that EPA believes that such measures are in fact reasonable and practicable. *See* 59 FR at 48678.

In fact, on September 27, 1994—five days after publication of the SNPRM—eleven of the thirteen OTC member States signed a Memorandum of Understanding regarding regional NO_X controls (NO_X MOU) somewhat less stringent than the 0.15 NO_X standard. Only Massachusetts and Virginia have not signed the NO_X MOU.

Designed to build on the existing NO_X Reasonably Available Control Technology (RACT) program, the agreement represents a phased approach to controlling NO_X emissions from power plants and other large fuel combustion sources. The first component (called ''phase II'' because the existing NO_X RACT program is ''phase I''), to be implemented by May 1999, would include three control zones in the region: An inner zone ranging from the Washington, DC, metropolitan area northeast to southeastern New Hampshire; an outer zone ranging from the inner zone out to western Pennsylvania; and a northern zone which includes much of northern New York and northern New England, including most of New Hampshire.

Control requirements under the MOU vary with the zone in which the various sources are located, with the most stringent requirements occurring in the inner zone. Affected sources (boilers and indirect heat exchangers with a maximum gross heat input rate of at least 250 MMBtu per hour and electric generating units producing at least 15MW of electricity) in the Inner Zone will be required to reduce NO_X emissions by 65 percent from base year levels or emit NO_X at a rate of no more than 0.2 lbs/MMBtu. In the Outer Zone, NO_X emissions must be reduced by 55 percent from base year levels by May 1, 1999, or emissions must be limited to no more than 0.2 lbs/MMBtu. Northern Zone controls remain at RACT levels during phase II.

The next phase (known as ''phase III'') would be implemented by May 2003. By that date, affected sources in both the Inner and Outer Zones must reduce NO_X emissions by 75 percent from base year levels or limit NO_X emissions to no more than 0.15 lb/MMBtu. Affected sources in the Northern Zone would be subject to regulations that would reduce their rate of NO_X emissions by 55 percent from base year levels, or would have to emit NO_X at a rate of no greater than 0.2 lbs/MMBtu.

The NO_X MOU provides for modified regulations for the May 1, 2003, targets if additional modelling and analysis show that these modified regulations, in combination with regulations for controlling VOCs, will result in attainment of the ozone standard throughout the OTR. In such a case, the NO_X MOU would have to be revised by December 31, 1998.

Based on EPA's 1990 interim emissions inventory, EPA estimates that the NO_X MOU will result in about a 70 percent reduction in NO_X from these sources, or slightly less than the reduction that would have occurred with the application of a region-wide 0.15 lbs/MMBtu standard. EPA estimates that more than three-fourths of the total NO_X reductions to be obtained under the NO_X MOU will be achieved by 1999.

In addition to the Act-mandated measures and region-wide NO_X controls, EPA also considered a variety of NO_X and VOC control measures from STAPPA/ALAPCO compilations, transportation control measures, California reformulated gasoline, and measures EPA proposed for FIPs for California areas. As summarized in the SNPRM, most of the NO_X source categories in the STAPPA/ALAPCO compilation were already encompassed within the 0.15 NO_X standard. The remaining STAPPA/ALAPCO categories of small stationary and area sources comprise an extremely small portion of the stationary source segment of the emissions inventory, and a still smaller portion of the overall inventory. EPA also calculated that the transportation control measures that EPA would consider potentially broadly practicable would yield only a combined reduction of 2.5% from 1990 baseline inventory-wide NO_X reductions. In the SNPRM, EPA identified the option of extending the employee trip reduction (or employee commute options (''ECO'')) program region-wide as potentially practicable. Upon further consideration, EPA believes it is more appropriate to characterize region-wide ECO as a measure that, while potentially practicable in some urban and suburban settings, cannot be considered broadly practicable if applied across the OTR. Deleting the emission-reduction benefits of extending ECO region-wide, however, merely buttresses the conclusions described above. For California reformulated gasoline, EPA calculated a 1.4% reduction in NO_X emission from 1990 baseline inventory-wide levels. For the proposed California FIP measures, EPA also did not find additional options that were not either inappropriate or unavailable in the OTR, or already encompassed within the Act-mandated controls or 0.15 NO_X standard. In sum, EPA concludes that all other potentially broadly practicable options will be needed in addition to more stringent controls for new motor vehicles throughout the OTR, in order for the serious and severe ozone nonattainment areas in the OTR to attain the ozone standard; those other options will not produce emissions reductions sufficient to remove the need for such motor vehicle controls. As described in the SNPRM, similar conclusions apply with respect to VOC emission controls in and near the urban Northeast Corridor nonattainment areas of the OTR.

iii. Determination Whether Reductions from OTC LEV or LEV-Equivalent Program Are Necessary

As discussed in the SNPRM and above, EPA has concluded that there are not sufficient broadly practicable options for making up the shortfall in emissions reductions necessary for attainment and that all of the emissions reductions associated with applying the OTC LEV or LEV-equivalent program are necessary. *See* 59 FR at 48683–48684. EPA calculated the impact of the OTC LEV program in 2005 from the 2005 projected inventory, over the reductions that will take place in New York and Massachusetts as a result of their existing LEV programs beginning in 1996. EPA did not account in those calculations for the emissions associated with migrating and visiting vehicles. EPA subsequently analyzed these migration effects and published a notice describing them on October 24, 1994, 59 FR 53396. Since that notice, EPA has done a more thorough analysis of these effects, which can be found in the RIA

located in section V of the docket. EPA now estimates that those migration effects result in a 16 ton per day increase in VOC emissions and a 28 ton per day increase in NO_X emissions in 2005 over EPA's previous estimates of highway vehicle emissions under the OTC LEV program. However, the benefits of the OTC LEV are still substantial and EPA continues to believe that the information above and in the SNPRM (*see* conclusion 59 FR at 48682) supports the conclusion that all of the emission reductions associated with the OTC LEV program are necessary and that no options other than that program are currently available to achieve reductions from new motor vehicles. The OTC LEV program is necessary unless an acceptable LEV-equivalent program is in effect.

The OTC LEV program would be reasonable and practicable in the OTR, as explained in the SNPRM, 59 FR at 48683–48684. EPA granted California a waiver for the LEV program based on a finding of technical feasibility and adequate lead-time; the California Air Resources Board (CARB) has continued to find the program feasible with certification of several categories of LEVs; New York and Massachusetts have also found that the program is reasonable; and the legislative history of section 177 reflects the notion that extension of California standards to other states would not place an undue burden on auto manufacturers.

iv. ZEV Equivalency

EPA requested comment in the SNPRM on whether it should use its authority under section 184 to include a ''ZEV equivalency'' requirement—*i.e.*, to require the OTR states to achieve the additional emissions reductions associated with the ZEV production mandate if the Agency were not to require the OTR states to adopt the ZEV mandate. *See* 59 FR at 48684. EPA noted that in an August 4, 1994, letter, the Chair of the OTC stated that, for purposes of discussing different options with the auto manufacturers, any alternative should be compared to the full LEV program, including the ZEV mandate. In addition, commenters suggested that EPA require that states' programs compel the automobile manufacturers either to sell ZEVs or to achieve equivalent reductions from the new vehicle sector.

EPA has decided that today's action should not require states to achieve those benefits of the ZEV production mandate that are not otherwise provided by the OTC LEV program.[17] First, EPA does not interpret the OTC's recommendation as recommending that EPA issue such a requirement. Regarding the ZEV production mandate, the OTC's February 10, 1994, recommendation states:

> To the extent that a Zero Emission Vehicle sales requirement must be a component of a LEV program under Section 177, such a requirement shall apply. Further, if such a Zero Emission Vehicle sales requirement is not a required component of programs adopted under Section 177, individual States within the OTC may at their option include such a requirement and/or economic incentives designed to increase the sales of ZEVs in the programs they adopt.

Thus the OTC states clearly recommended that they be obligated to adopt the ZEV mandate only if it were legally required for adoption of the LEV program under section 177. Since EPA has concluded that states adopting the LEV program are *not* obligated to adopt the ZEV mandate under section 177 (*see* discussion in section IV.B.3. below), the OTC states have not recommended that EPA require state adoption of the ZEV mandate. The states also clearly expressed their wish to retain authority as individual states to adopt ZEV mandates. This in no way suggests that the states wanted EPA to require those who choose not to adopt a ZEV production mandate to achieve its benefits through other requirements applicable to manufacturers of new motor vehicles.

The February 10 recommendation does not elsewhere reflect any desire that EPA require the states to achieve the additional benefits associated with a ZEV mandate. The recitation clauses in the OTC's recommendation state the OTC's expectation that EPA should evaluate alternatives to the OTC LEV program according to specified criteria. This does not, however, amount to a request that EPA require that states achieve the benefits associated with the ZEV mandate. Rather, EPA believes this is best understood as indicating the OTC's desire that EPA should consider other options to achieve the same reductions from new motor vehicles through a LEV-equivalent program. In so doing, EPA believes the OTC's recommendation is best understood to underscore that such an option should also advance technology.

Second, the August 4, 1994 letter from the OTC does not support the view that EPA should require that states achieve the additional emissions benefits of the ZEV mandate. That letter does not purport to interpret the OTC's February 10 recommendation.[18] Rather, that letter sets forth the OTC's principles in approaching negotiations with the automakers regarding a LEV-equivalent program. The August 4 letter reflects the OTC's desire that the OTC's agreement to accept a LEV-alternative would not deprive the OTC states of the ZEV benefits that they would otherwise have the option to require. This is entirely different from a recommendation that EPA *require* that the states achieve the ZEV benefits.[19]

d. The Effect of a Possible LEV-Equivalent Program on the Need for OTC LEV

As mentioned above, EPA is continuing to work with the interested parties to determine whether a LEV-equivalent program could be developed. Several commenters have argued that the possibility of a LEV-equivalent program precludes EPA from finding that OTC LEV is necessary. EPA disagrees with these commenters for the reasons given in the SNPRM, 59 FR 48683 (cols. 2–3). There is no currently available method (other than adoption of a LEV program under section 177) for a state unilaterally to require emission reductions from new motor vehicles. The alternative program being developed by interested parties is not an option that individual states can adopt now. The alternative requires the automakers' consent to tighter standards and the automakers have made it clear that their consent will not be given without certain conditions being met—including the condition that all OTC states agree to the alternative. Not all OTC states have agreed to an alternative, and EPA does not have authority to require them to do so. In addition, the automakers have indicated that their agreement to a LEV-equivalent program is contingent on New York and

[17] For purposes of today's action, the additional benefits of ZEVs are NMOG evaporative and NOx tailpipe emissions. Because the LEV program's fleet NMOG average is unaffected by the ZEV mandate, the ZEV mandate does not affect fleet NMOG tailpipe emissions, but the mandate does result in increased reductions of NMOG evaporative and NOx tailpipe emissions. Commenters also suggested that auto manufacturers be responsible for CO, toxics and CO_2 benefits of ZEVs, but consideration of these benefits is beyond the scope of the Agency's authority under section 184, which pertains solely to ozone pollution and its precursors.

[18] EPA need not resolve whether it is appropriate to rely on such a letter to determine the OTC's intent.

[19] Even if the OTC had intended that EPA require state programs requiring from the new motor vehicle sector the additional benefits provided by a ZEV production mandate, it is unlikely that EPA could issue such a requirement. EPA received no comments explaining how, without adopting a ZEV mandate, states could require the additional ZEV mandate emission benefits from the new motor vehicle sector and not violate sections 209 and 177.

Massachusetts dropping their ZEV programs. EPA cannot require those states to take such an action. Furthermore, the alternative would likely require either EPA regulations or a consent decree or both before it would be valid. EPA cannot now find that the OTC LEV program is unnecessary even though a LEV-equivalent program might become available in the near future. As discussed elsewhere in this notice, however, EPA has qualified its finding that OTC LEV is necessary by providing that that program will not be considered necessary, and hence will not be required, if and when EPA finds that an acceptable LEV-equivalent program is in effect.[20]

e. Particular Circumstances of OTC LEV Program.

Several particular aspects of the OTC LEV program further support EPA's conclusion that it is necessary to adopt the program region-wide to attain the greatest amount of emissions reductions and to facilitate operation of the program, as explained in more detail in the SNPRM. *See* 59 FR at 48684–48685. These circumstances include: The interstate nature of the business of selling new cars, particularly among the smaller Northeast states and especially along their border areas; the need for states to adopt the program as soon as possible because the fleet turnover on which the emissions reductions depend takes substantial time; and the mobility of cars throughout the dense transportation infrastructure in the Northeast, so that the sale of cars meeting less stringent standards in part of the region could compromise environmental benefits across the region. The mobility of motor vehicles in the OTR supports the conclusion that the LEV program is needed throughout the OTR, to ensure that both the motor-vehicle-related portion of the overall NO_X reduction needed throughout the OTR, and the motor-vehicle-related portion of the overall VOC reductions needed in and near the urbanized Northeast Corridor, are actually achieved.

f. Conclusions Regarding Need for OTC LEV or a LEV-Equivalent Program for Purposes of Bringing Downwind States Into Attainment by the Dates Provided in Subpart 2 of Part D of Title I

The next step in EPA's analysis in the SNPRM was to address specifically the need for the OTC LEV program by the 1999, 2005, and 2007 attainment deadlines for the serious and severe areas in the OTR. As noted above, EPA's conclusion that 50% to 75% reduction from a 1990 baseline inventory in NO_X emissions throughout the OTR and in VOC emissions in and near the urban areas is constant over time. EPA's modeling focused primarily on the 2005 inventory, at which time growth since 1990 must be offset in addition to achieving the 50% to 75% reductions. As EPA explained in the SNPRM, there is no reason to believe that the conclusion that emission reductions equivalent to those achieved by the OTC LEV program are necessary would be different for the New York-New Jersey-Connecticut severe area, which has a 2007 attainment deadline. This is because the control options EPA considered will not achieve such greater reductions in the extra two years so as to make up the shortfall needed for attainment. Also, each of these three states needs the program in order that the other two may attain by 2007, as they share a common airshed and commuters from each of these states contribute emissions to the others. For these same reasons, these three states may also need the program in order that the southern New Jersey-Philadelphia nonattainment area may attain by 2005.

Based on the ROM and trajectory analyses described in the SNPRM and the analysis of alternative control measures, EPA also believes that, unless an acceptable LEV-equivalent program is in effect, all of the OTR states need the OTC LEV program in order that serious areas with a 1999 attainment deadline may attain on time. As noted above, because emissions will be lower in the OTC nonattainment areas in 2005 than in 1999, it is a reasonable extrapolation from the modeling data that an even greater nonattainment problem will remain in 1999 than in 2005. Even the limited reductions from the OTC LEV program in model year 1999 are actually necessary, given the reductions that need to be achieved in upwind states in order for each of these areas to attain on time. Further, the attainment date for those serious areas may well extend beyond 1999. This provides another reason to resolve in favor of acting quickly, any uncertainties with regard to the need for an OTC LEV or LEV-equivalent program to bring serious areas into timely attainment. Three years of data are needed to actually achieve attainment, and the states may legally extend their attainment deadlines for two one-year periods if one exceedance of the NAAQS occurs in the deadline year. It is quite possible that at least some of the serious areas with 1999 deadlines will need to rely on these extensions through 2001. Certainly current modeling indicates that the best chance for these areas to attain by their attainment dates would be through use of these one-year extensions. Emission reductions from the OTC LEV program would be necessary to offset growth and sustain attainment-level air quality in 2000 and 2001, when the program will generate increasing reductions due to fleet turnover.

In summary, based on the analysis in the SNPRM and consideration of the comments, EPA concludes that (1) emission reductions from the OTC LEV or a LEV-equivalent program are a necessary part of the 50–75% NO_X and VOC reductions needed from upwind states to bring serious and severe areas stretching from the Washington, DC nonattainment area to the Portsmouth, New Hampshire nonattainment area into attainment by the 1999, 2005, and 2007 deadlines applicable to those areas; (2) the reductions from OTC LEV or a LEV-equivalent program will be needed in areas located in a broad arc extending from the south through the northwest of each of those areas; (3) such a program is also needed in the remaining parts of the OTR to maintain the program's effectiveness in light of dealership trading and migration of vehicles throughout the OTR; and (4) the OTC LEV program is the only currently available program for reducing emissions from new motor vehicles. Therefore, EPA concludes that the OTC LEV program is necessary in each state (or in the case of Virginia, portion of the state) in order to bring all of those serious and severe nonattainment areas into attainment by those dates, unless an acceptable LEV-equivalent program is in effect.

3. OTC LEV or LEV-Equivalent Program is Also Needed for Maintenance

In the SNPRM, EPA also addressed how maintenance of the ozone NAAQS after it is achieved is relevant to EPA's analysis. *See* 59 FR at 48687–48690. First, EPA explained its legal authority to consider maintenance under both sections 110(k)(5) and 184, and then described why OTC LEV or a LEV-equivalent program is necessary for maintenance.

a. Legal Analysis

EPA concludes that it has authority to act, even under section 110(k)(5), even prior to submission of attainment demonstrations under section 182, to require submission of measures

[20] On another point raised in the SNPRM, EPA noted that it was considering an extension of its cross-border sales policy to Maine dealers. EPA has made this extension. *See* letters from Mary T. Smith to Honorable Olympia J. Snowe and Honorable William S. Cohen, dated October 12, 1994.

necessary for compliance with the maintenance aspects of section 110(a)(2)(D), as discussed in more detail in the SNPRM. In the SNPRM and NPRM discussions, EPA emphasized the relocation of maintenance in general to section 175A in the 1990 Amendments to the Act, together with the retention of maintenance as an explicit consideration under section 110(a)(2)(D) for purposes of addressing pollution transport. Particularly in light of the staggered attainment deadlines under section 181 for ozone, upwind areas with later deadlines may continue to generate emissions interfering with downwind maintenance in downwind areas with shorter attainment deadlines. As with the attainment analysis, EPA concludes that it is important to act now, because reductions from the OTC LEV and LEV-equivalent programs are dependent on fleet turnover, and delay would cause the irrevocable loss of emissions reductions necessary for downwind maintenance. Also, uncertainty in the factual analysis for maintenance should be resolved in favor of health and the environment for the same reasons EPA described in the attainment discussion.

EPA also concludes maintenance is a proper consideration under section 184(c), as described in more detail in the SNPRM and NPRM. While the language of section 184(c) references timely attainment and does not explicitly refer to maintenance, EPA concluded that ''attainment'' should be understood to include ''maintenance'' where the issue is whether measures are ''necessary'' to comply with pollution transport requirements. This is because it does not make sense to believe Congress intended that section 184 would not reach a measure in fact necessary for maintenance, when the result of a failure to implement the measure would therefore be downwind areas' relapse into nonattainment. Also, EPA believes that the OTC is an entity also established under section 176A, which encompasses both the attainment and maintenance aspects of section 110(a)(2)(D). Section 184 simply adds stringency to section 176A in light of the serious problem in the northeast. It therefore makes sense to believe Congress did not intend in section 184(c) to displace the more general authority of a commission under section 176A to make recommendations, and for EPA to approve recommendations, concerning both the attainment and maintenance aspects of section 110(a)(2)(D). EPA has reviewed the comments submitted on this issue and continues to believe that it has the authority to consider maintenance when acting pursuant either to section 110 or section 184 for the reasons given in the SNPRM and in the response-to-comments documents.

Beyond that, as described earlier, EPA believes that it may treat the OTC submittal also as a request with recommendations under section 176A, which plainly authorizes EPA to approve such a request if its recommended measures are necessary to prevent interference with maintenance in downwind states under section 110(a)(2)(D).

b. Technical Analysis

EPA is concluding that, unless an acceptable LEV-equivalent program is in effect, the OTC LEV program is necessary for states in the OTR to maintain the ozone NAAQS after they achieve the standard, as discussed in the SNPRM. *See* 59 FR at 48688. EPA bases this conclusion on its analysis of emissions growth in the OTR which the additional measures must neutralize, even after sufficient controls for attainment by the attainment deadlines are in place. This growth results especially from increasing vehicle miles traveled (VMT), which tends to overcome reductions resulting from turnover to the Tier 1 standards and implementation of advanced inspection/maintenance programs. Therefore, the high level of reductions needed to attain the NAAQS are also needed from the same areas to maintain the NAAQS, and OTC LEV or a LEV-equivalent program is needed from those areas for the same reason.

The Agency's analysis of available control options shows that they are insufficient to produce the emissions reductions needed to bring downwind areas into attainment without more stringent standards for new motor vehicles. The Agency therefore concludes that such options would *a fortiori* be insufficient to achieve the emissions reductions needed to maintain the standard over two consecutive ten-year periods following redesignation (as required under section 175A). The additional ROM and meteorological studies described above tend to confirm that the serious areas in the Northeast Corridor—including the New England areas—will not be able to attain and maintain the ozone standard without a combination of measures including OTC LEV or a LEV-equivalent program. (The response-to-comments documents include additional support for this conclusion.)

EPA explained that the OTC LEV or LEV-equivalent program will continue to accrue additional benefits through the year 2028. EPA calculated that in 2015 (the latest year for which it has projected emissions reductions), the program would yield a 39% reduction in NO_X emissions and a 38% reduction in VOC emissions from highway vehicles compared to emissions in that year without the program.

EPA acknowledges that for the most part, sources in Maine do not directly contribute emissions or ozone to an interstate ozone nonattainment problem. Maine is included because vehicles purchased in Maine may release emissions in parts of the OTR that do contribute to a nonattainment or maintenance problem. A vehicle purchased in Maine may travel to another state in the OTR because a Maine resident who purchased the vehicle in Maine moved to the other state or traveled there for purposes of work or recreation. This pattern is more common in southeastern Maine, which is close to the New Hampshire city of Portsmouth.

EPA's rationale for finding LEV necessary in New Hampshire is several-fold. Parts of southern and central New Hampshire are northwest of Boston, and trajectory studies support the hypothesis that emissions and ozone from these areas contribute to the Boston nonattainment problem. In addition, part of New Hampshire is in the Boston nonattainment area; thus, vehicles in this area generate local NO_X and VOC emissions that are part of the problem on the Massachusetts side of the state border. Vehicles in other parts of New Hampshire should be subject to the OTC LEV program for the same reason as vehicles in Maine, discussed above.

In addition, New Hampshire lies to the south and southwest of Maine, and thus contributes to Portland and other Maine nonattainment problems. Although the Maine areas are moderate with an attainment date of 1996, it is possible that the LEV reductions, which will not begin until 1999, will be necessary for attainment and maintenance in Maine. At the least, this possibility provides EPA with another reason to resolve any uncertainty over the necessity of OTC LEV in this state in favor of requiring OTC LEV.

Specifically, the OTC ROM and the New York UAM/ROM Study clarify the extent to which LEV may be needed for attainment and maintenance in the northeastern portions of the OTR. Both studies (i) apply ROM 2.2 to analyze what would happen with a recurrence of the July 1988 meteorological episodes in the year 2005, and (ii) incorporate the interim regional emissions inventory as well as emissions reductions from

controls required under the Clean Air Act Amendments. These studies find that, for the episode days modelled, ozone levels for the southeast coastal region in Maine hover at the 120 ppb standard. OTC ROM, figures A–2 and B–2; New York UAM/ROM Study, figures 15a–c and 18a–c. It should be noted that the ROM model tends to underestimate ozone levels in this seacoast region by failing to fully account for the impact of the seabreeze. The ROM model tends to show higher levels of ozone just off the coast, but it appears that seabreezes keep more of the ozone plume over the shore. Accordingly, it is quite possible that by the year 2005, this portion of Maine would remain in nonattainment notwithstanding the imposition of all mandated Clean Air Act controls.

The attainment date for this area is 1996. Emissions inventories are expected to decrease over time, so that the 2005 inventory is expected to be lower than inventories in the last part of the 1990s. Accordingly, ozone levels in the last part of the 1990s in Maine may be expected to be even higher than in the year 2005. For this reason, it is possible that Maine's attainment dates will be extended to or past 1999 through application of EPA's overwhelming transport policy. Even if Maine's attainment date remains 1996, Maine appears likely to have a problem maintaining the NAAQS standard in the late 1990s and early 21st century. Accordingly, EPA believes it relevant to inquire into how to assure attainment and maintenance of the ozone NAAQS in Maine.

The OTC ROM study shows that the beneficial impact of OTC LEV and .15 lb/MMBtu NO_X limits throughout the OTR is an ozone reduction of some 6–9 ppb, and that the beneficial impact of OTC LEV alone is approximately 3 ppb. The spatial impact of these reductions is difficult to discern from the ROM model due to, among other things, the large grids it employs; thus, it is not possible to isolate the benefits from stationary sources compared to mobile sources. Therefore, it is possible that reductions from motor vehicles will prove to be a necessary component of any control strategy designed to assure attainment and maintenance for the Maine coastal areas. It is further possible that emissions reductions from other mobile source measures will not prove to be sufficient, and therefore that the reductions from OTC LEV would be necessary.

Although the preceding conclusions are based on information that at present is uncertain, EPA believes that it is appropriate to resolve those uncertainties in favor of concluding that the emission reductions that would be achieved by OTC LEV or an acceptable LEV-equivalent program throughout Maine and New Hampshire (as well as states to the south and west of Maine) are indeed needed to ensure maintenance (if not also timely attainment) in Maine.

4. Relevance of EPA Transport Policy

As described in the SNPRM, the Agency's September 1, 1994 transport policy addresses areas where overwhelming transport from upwind areas with later attainment dates is a dominant factor accounting for nonattainment in downwind areas with an earlier attainment date. Such downwind areas may not be able to attain by the deadline due to the impact of transport. EPA's policy is that states may seek to have EPA interpret the Act so that, if it is impracticable to accelerate controls upwind and other facts can be shown, then the downwind areas might have additional time to attain beyond the section 181(a)(1) dates. EPA anticipates that emissions reductions during any ''extension period'' for downwind areas would apply to reaching attainment rather than to maintenance. In addition, if EPA concludes that certain serious areas in the OTR will not be able to reach attainment by 1999, and do not qualify for any extensions, then they would be reclassified to a higher classification (i.e., ''bump up'') under section 181(b)(2) of the Act and would have additional time to attain. The OTC LEV or a LEV-equivalent program would ultimately also be necessary to achieve the reductions needed by any such area in the period after 1999 to attain by such later attainment dates.

B. Consistency of OTC LEV With Section 177 of the Clean Air Act

1. Introduction

EPA concludes that the OTC's recommendation is consistent with section 177 of the Act, and that implementation of the ZEV production mandate is unnecessary for the recommendation to be consistent with section 177, for the reasons given in greater detail in the response-to-comments document and in the SNPRM, 59 FR at 48690–48694. The aspects of the OTC recommendation identified as potentially implicating section 177 include: the statement in the OTC recommendation that adoption of California reformulated gasoline is not a part of the recommendation; the recommendation that EPA not require the ZEV production mandate except to the extent required under section 177; and the recommendation's failure to explicitly incorporate California's regulations. Commenters raised other concerns about consistency of the OTC's recommendation with section 177, including: whether incorporation of the NMOG fleet average requirement would violate section 177; whether a state's incorporation of the California LEV program after the program is initiated in California would create a ''third vehicle'' due to California's credit banking provisions; and whether a state without a current nonattainment area or approved SIP can adopt the California LEV requirements.

EPA has reviewed the comments provided since the publication of the SNPRM and has concluded that the determination of consistency proposed in the SNPRM should be made final. Therefore, EPA finds that the OTC LEV recommendation is consistent with section 177 of the Act.

2. California Fuel Regulations

EPA finds that the OTC's choice not to include California's clean fuel requirements in its recommendation does not violate section 177 because it neither contravenes the ''identical standards'' requirement nor the ''third car'' prohibition of section 177. EPA addressed this issue in detail in the SNPRM and continues to rely on that discussion. *See* 59 FR at 48690–91. California's fuel provisions were not part of California's waiver application under section 209 and are not governed by section 209(a). Rather, they are addressed separately in section 211 of the Act. Section 211 allows states to regulate fuels differently than EPA if they can demonstrate that such regulation is necessary to meet air quality standards, except that California may regulate fuel without such a showing. California's fuel standards are thus not ''standards * * * for which a waiver has been granted'' under section 177. If states were obligated to adopt California's fuel standards to comply with section 177, then such states would also have to meet the necessary showing under section 211 with respect to the fuel requirements. This would contradict the structural separation in the Act between vehicle and fuel requirements. It would also erect a ''necessary'' hurdle to adopting vehicle standards identical to California's vehicle standards in a way not contemplated in section 177.

Moreover, given the specific language of section 177 (its references to section 209, its reference to waivers, and its use of the term ''standards relating to control of emissions from new motor vehicles,'' which mirrors section 209's

language), it is clear that the ''standards'' that must be identical under section 177 are vehicle-based standards, not fuel standards. Finally, the legislative history indicates that Congress specifically decided not to include fuel requirements under section 177 when it reviewed section 177 in 1990.

Both federal courts that have reviewed the issue have found that failure of a state to promulgate California's fuel regulations does not violate section 177's requirement that an adopting state's standards be identical to California's standards. *Motor Vehicle Manufacturers Association* v. *NYDEC,* 17 F.3d 521 (2nd Cir. 1994) and *American Automobile Manufacturers Association* v. *Greenbaum,* No. 93–10799–MA (D. Mass. October 27, 1993) (the ''New York case'' and the ''Massachusetts case'', respectively). These decisions are in accord with EPA's position on this matter. For a more detailed discussion of this issue, review the response-to-comments documents and the SNPRM at 59 FR at 48690 (col. 3).

Likewise, EPA finds that the OTC's choice not to include the California fuel requirements does not violate section 177's ''third vehicle'' prohibition. The auto manufacturers claim higher sulfur levels in fuel found in the OTR would cause problems with California LEV emissions control systems, necessitating changes in design that would create a ''third vehicle.'' EPA rejects this argument.

The voluminous data provided by manufacturers do not contradict the basic premises outlined by EPA in the SNPRM. This data refers to three issues related to increased sulfur in fuel in the northeast that manufacturers claim will cause the manufacture of ''third vehicles.'' These are: The effects sulfur will have on California's on-board emissions diagnostics system (OBD II); the effects of sulfur on in-use recall testing; and the effects of sulfur on ''maximum I/M cutpoints'' (*i.e.,* cutpoints of 1.5 times the applicable standard).

As the Agency made clear in the SNPRM, nothing in the OTC LEV recommendation requires manufacturers to build a third car. In fact, the OTC LEV petition requires that cars sold in the OTC be California-certified vehicles. Manufacturers can build the same car to meet both California's and the OTC's requirements. Any design change that a manufacturer makes is based on the manufacturer's choice to do so. As the Second Circuit made clear in its decision denying manufacturers' ''third vehicle'' claim in the context of the ZEV production mandate, whatever design change ''manufacturers choose to install on cars sold in New York is a marketing choice of theirs and not a requirement imposed by the (state).'' *MVMA,* 17 F.3d 521, 538 (2nd Cir. 1994).

Manufacturers' claims regarding sulfur's effects on California OBD II systems center around the contention that manufacturers will use flange-mounted catalyst assemblies instead of welded ones in their vehicles sold in the northeast. This is not a significant change in the design of the vehicles, and it would be done to save consumer time and cost if the catalysts need to be replaced. This would be a marketing choice by manufacturers and does not provide the basis for a third vehicle claim.

This issue was addressed by the District Court in the New York case recently. In dismissing a virtually identical claim by manufacturers in the New York case, the District Court (Judge McAvoy) found that ''the changes of which (manufacturers) complain are simply not required by New York's adoption of California's LEV program. Certainly New York has not expressly required that manufacturers change their emissions systems mounting. Likewise, (manufacturers) have failed to show that New York's adoption will *de facto* inevitably cause the switch from flanged to bolted assemblies.'' *MVMA,* Docket No. 92–CV–869, *slip op.* at 16 (N.D.N.Y. Oct. 24, 1994). In the Massachusetts case, the trial judge in *AAMA* has also denied manufacturers' request for a preliminary injunction on this issue, determining that manufacturers were unlikely to succeed on the merits of their claim. *AAMA,* Docket No. 93–10799–MA (D. Mass. Oct. 27, 1993.)

In addition, manufacturers' claims regarding ''maximum I/M cutpoints'' (*i.e.,* cutpoints 1.5 times above the applicable standards) and state in-use recall testing are inapposite. The OTC recommendation did not include requests for either maximum I/M or in-use recall testing. It is uncertain whether state programs will include these provisions. Therefore, as such provisions are not required or otherwise implicated by this action, manufacturers' arguments that such programs will cause ''third vehicles'' are not ripe.

Another important issue noted by several commenters and Judge McAvoy is that a significant number of vehicles sold in California (those that permanently or, to a lesser extent, temporarily relocate) are likely to be subjected to fuels with the same sulfur levels as those in the northeast. In fact, AAMA admits that permanently relocated California vehicles will likely need to have their converters replaced. However, according to AAMA, auto manufacturers apparently will choose not to equip California vehicles with the flange mounted converter assemblies, though manufacturers do not claim that such assemblies are forbidden by California regulations or that the way in which vehicle catalysts are mounted is relevant in California certification testing. Once again, any difference in vehicles is a manufacturer choice and is certainly not mandated by the provisions of the OTC LEV recommendation; nor is it an undue burden.

Moreover, as discussed more thoroughly in the response-to-comments documents, the legislative history shows that Congress intended to provide separate requirements for state regulation of vehicles and state regulation of fuels. As Judge McAvoy determined, Congress did not intend that differences in fuel requirements be used as criteria to invalidate state vehicle regulations under section 177. *See MVMA,* Docket No. 92–CV–869, slip op. at 19 (N.D.N.Y. Oct. 24, 1994).

Finally, as discussed in detail in the response-to-comments documents, EPA is not convinced that the factual data provided by manufacturers show that manufacturers will need to build a different car for the OTR than for California in model year 1999 and thereafter. First, manufacturers admit that the data they provide are generally applicable to vehicles built prior to the current model year or to model years 1996–1998. EPA notes that significant progress in developing catalyst formulations that are more tolerant of sulfur than current formulations may eliminate much of the concerns of manufacturers by the 1999 model year. Also, EPA believes that manufacturers have not shown that sulfur in fuel will, in and of itself, cause OBD II catalyst monitors to illuminate malfunction indicator lights by mistaking otherwise good catalysts as malfunctioning.

3. ZEV Production Mandate

EPA finds that the ZEV production mandate is not required to ensure consistency with section 177 for the reasons given in the SNPRM. *See* 59 FR at 48691–48692. EPA is leaving to each individual OTC state the decision as to whether to adopt the ZEV mandate.[21] EPA is not resolving whether the ZEV mandate is an ''emission standard.''

[21] EPA believes that the incorporation of the ZEV production mandate into a state's LEV program is consistent with the requirements of section 177.

Rather, the Agency concludes that the ZEV production mandate is not required to meet the identical standards provision under section 177, whether or not the mandate is a standard relating to control of emissions. Section 177 does not require adoption of all California standards for a particular model year, but only requires that if a state adopts motor vehicle standards, those standards that are adopted must be identical to California's standards.[22] The ZEV production mandate and the remainder of the LEV program can be segregated from each other, and the ZEV mandate is not essential for implementation and enforcement of the remainder of the LEV program, which is a fully functional and enforceable motor vehicle emissions program. States adopting the LEV program therefore need not adopt the ZEV mandate to comply with the requirement for identical standards under section 177.

4. Incorporation of Minor Provisions of the California LEV Program

The OTC's recommendation does not spell out every detail of the California LEV program that it intended to incorporate into the recommended program. As discussed in more detail in the SNPRM and the response-to-comments documents, EPA interprets the OTC's recommendation to incorporate the requirement that standards be identical to the California LEV program, and to include any secondary requirements of the California program necessary to ensure consistency with section 177 for 1999 and later model year passenger cars and light-duty trucks. *See* 59 FR at 48693. Determinations regarding which portions of the California LEV program are required for consistency with section 177 will be made in the review of each state plan.

5. NMOG Fleet Average

State adoption of the NMOG fleet average does not violate section 177, as explained in the SNPRM. *See* 59 FR at 48693. The fleet average requirement is a primary component of the California program that is necessary to ensure specified emission reductions. Adoption of it by other states is consistent with the identical standards requirement of section 177. The NMOG average requires that a certain number of lower-emitting vehicles must be sold in order to assure compliance, but does not prohibit the sale of any California-certified car. State incorporation of the NMOG average is therefore consistent with section 177's provision that states cannot restrict the sales of California-certified vehicles.

6. Averaging, Trading, and Banking

Manufacturers claim that states must allow manufacturers to carry over to OTR states any banked credits manufacturers have received in California in model years leading up to 1999. Since California's LEV program begins before model year 1999, each manufacturer is allowed to generate and bank credits under California's program prior to 1999. The manufacturer may use these credits to reduce the stringency of the NMOG standards it must meet in California in model year 1999 and, to some extent, later years. For OTC states that begin the program in model year 1999, manufacturers would not be able to generate and bank credits in that state before that year. Forcing manufacturers to meet the NMOG fleet average in 1999 without the ability to use banked credits would, according to manufacturers, violate section 177 by requiring a different vehicle mix and, in effect, more stringent standards, in 1999. Therefore, auto manufacturers arguably could have to meet a more stringent NMOG fleet average requirement in model year 1999 than they would have to meet in California in that year.

EPA concludes that the availability of credit banking in California prior to model year 1999 does not cause the OTC's recommended program to violate the identical standards requirement of section 177. In addition, states do not have to accept credits manufacturers have banked in California in model years prior to 1999.

The specific language of section 177 indicates that the existence of banked credits from a previous model year should not prevent states from enacting the same NMOG fleet average requirements as California has for 1999 and later years. Section 177 states that ''any State * * * may adopt and enforce *for any model year* standards * * * and take other actions * * * if * * * such standards are identical to the California standards for which a waiver has been granted for such model year.'' (Emphasis added.) Section 177 explicitly refers to standards (and other actions) taken with regard to a specific model year. Thus, as the OTC LEV program's NMOG fleet average for the 1999 and later model years is identical to the California NMOG fleet average that California has in effect for those model years, there is no conflict with section 177. Moreover, the ''limitation on California vehicles'' language is concerned with ensuring that ''types'' of California vehicles are not prohibited in section 177 states. It is not designed to ensure that manufacturers' vehicle mixes in all states are identical.

However, as discussed in part V below, EPA believes that a state, if it so chose, could implement the NMOG fleet average to account for manufacturers' inability to bank credits in that state prior to the start of the OTC LEV program in that state. EPA believes that there may be advantages to states and manufacturers if states did account for the manufacturers' inability to bank credits in OTC LEV programs prior to model year 1999. For further explanation, see EPA's discussion in the SNPRM (59 FR at 48694) and the response-to-comments documents.

7. Applicability of Section 177 in States Without Plan Provisions Approved Under Part D of Title I

All states in the OTR have plan provisions approved under part D of title I of the Act, and therefore satisfy this prerequisite for eligibility under section 177. All states other than Vermont have ozone nonattainment areas with associated SIPs approved under part D. Vermont has plan provisions approved under part D related to earlier nonattainment problems. *See* 40 CFR 52.2370(c)(10). In addition, EPA has very recently approved Vermont's plan provisions related to emissions statements in order to fulfill obligations under part D as revised by the 1990 Amendments to the Act.

V. Action on OTC Petition, Issuance of Findings of SIP Inadequacy, and Requirements for SIP Revisions

A. Action on OTC Petition and Explanation of SIP Call[23]

Based on the factual conclusions and legal interpretations presented in section IV.A. above, EPA determines through today's action that, until such time as EPA finds that an acceptable LEV-equivalent program is in effect, adopting OTC LEV throughout the OTR is necessary to bring certain areas into attainment (including maintenance) by the dates provided in subpart 2 of part D of title I of the Clean Air Act. Based on the conclusions presented in section

[22] In the SNPRM, 59 FR 48692, n. 72, EPA stated its belief that all standards applicable to a segregable program must be implemented to assure that specific vehicles are subject to the same emissions requirements. Upon further review, EPA believes that individual emission standards may be implemented as long as the ''third car'' and ''sales limitation'' requirements of section 177 are not violated by the omission of any standard.

[23] EPA is not relying on the discussion in section V. A. of the SNPRM (59 FR at 48694–48695) for the statement of basis and purpose for today's action, but is relying on the discussion in section V. B. (59 FR at 48695).

IV.B. above, EPA determines through today's action that OTC LEV is otherwise consistent with the Act. Based on those conclusions, EPA today approves the OTC's recommendation that OTC LEV be adopted throughout the OTR. As described elsewhere, however, EPA's approval of the OTC recommendation and the requirements that flow from it leave open the option for an acceptable LEV-equivalent program that would remove the need for the OTC LEV program.

In section IV.A., EPA discussed its factual finding that emission reductions from new motor vehicles equivalent to the reductions that would be achieved by the OTC LEV program are needed throughout the OTR to bring certain OTR nonattainment areas into attainment (including maintenance) by their applicable attainment dates. Based on this finding, EPA today finds under section 110(a)(2)(D) that each of those states (and in the case of Virginia, the portion of the state lying within the OTR) contributes significantly to nonattainment in, and interferes with maintenance by, another state with respect to the ozone standard. Because the SIPs for those states currently lack provisions requiring those emission reductions, EPA today finds under its independent section 110(k)(5) authority that each of those SIPs is substantially inadequate (1) to comply with section 110(a)(2)(D)'s requirement that each SIP contain adequate provisions prohibiting any emissions activity that will contribute significantly to nonattainment in, or interfere with maintenance by, another state with respect to the ozone standard; and (2) to mitigate adequately the interstate pollutant transport described in section 184. EPA is making the first of these findings also pursuant to the requirement of section 184(c)(5) that, upon approval of an OTC recommendation, EPA make ''a finding under section 110(k)(5) that the implementation plan for such state is inadequate to meet the requirements of section 110(a)(2)(D).''

Section 184(c)(5) states that EPA's finding under section 110(k)(5) shall require the affected state to revise its SIP to include the approved control measure within one year after the finding is issued. Section 110(k)(5) itself provides that EPA must require the state receiving a finding of SIP inadequacy to revise its SIP ''as necessary'' to correct the inadequacies that are the subject of the finding. As described above, EPA is qualifying its finding that OTC LEV is necessary under sections 184 and 110(a)(2)(D), and hence is qualifying its approval of the OTC LEV recommendation, by making each finding subject to the contingency that EPA will find that an acceptable LEV-equivalent program has come into effect. Thus, the SIP inadequacy would be cured for each such SIP if an acceptable LEV-equivalent program were in effect, and states would not have to submit a SIP revision to comply with today's action. Therefore, EPA has structured today's rule to require that each state in the OTR submit a SIP revision within one year from the effective date of the SIP call unless EPA finds that an acceptable, LEV-equivalent program is in effect.

As described earlier, EPA has based its necessity findings on the conclusions that there are insufficient potentially broadly practicable measures to achieve the necessary emission reductions without also applying OTC LEV or a LEV-equivalent program. A state would always have the option under section 110 to adopt whatever measures it may believe practicable for application within its borders. Thus, EPA is qualifying its finding of necessity, and hence is qualifying its approval of the OTC recommendation, by making each subject to the contingency that a state will actually adopt sufficient (non-LEV) measures beyond those EPA has identified as potentially broadly practicable so as to demonstrate that the OTC LEV program is not necessary for that state to cure the SIP inadequacy. EPA has structured its rule to provide that, unless an acceptable LEV-equivalent program is in effect, the SIP revisions required in response to the findings of SIP inadequacy must contain either the OTC LEV program or sufficient adopted alternative measures. These measures would be sufficient if, when combined with the emission reductions that would result in that state from the measures mandated by the Clean Air Act and all measures EPA has currently concluded are potentially broadly practicable, they would achieve 50 to 75% NO_X reductions from a 1990 baseline throughout that state and 50 to 75% VOC reductions from a 1990 baseline in the portions of the state in or near the line of serious and severe nonattainment areas along the Northeast Corridor.

As described above, today's SIP call keeps open the option of an acceptable[24] LEV-equivalent program, while ensuring that necessary emission reductions are not delayed. The finding of inadequacy would be cured and states would not have to adopt OTC LEV if an acceptable LEV-equivalent program were in effect (which EPA assumes for today's action would include a requirement that auto manufacturers could not opt out once they had opted in). If states take action to adopt or enact OTC LEV before discussions on the alternative program are concluded, EPA encourages states to structure their OTC LEV programs to provide for a future LEV-equivalent program that EPA finds is acceptable in a future rulemaking. Such a provision could give auto manufacturers the choice of complying with either the state's OTC LEV standards or the acceptable LEV-equivalent program.

To meet the requirements of this SIP call using an OTC LEV program, a state must exercise its authority under section 177 to adopt the NMOG fleet averages that are part of California's LEV program. The requirements for these are set forth in the following section. States are not required to adopt the ZEV mandate, but retain their authority to do so under section 177.

As described above, rather than submit an OTC LEV SIP revision, states may submit a ''shortfall'' program to meet today's SIP call. A ''shortfall'' SIP revision must contain adopted measures that make up the shortfall between (1) the emission reductions necessary to prevent adverse consequences on downwind nonattainment (*i.e.*, 50–75% NO_X reductions throughout the state and 50–75% VOC reductions in the portions of the state in, or near and upwind of the Northeast urban corridor), and (2) the emission reductions that would be achieved by the measures mandated by the Act and the potentially broadly applicable measures EPA identifies in this notice and the SNPRM. Such SIPs will include measures that EPA cannot now conclude are potentially practicable for the region as a whole. Therefore, states submitting a shortfall SIP in lieu of the OTC LEV program must submit fully adopted measures sufficient to fill completely the emission reduction shortfall, not just the emission reduction equivalent to the OTC LEV program, in order to make a convincing demonstration that OTC LEV is not necessary to prevent adverse impacts in downwind states. The submittal of (non-LEV) measures that would achieve only emissions reductions equivalent to what

[24] The criteria for determining whether a LEV-equivalent program is acceptable will be established as part of the rulemaking on the acceptability of that program. However, to relieve states of their obligation to submit an OTC LEV program, EPA has assumed that a LEV-equivalent program would not allow manufacturers to opt out of the program after they had opted in. EPA is not addressing today whether states would need to adopt OTC LEV as a ''back stop'' if manufacturers could opt out of the program.

the OTC LEV or LEV-equivalent program would achieve might still leave a substantial shortfall. Thus, there would be no showing that a LEV program would be unnecessary to fill that remaining shortfall. The ''shortfall'' SIP measures cannot be measures that are mandated by the Clean Air Act or are among the potentially broadly applicable measures identified by EPA in this notice or the SNPRM. For purposes of determining whether such a shortfall SIP revision is complete within the meaning of section 110(k)(1) (and hence is eligible at least for consideration to be approved as satisfying today's SIP call), such a SIP revision must contain other adopted emission-reduction measures that, together with the identified potentially broadly applicable measures, achieve at least the minimum 50% reduction in NO_X emissions throughout those portions of the state within the transport region, and at least the minimum 50% reduction in VOC emissions within those portions of the state in or near (and upwind of) the urbanized portions of the Northeast Corridor.

B. State Requirements Under EPA SIP Call

To satisfy the requirement for an OTC LEV SIP revision under today's SIP call, unless EPA finds that an acceptable LEV-equivalent program is in effect, every state in the OTR is required to promulgate regulations that will mandate the OTC LEV program for new light-duty vehicles and trucks beginning in model year 1999. The regulations must be adopted no later than one year following the effective date of the SIP call and apply to 1999 and later model years. This will provide manufacturers with the two-year lead-time required under section 177.[25] The OTC LEV program applies to all passenger cars and light-duty trucks (0–5750 pounds loaded vehicle weight (LVW)) in the OTR.[26]

The OTC LEV program generally requires that no 1999 or later model year vehicle may be sold, imported, delivered, purchased, leased, rented, acquired, received, or registered in the OTR unless such vehicle has received a certification from the California Air Resources Board.[27] Each state must allow for the sale of California's Tier I, TLEV, LEV, ULEV and ZEV vehicles in that state. The emission standards for such vehicle classes must be identical to those in California. In addition, all states must promulgate California's NMOG fleet average requirements. The fleet averages for passenger cars and light-duty trucks 0–3750 lbs. LVW shall be identical to California's NMOG fleet averages for such classes of vehicles, as stated in the OTC recommendation. The NMOG fleet averages for larger light-duty trucks (3751–5750 lbs. LVW) shall be identical to California's NMOG fleet averages for such class of vehicles for the applicable model years.[28] As discussed below, states have considerable flexibility in implementing these NMOG fleet averages during the appropriate model years.

States must adopt California's provisions pertaining to averaging, banking and trading, hybrid electric vehicles, extensions and exemptions for intermediate and small volume manufacturers (as defined by California), and Reactivity Adjustment Factors (RAFs) as necessary for certification in California. States also must adopt any other provisions of California's new motor vehicle regulations that are necessary to ensure compliance with section 177 of the Clean Air Act. EPA has not examined which other provisions are necessary to ensure compliance with section 177. The need for other provisions shall be addressed when individual states adopt or seek approval of the OTC LEV program.

States are not required to adopt California's ZEV production mandate. As discussed earlier in section IV.B.3., EPA does not believe that adoption of the production mandate is necessary to ensure compliance with section 177. The OTC did not recommend that EPA require states to incorporate the ZEV production mandate unless it was required by section 177, and EPA declines to use its discretion to require states to incorporate the mandate. However, states are free, at their own discretion, to incorporate the mandate into their motor vehicle emission programs.

States also have significant discretion in the manner in which they implement the OTC LEV program. Though states must adhere to the requirements of section 177, EPA is not mandating specific methods that states must use to implement the program. In particular, EPA believes that states have significant discretion in the manner in which they implement the NMOG fleet average.

Given the regional nature of the OTC LEV program and the possible hardships to state governments and manufacturers in having to administer and comply with separate programs in thirteen different jurisdictions, states should attempt to coordinate their programs as much as possible. In particular, EPA believes that states could choose to give manufacturers the option of meeting the NMOG average on a region-wide basis, rather than having to meet the requirement on a state-by-state basis.[29] This will allow for more flexibility in enforcement and compliance, but will require more coordination among jurisdictions.

EPA also believes that states have the discretion to account for automakers' inability to bank credits in those states prior to 1999. This might be accomplished by accounting for banked credits that manufacturers have amassed in California (or perhaps in New York or Massachusetts) in model years prior to 1999 under the averaging, banking and trading provisions of the LEV program. As discussed above in part IV.B.3, EPA does not believe that states have an obligation to account for credits that manufacturers have received in California for early banking. A state program that includes California's NMOG average and California's averaging, banking and trading provisions is consistent with section 177, whether or not the state accounts for credits that are banked in California prior to the state's implementation of the LEV program. However, EPA believes that, in implementing the program, states can, consistent with section 177, account for banked credits. Given that the averaging, banking and

[25] Given today's model year regulations, the effective date of this rule, and the information in the docket on auto manufacturers' production schedules, EPA realizes that a few 1999 model year engine families might not be subject to OTC LEV. EPA does not anticipate that this will reduce emission benefits significantly.

[26] These requirements therefore apply to all 1999 and later model year vehicles in each state, except that these requirements only apply in the northern portion of Virginia that is a part of the OTR.

[27] The OTC recommendation contained several exceptions to this requirement. For example, vehicles sold directly from one dealer to another dealer are not subject to this requirement. EPA expects that these exemptions will be included in state programs. EPA is not today ruling whether these exemptions are required, permitted or prohibited under the Act, although EPA notes that it received no comments providing any substantive arguments that these exceptions violate section 177.

[28] The NMOG fleet averages for passenger cars and light-duty trucks (0–3750 lbs. LVW) for the applicable model years, in grams per mile, are: 1999–0.113; 2000–0.073, 2001–0.070, 2002–0.068; 2003 and later years-0.062. The NMOG averages for light-duty trucks (3751–5750 lbs. LVW) are: 1999–0.150; 2000–0.099; 2001–0.098; 2002–0.095; 2003 and later-0.093.

[29] For example, a state program could deem a manufacturer to be in compliance with a state's NMOG average if the manufacturer's sales in OTR states with identical requirements meet the NMOG average. There might be only small variations in vehicle mix from one state to another if the states have identical standards and are in the same region. If such variations have insignificant effects on a state's air quality, state-by-state compliance with NMOG averages might not be worth the administrative burden.

trading program was included by California to provide flexibility in meeting the program, EPA does not believe it is a breach of the identicality requirement to allow states to account for banked credits in implementing the OTC LEV program. Also, if any states fail to implement the program in model year 1999, desire for regional consistency would also dictate that such states allow for any banked credits from other state programs in the implementation of their programs. In any case, states should coordinate with each other to ensure that the goals of regional consistency are not frustrated by differences in implementation of the NMOG fleet average.

Finally, as discussed in section VI.B.5, states may decide not to include the NMOG average in their implementation of the OTC LEV program in the initial model year if the state can only begin implementation of the program in the middle-to-end of the year. Manufacturers have objected that beginning implementation of the OTC LEV program in the middle of a calendar year would create significant problems for manufacturers in meeting the NMOG fleet average requirements for the first model year. This is because manufacturers meet the NMOG fleet average by coordinating their entire fleets to achieve the desired average. This process is susceptible to disruption when manufacturers must meet the NMOG average in the initial model year if the initial model year begins in the middle-to-end of a calendar year. This is because, under the model year regulations finalized today, only a portion of a manufacturer's fleet may be subject to the NMOG requirements for the initial model year if it is a ''split'' model year. EPA believes that manufacturers are well equipped to deal with this disruption by moving production start dates, especially given the two years of lead-time that manufacturers will have to coordinate their production schedules. However, given the fleet-wide nature of the NMOG fleet average and the desire for coordinated regional strategy, it may be appropriate for states that begin the OTC LEV program in the middle-to-end of a calendar year to refrain from implementing the NMOG fleet average for the initial model year. However, once the second model year begins, the NMOG fleet average must be a part of the state program. Also, states that initiate the OTC LEV program close to the beginning of the year (when disruption of the NMOG program should be minimal) should include the NMOG fleet average as part of the OTC LEV program in the initial model year.

C. Sanctions

In the SNPRM, EPA addressed the imposition of sanctions in the case of state non-compliance with EPA's SIP call under section 110(k)(5) of the Act. EPA's rule to implement section 179 of the Act regarding sanctions specifies the order in which the statutory highway funding and offset ratio sanctions will apply, but does not address the imposition of sanctions in the case of state failure to comply with a SIP call under section 110(k)(5) of the Act. *See* 59 FR 38932 (Aug. 4, 1994)(sanctions rule). EPA therefore proposed in the SNPRM to extend the general scheme promulgated for sanctions under section 179 to the SIP call at issue here, with the 2:1 offset sanction applied first and the highway funding sanction applied second. EPA takes final action today to apply that general scheme to this SIP call.

EPA also requested comment on whether it should provide in the final rule that discretionary sanctions under section 110(m) of the Act would apply beginning immediately upon a finding of failure to submit the OTC LEV program (or a complete shortfall SIP revision) by the one-year deadline for that submission. EPA questioned whether the particular circumstances presented here by the two-year lead-time requirement may warrant such action. EPA is deferring final action on whether to exercise its discretion under section 110(m) to accelerate the imposition of sanctions if states fail to submit the OTC LEV program by the applicable deadline. The Agency will consider this issue further.

VI. Determination of Model Year

In the SNPRM, EPA proposed to promulgate regulations determining for purposes of Section 177 and Title II, Part A of the Act the definition of the term ''model year'' and certain related terms. *See* 59 FR at 48696–48698. EPA believed that this was a necessary step to remove any confusion regarding the commencement of a model year which may have resulted from conflicting views on this point in the New York and Massachusetts litigations regarding the adoption of the California LEV standards.

After review of the comments received on the proposed model year regulations published in the SNPRM, EPA has determined, for the reasons given below, in the SNPRM (59 FR 48697–48698), and in the response-to-comments documents, that it is appropriate at this time to promulgate these proposed regulations as final rules. At the request of AAMA, EPA is adding language clarifying the term ''date on which a vehicle or engine is first produced.''

EPA's proposed model year regulations, which apply to section 177 and Title II, retained the definition of ''model year'' found in both the Act and in existing EPA regulations (promulgated under section 202) as essentially ''the manufacturer's annual production period.''[30] EPA's proposed model year regulations also codified the definition of ''annual production period,'' which has appeared in various versions of EPA Advisory Circulars on this issue since 1972.

Under the proposed regulations, model year would be determined on an engine family basis for specific models within engine families, depending upon the date the first model in the engine family commences production. Therefore, the date upon which the model year begins may be different for each engine family that a manufacturer produces. EPA believes this approach is more appropriate than beginning model years industry-wide on a certain date (an alternative favored by the industry and discussed below) because it is more suited to the central purpose of section 177, which is to allow states to receive emission benefits from the California motor vehicle program while giving manufacturers two years of lead-time to prepare to meet the state standards. In addition, as discussed in the SNPRM (59 FR 48697), this approach provides manufacturers with substantial flexibility to continue to produce automobiles for one model year while initiating production of other models for a later model year.

EPA received critical comments on the proposed rule only from AAMA, which raised several objections. The main thrust of the AAMA argument is that the EPA model year regulations will cause more harm than good because they will compel manufacturers to provide both California and Federal vehicles to a single state in a single model year depending on that state's date of adoption of the California standards. For this reason, AAMA supported an industry-wide approach in which model years would begin on January 2 of the calendar year preceding the model year for which the model year is designated. However, as emphasized in the SNPRM, EPA believes that the model year regulations provide vehicle manufacturers the maximum flexibility in terms of adjusting the model year

[30] *See* 42 U.S.C. sec. 7521 (b)(3)(A)(i) (1993) and 40 CFR 86.082–2 (1994).

designations of their product line to meet marketing needs and product changes.

EPA's approach allows manufacturers to control the beginning of the model year for each of its engine families, since manufacturers control the date upon which its models begin production. Manufacturers are in the best position to determine the date that any model in an engine family commences production and manufacturers decide production start dates on a model-by-model basis. Therefore, the engine family approach allows manufacturers to avail themselves of the two year lead-time without allowing the state program to lag unnecessarily. By contrast, AAMA's approach (allowing the model year to begin on January 2 of the year previous to the calendar year for all models) would in fact turn the two year lead-time into, in the worst case, a three year lead-time (minus one day).

AAMA also commented that the EPA model year regulations could ''obviate'' the NMOG fleet average in a situation where manufacturers needed to provide California vehicles to a state for only part of a model year, and thus may have difficulties meeting the fleet average for that model year. EPA recognizes this possibility but notes that one way to solve the problem is to revise production and supply schedules to make sure the state fleet average is met. Given that manufacturers have two years to prepare to meet these requirements, this solution is within the capability of manufacturers. In any event, EPA notes that it is not today ordering that states must include the NMOG fleet average provisions in their state programs in a split model year. Though EPA believes that the NMOG average is important to ensure emission reductions in states with OTC LEV programs, EPA recognizes that states may wish to avoid some of the confusion manufacturers allege is possible in the introductory year of the program. If the application of NMOG fleet average creates a substantial hardship for manufacturers in the first year due to the adoption of OTC LEV by a state late in the year, the state may wish not to require manufacturers to comply with the NMOG fleet average for the first applicable model year.

In addition, AAMA asks for clarification regarding two points. First, AAMA asks EPA to declare whether the model year rules apply on a model-by-model basis or an engine family-by-engine family basis. Second, AAMA seeks clarification on how to determine the point of first production of a particular model. The model year rules are applied on an engine family basis. Where an engine family contains more than one model, the model year for that engine family begins upon the first production of any model in that engine family. The date of first production of any model is the ''Job 1 date,'' which is the date on which a manufacturer produces the first saleable unit of a specific model.

EPA received a request from AAMA to extend the comment period for the proposed model year regulations to allow more time to consider the issues. EPA rejects this request for the following reasons. EPA recognizes that because of its approval of the OTC recommendation, the OTC member states must now proceed to adopt the OTC LEV program one year from the effective date of the SIP call to ensure the minimum adequate lead-time for the standards to be effective in model year 1999. EPA believes that it is important to promulgate these final regulations now to eliminate any confusion regarding when a model year commences before these states begin the adoption process. EPA has provided the public with a full thirty-day comment period with an opportunity for hearing. In addition, as the model year issue has been the subject of litigation for the last two years, manufacturers have been aware of the central questions surrounding this issue.

For a more detailed discussion of the issues raised by EPA's model year regulations, including AAMA's comments and EPA's responses, please review the SNPRM, 59 FR 48697–48698, and the response-to-comments documents. The text of the final regulations, with minor changes from the proposal, appears below.

VII. Effective Date

The regulations to be codified in 40 CFR parts 51 and 52 (the ''SIP call'' regulations) are effective February 15, 1995. This is consistent with the requirement of the Administrative Procedure Act, codified at 5 U.S.C. 553(d), that publication or service of a substantive rule be made not less than 30 days before it becomes effective.[31] EPA will assure that, by January 16, 1995, either notice of today's action will be published in the **Federal Register** or EPA will have provided actual notice of this action to the states that have regulatory obligations as a result of this action. EPA will also make this notice available to other interested persons upon request prior to publication.

As EPA explained in its proposal, it is very important that states begin implementation of the OTC LEV program in model year 1999 to achieve the necessary emissions reductions. EPA had expressed concern in the SNPRM that, to ensure implementation for all models in model year 1999, states must adopt the program before January 2, 1996. *See* 59 FR at 48669–48670. Based on information in the docket on the production schedules for new models, EPA now believes that adoption of the OTC LEV program by mid-February, 1995, will not significantly reduce the emission benefits of the program for model year 1999.

The regulations to be codified in 40 CFR part 85 are effective February 23, 1995.

EPA believes that today's actions, including the finding of inadequacy, the SIP call and the promulgation of the model year regulations, are nationally applicable regulations under section 307(b)(1) of the Act. Alternatively, the Administrator determines that today's actions are nationwide in scope and effect and bases today's action on that determination. Today's action interprets sections 110, 184 and 177 in ways that are applicable nationwide. In addition, the SIP call affects 13 different jurisdictions in five different federal appellate circuits. Thus, under section 307(b), any petitions for review must be filed in the Court of Appeals for the D.C. Circuit within 60 days from the date that notice of this action appears in the **Federal Register**.

VIII. Statutory Authority

The statutory authority for this final rule may be found at sections 110, 176A, 177, 184, 202, 206, 209, 301 and 307 of the Clean Air Act, 42 U.S.C. 7410, 7506a, 7507, 7511c, 7521, 7525, 7543, 7601, and 7607.

IX. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, 58 FR 51735 (Oct. 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 ''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

[31] EPA generally acts consistently with this provision and provides that a rule does not become effective until 30 days after the date of publication, but technically today's action is not subject to this provision. The EPA Administrator has determined that, pursuant to section 307(d)(1)(V) of the Act, the rulemaking procedures of section 307(d) apply. *See* 59 FR at 21724. Section 307(d)(1) specifically provides that ''[t]he provisions of section 553 through 557 and section 706 of title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies.'' Nowhere does subsection 307(d) expressly provide that section 553(d) of title 5 applies.

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, since this action could result in a rule that would have substantial impact, this notice is a ''significant regulatory action'' because the estimated range of annual costs of the OTC LEV program is between $xx and $xx. As such, this action submitted to the Office of Management and Budget (OMB) for review. Changes made in response to OMB suggestions or recommendations will be documented in the public docket for this rulemaking.

EPA has prepared an economic analysis for this rule under E.O. 12866. A copy of this analysis has been placed in the docket. A draft version of the Regulatory Impact Analysis was submitted to OMB for review as required by E.O. 12866. Any written comments from OMB and EPA responses to those comments will be placed in the public docket for this rulemaking. A final version of the analysis is available in the docket.

X. Impact on Small Entities

The Regulatory Flexibility Act, 5 U.S.C. 601(a), provides that, whenever an agency is required to publish a general notice of rulemaking, it must prepare and make available a regulatory flexibility analysis (RFA). While EPA has followed rulemaking procedures under 307(d) of the Clean Air Act, EPA believes it is not legally required to publish a general notice of rulemaking here, and hence that it need not prepare an RFA. But even if EPA is required to publish a general notice of rulemaking here, an RFA is required only for small entities that are directly regulated by the rule. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on regulated entities and not indirect impact on small entities not regulated). The OTC LEV program will directly regulate auto manufacturers. Since these auto manufacturers generally do not qualify as small businesses within the meaning of the Regulatory Flexibility Act, EPA does not believe an RFA is needed for either the proposed or final rules, even if a rulemaking is required. Accordingly, pursuant to 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Nevertheless, the Agency has considered the effect of an OTC LEV program on new and used car dealerships as part of its regulatory impact analysis, even though such analysis is not required because these businesses would not be directly regulated under the rule. The results of this analysis, set forth in the RIA, indicate that the OTC LEV would not have a significant economic impact on automobile dealerships.

XI. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

Attachment A to the Preamble

Revised Draft Discussion Paper on ATV Component of 49-State Alternative

December 7, 1994.

I. Principles and Definition

The Advanced Technology Vehicle (ATV) component of a 49-State alternative to the OTC petition will be based on the following principles:

fl Parties publicly commit to work in cooperation with each other to establish and maintain a sustainable, viable market for ATV's at the retail level.

fl ATV program will be designed to achieve shared responsibility among states, EPA, DOE, fuel providers, fleet operators and auto manufacturers for achieving increases in ATV's.

fl Phased program from infrastructure and vehicle development to fleet sales to retail sales will be pursued. Timeframes will be assigned to components of any alternative that will involve incremental steps toward accomplishing increases in ATV's.

fl Vehicle yield from federal and State programs, municipal and private fleets, as well as approaches to provide vehicles to private consumers will be included.

fl Parties will, at the initiation of the MOU and throughout the program, jointly develop sales estimates of fleet and consumer vehicles that all parties anticipate should be on the road at specific milestones.

fl All parties commit that specific actions will be identified and undertaken as necessary if estimates are not realized.

fl Parties will develop a fuel neutral strategy based on achieving market longevity and environmental benefits. Infrastructure must be constructed under a joint strategy, but it is understood that states will make infrastructure choices according to regional needs.

fl The definition of ATV for the purposes of this agreement will be (PARTIES WILL INSERT DEFINITION LATER).

II. Memorandum of Understanding

The Memorandum of Understanding is based on the agreement that all parties will contribute to a joint effort to create a sustainable, viable ATV market. All parties agree that the best strategy for achieving this market is to first utilize the federal fleet markets in order to establish a full range of viable vehicle technology, maximize the number of vehicles purchased through municipal and state fleet programs, create incentives to encourage private fleet purchases, establish infrastructure requirements, assess customer preference, and to systematically evaluate progress for the purposes of introducing vehicles to the private consumer as soon as possible.

Components of a joint strategy will include the following areas:

(1) Fleet Estimates—The foundation for introduction of ATV's will be the federal requirements under EPAct. Parties will develop projections or estimates for anticipated number of vehicles resulting from the programs that will be used as objectives for gaining a number and types of vehicles on the road on a specific timeline. Parties will develop agreements for joining in the programs, including harmonizing EPAct and the CAA of 1990, and maximizing federal fleet purchases. Parties will work jointly to develop programs and maximize municipal and private fleet purchases in the Northeast states. Parties will assume expanded municipal and private fleet vehicle sales for the purposes of estimation.

(2) Development of Objectives Based on Fleet and Consumer Sales Estimates—At the initiation of the MOU, parties will agree on assumptions for and will establish initial overall fleet and consumer vehicle sales estimates that can be reasonably expected in the OTR by 2004. Parties will jointly state that this estimated number of vehicles should be sold if initial assumptions prove to be correct and if all aspects of the strategy are successfully implemented. Annual sales estimates

will be revised as part of the annual meeting process.

(3) Problem Identification and Action Commitment—Parties will identify possible problems that might occur in the development of a viable market and examples of specific actions that might be contemplated in a joint evaluation process (specific actions are detailed in Section III below).

(4) Benchmark Criteria and Components of a Viable Market—Benchmark criteria will be developed for a long-term, sustainable market. Some criteria might include, but will not be limited to:

fl Infrastructure development (fuel quality and price, station density, user friendly refueling, service support, incentives, quasi-public service and fuel sales).

fl Vehicle development (range, life-cycle costs, safety and user convenience).

fl Removal of regulatory impediments to ATV vehicle sales.

fl Reliability and durability profile of fleets.

fl Consumer needs surveyed from Federal, state and municipal fleets and then further defined.

fl Fuel savings documented and demonstrated.

fl Vehicle resale value documented and retained.

fl Consumer-directed incentives in place.

(5) Joint ATV Program Implementation Process—Parties agree to oversee the implementation of this ATV agreement. This joint implementation process will include annual meetings to be held between principal representatives of the Northeast States and Auto manufacturers. Staff level meetings will occur during the course of a year to chart progress in the areas listed below and provide a basis for evaluation of progress. Possible areas for evaluation include, but are not limited to:

fl Assumptions for Annual Sales Estimates.

fl Funding for Federal Fleet Purchases.

fl Technology and Vehicle Type Availability.

fl State Procurement Requirements and Practices.

fl Joint Marketing Efforts.

fl Infrastructure Construction and Capabilities.

fl Research and Data Needs.

fl Other Information and Expertise Needs.

fl Consumer Satisfaction Assessed and Consumer Confidence Built.

fl Plans to Remove Roadblocks and Other Program Adjustments.

(6) Group Structure and Disagreement Settlement Process—A structure for the evaluation will be established by a working group at the initiation of the ATV program. This working group will design the structure of the annual meetings; designate the purpose, number, type and level of meetings to evaluate program progress; and, outline the issues of concern to be addressed. Specifically, responsibilities for discussion of the evaluation areas listed above will be delineated, possible scenarios for action should problems occur or milestones not be met by any party will be developed, and a process for resolving disagreements that arise will be defined.

It is agreed by all parties that primarily the auto manufacturers and states will be involved in the group structure discussions and the overall evaluation process, but that all key parties will be consulted for their advice throughout the process.

(7) Suggested Timeline for Introduction of ATV's—The ATV program will consist of three phases. If significant progress could be made early for any of these phases, parties could agree through annual meeting decisions to advance the timeline of for delivery of vehicles. The parties recognize the legitimacy of existing incentive programs and that new incentive programs may be instituted earlier than this timeframe. The conceptual and planning work for all phases of this process will proceed simultaneously, and lessons from existing programs will be applied in initiating these steps.

1996–98—EPAct for Federal, State and Fuel Provider Fleets

Manufacturers market ATV's to fleets. Infrastructure development begins. Incentive programs are established. Surveys are conducted to estimate potential demand for 1999–2001, including municipal and private fleets.

1999–2001—Add Municipal and Private Fleets

Manufacturers expand product offerings. Infrastructure expands. Incentive programs expand to municipal and private fleets. Surveys conducted to estimate 2002–2004 retail consumer demand. Criteria decided for maintaining sustainable retail sales.

2002–2004—Add Retail Consumer Offerings

According to establishment of adequate infrastructure, offer ATV's for retail consumer sales in all Northeast States. Incentive programs expand to retail consumers.

III. Summary of Commitments by All Parties

In this strategy, each party commits to provide certain results within an agreed upon timeframe. A summary of each parties' commitments follows.

Auto Manufacturers

fl Auto manufacturers will supply private consumer ATVs in a timely manner in 2002, if commitments and criteria put forth in the MOU are met by all parties. Auto manufacturers will introduce ATV's sooner than 2002 if both parties agree that the criteria defining a viable market described in this agreement are met earlier.

The responsibility for supply ATVs includes modifying vehicles to the extent necessary for use in the Northeast, establishing adequate sales and support structure, technician training and service parts inventories in addition to vehicle design, development and manufacture.

fl The Auto manufacturers agree to participate in the annual review process to assess the progress of the program and to determine how to develop a viable market for ATVs in the OTR. This includes participating in the projection of annual sales estimates and evaluating progress toward meeting those estimates.

fl Auto Manufacturers agree to work with the states to determine what actions may be needed to adjust the program if sales estimates are not being met. This will include consideration of voluntary actions such as increasing public education and marketing, addressing weaknesses in infrastructure development, and discussing and addressing technological barriers or hardware problems. Auto manufacturers agree to implement the actions identified and agreed upon.

fl Auto manufacturers agree to discuss pricing issues with states individually as requested to address vehicle pricing concerns.

State Representatives

fl States will establish incentive programs to encourage the purchase of ATVs and direct state procurement policies in a manner consistent with Federal Practices. States will maximize purchases of ATVs in state fleets to the greatest extent possible.

fl States agree to work to assist municipalities to conform with EPAct requirements as soon as feasible. States will also work to assist in the development of incentive programs for private fleet purchases of ATVs.

fl States will participate in the annual review process to assess the

progress of the program and to determine how to develop a viable market for ATVs in the OTR. This includes participating in the projection of annual sales estimates and evaluating progress toward meetings estimates.

fl States agree to work with auto manufacturers to determine what actions may be needed to adjust the program if sales estimates are not met. This will include consideration of actions such as participating in public education efforts and joint marketing; addressing problems in fleet purchases, vehicle procurement processes or program funding in specific states; and providing information on fleet vehicle customer satisfaction and issues. States agree to implement the actions identified and agreed upon.

fl States agree to seek support of public service commissions in becoming involved in the ATV program, and emphasizing the importance of fueling infrastructure construction. States agree to initiate and support legislation to the greatest extent possible.

Others

fl Administration will direct Federal procurement practices favoring purchase of ATV's.

fl EPA will work with DOE to assure harmonization and consistency between CAA of 1990 and EPAct.

fl Fuel and energy providers will purchase vehicles according to EPAct requirements, establish refueling infrastructure, and contribute to the development of state incentive programs.

List of Subjects

40 CFR Part 51

Environmental protection, Air pollution control.

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Volatile organic compounds.

40 CFR Part 82

Environmental protection, Air pollution control, Motor vehicle pollution, Penalties.

Dated: December 19, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter 1, is amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 shall continue to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Subpart G is amended by adding a new § 51.120, to read as follows:

§ 51.120 Requirements for state implementation plan revisions relating to new motor vehicles.

(a) The EPA Administrator finds that the State Implementation Plans (SIPs) for the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont, the portion of Virginia included (as of November 15, 1990) within the Consolidated Metropolitan Statistical Area that includes the District of Columbia, are substantially inadequate to comply with the requirements of section 110(a)(2)(D) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(D), and to mitigate adequately the interstate pollutant transport described in section 184 of the Clean Air Act, 42 U.S.C. 7511C, to the extent that they do not provide for emission reductions from new motor vehicles in the amount that would be achieved by the Ozone Transport Commission low emission vehicle (OTC LEV) program described in paragraph (c) of this section. This inadequacy will be deemed cured for each of the aforementioned states (including the District of Columbia) in the event that EPA determines through rulemaking that a national LEV-equivalent new motor vehicle emission control program is an acceptable alternative for OTC LEV and finds that such program is in effect. In the event no such finding is made, each of those states must adopt and submit to EPA by February 15, 1996 a SIP revision meeting the requirements of paragraph (b) of this section in order to cure the SIP inadequacy.

(b) If a SIP revision is required under paragraph (a) of this section, it must contain the OTC LEV program described in paragraph (c) of this section unless the State adopts and submits to EPA, as a SIP revision, other emission-reduction measures sufficient to meet the requirements of paragraph (d) of this section. If a State adopts and submits to EPA, as a SIP revision, other emission-reduction measures pursuant to paragraph (d) of this section, then for purposes of determining whether such a SIP revision is complete within the meaning of section 110(k)(1) (and hence is eligible at least for consideration to be approved as satisfying paragraph (d) of this section), such a SIP revision must contain other adopted emission-reduction measures that, together with the identified potentially broadly practicable measures, achieve at least the minimum level of emission reductions that could potentially satisfy the requirements of paragraph (d) of this section. All such measures must be fully adopted and enforceable.

(c) The OTC LEV program is a program adopted pursuant to section 177 of the Clean Air Act.

(1) The OTC LEV program shall contain the following elements:

(i) It shall apply to all new 1999 and later model year passenger cars and light-duty trucks (0–5750 pounds loaded vehicle weight), as defined in Title 13, California Code of Regulations, section 1900(b)(11) and (b)(8), respectively, that are sold, imported, delivered, purchased, leased, rented, acquired, received, or registered in any area of the state that is in the Northeast Ozone Transport Region as of December 19, 1994.

(ii) All vehicles to which the OTC LEV program is applicable shall be required to have a certificate from the California Air Resources Board (CARB) affirming compliance with California standards.

(iii) All vehicles to which this LEV program is applicable shall be required to meet the mass emission standards for Non-Methane Organic Gases (NMOG), Carbon Monoxide (CO), Oxides of Nitrogen (NO_X), Formaldehyde (HCHO), and particulate matter (PM) as specified in Title 13, California Code of Regulations, section 1960.1(f)(2) (and formaldehyde standards under section 1960.1(e)(2), as applicable) or as specified by California for certification as a TLEV (Transitional Low-Emission Vehicle), LEV (Low-Emission Vehicle), ULEV (Ultra-Low-Emission Vehicle), or ZEV (Zero-Emission Vehicle) under section 1960.1(g)(1) (and section 1960.1(e)(3), for formaldehyde standards, as applicable).

(iv) All manufacturers of vehicles subject to the OTC LEV program shall be required to meet the fleet average NMOG exhaust emission values for production and delivery for sale of their passenger cars, light-duty trucks 0–3750 pounds loaded vehicle weight, and light-duty trucks 3751–5750 pounds loaded vehicle weight specified in Title 13, California Code of Regulations, section 1960.1(g)(2) for each model year beginning in 1999. A state may determine not to implement the NMOG fleet average in the first model year of the program if the state begins implementation of the program late in a calendar year. However, all states must implement the NMOG fleet average in any full model years of the LEV program.

(v) All manufacturers shall be allowed to average, bank and trade credits in the same manner as allowed under the

program specified in Title 13, California Code of Regulations, section 1960.1(g)(2) footnote 7 for each model year beginning in 1999. States may account for credits banked by manufacturers in California or New York in years immediately preceding model year 1999, in a manner consistent with California banking and discounting procedures.

(vi) The provisions for small volume manufacturers and intermediate volume manufacturers, as applied by Title 13, California Code of Regulations to California's LEV program, shall apply. Those manufacturers defined as small volume manufacturers and intermediate volume manufacturers in California under California's regulations shall be considered small volume manufacturers and intermediate volume manufacturers under this program.

(vii) The provisions for hybrid electric vehicles (HEVs), as defined in Title 13 California Code of Regulations, section 1960.1, shall apply for purposes of calculating fleet average NMOG values.

(viii) The provisions for fuel-flexible vehicles and dual-fuel vehicles specified in Title 13, California Code of Regulations, section 1960.1(g)(1) footnote 4 shall apply.

(ix) The provisions for reactivity adjustment factors, as defined by Title 13, California Code of Regulations, shall apply.

(x) The aforementioned state OTC LEV standards shall be identical to the aforementioned California standards as such standards exist on December 19, 1994.

(xi) All states' OTC LEV programs must contain any other provisions of California's LEV program specified in Title 13, California Code of Regulations necessary to comply with section 177 of the Clean Air Act.

(2) States are not required to include the mandate for production of ZEVs specified in Title 13, California Code of Regulations, section 1960.1(g)(2) footnote 9.

(3) Except as specified elsewhere in this section, states may implement the OTC LEV program in any manner consistent with the Act that does not decrease the emissions reductions or jeopardize the effectiveness of the program.

(d) The SIP revision that paragraph (b) of this section describes as an alternative to the OTC LEV program described in paragraph (c) of this section must contain a set of state-adopted measures that provides at least the following amount of emission reductions in time to bring serious ozone nonattainment areas into attainment by their 1999 attainment date:

(1) Reductions at least equal to the difference between:

(i) The nitrogen oxides (NO_X) emission reductions from the 1990 statewide emissions inventory achievable through implementation of all of the Clean Air Act-mandated and potentially broadly practicable control measures throughout all portions of the state that are within the Northeast Ozone Transport Region created under section 184(a) of the Clean Air Act as of December 19, 1994; and

(ii) A reduction in NO_X emissions from the 1990 statewide inventory in such portions of the state of 50% or whatever greater reduction is necessary to prevent significant contribution to nonattainment in, or interference with maintenance by, any downwind state.

(2) Reductions at least equal to the difference between:

(i) The VOC emission reductions from the 1990 statewide emissions inventory achievable through implementation of all of the Clean Air Act-mandated and potentially broadly practicable control measures in all portions of the State in, or near and upwind of, any of the serious or severe ozone nonattainment areas lying in the series of such areas running northeast from the Washington, DC, ozone nonattainment area to and including the Portsmouth, New Hampshire ozone nonattainment area; and

(ii) A reduction in VOC emissions from the 1990 emissions inventory in all such areas of 50% or whatever greater reduction is necessary to prevent significant contribution to nonattainment in, or interference with maintenance by, any downwind state.

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Subpart A is amended by adding a new § 52.32, to read as follows:

§ 52.32 Sanctions following findings of SIP inadequacy.

For purposes of the SIP revisions required by § 51.120, EPA may make a finding under section 179(a) (1)–(4) of the Clean Air Act, 42 U.S.C. 7509(a) (1)–(4), starting the sanctions process set forth in section 179(a) of the Clean Air Act. Any such finding will be deemed a finding under § 52.31(c) and sanctions will be imposed in accordance with the order of sanctions and the terms for such sanctions established in § 52.31.

3. Subpart H is amended by adding a new § 52.381, to read as follows:

§ 52.381 Requirements for state implementation plan revisions relating to new motor vehicles.

Connecticut must comply with the requirements of § 51.120.

4. Subpart I is amended by adding a new § 52.433, to read as follows:

§ 52.433 Requirements for state implementation plan revisions relating to new motor vehicles.

Delaware must comply with the requirements of § 51.120.

5. Subpart J is amended by adding a new § 52.498, to read as follows:

§ 52.498 Requirements for state implementation plan revisions relating to new motor vehicles.

The District of Columbia must comply with the requirements of § 51.120.

6. Subpart U is amended by adding a new § 52.1035, to read as follows:

§ 52.1035 Requirements for state implementation plan revisions relating to new motor vehicles.

Maine must comply with the requirements of § 51.120.

7. Subpart V is amended by adding a new § 52.1079, to read as follows:

§ 52.1079 Requirements for state implementation plan revisions relating to new motor vehicles.

Maryland must comply with the requirements of § 51.120.

8. Subpart W is amended by adding a new § 52.1160, to read as follows:

§ 52.1160 Requirements for state implementation plan revisions relating to new motor vehicles.

Massachusetts' adopted LEV program must be revised to the extent necessary for the state to comply with all aspects of the requirements of § 51.120.

9. Subpart EE is amended by adding a new § 52.1530, to read as follows:

§ 52.1530 Requirements for state implementation plan revisions relating to new motor vehicles.

New Hampshire must comply with the requirements of § 51.120.

10. Subpart FF is amended by adding a new § 52.1583, to read as follows:

§ 52.1583 Requirements for state implementation plan revisions relating to new motor vehicles.

New Jersey must comply with the requirements of § 51.120.

11. Subpart HH is amended by adding a new § 52.1674, to read as follows:

§ 52.1674 Requirements for state implementation plan revisions relating to new motor vehicles.

New York's adopted LEV program must be revised to the extent necessary for the state to comply with all aspects of the requirements of § 51.120.

12. Subpart NN is amended by adding a new § 52.2057, to read as follows:

§ 52.2057 Requirements for state implementation plan revisions relating to new motor vehicles.

Pennsylvania must comply with the requirements of § 51.120.

13. Subpart OO is amended by adding a new § 52.2079, to read as follows:

§ 52.2079 Requirements for state implementation plan revisions relating to new motor vehicles.

Rhode Island must comply with the requirements of § 51.120.

14. Subpart UU is amended by adding a new § 52.2385, to read as follows:

§ 52.2385 Requirements for state implementation plan revisions relating to new motor vehicles.

Vermont must comply with the requirements of § 51.120.

15. Subpart VV is amended by adding a new § 52.2453, to read as follows:

§ 52.2453 Requirements for state implementation plan revisions relating to new motor vehicles.

Virginia must comply with the requirements of § 51.120 with respect to the portion of Virginia that in 1990 was located in the Consolidated Metropolitan Statistical Area containing the District of Columbia.

PART 85—CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES AND MOTOR VEHICLE ENGINES

1. The authority citation for part 85 is revised to read as follows:

Authority: 42 U.S.C. 7507, 7521, 7522, 7524, 7525, 7541, 7542, 7543, 7547, 7601(a), unless otherwise noted.

2. Part 85 is amended by adding subpart X to read as follows:

Subpart X—Determination of Model Year for Motor Vehicles and Engines Used in Motor Vehicles Under Section 177 and Part A of Title II of the Clean Air Act

Sec.
85.2301 Applicability.
85.2302 Definition of model year.
85.2303 Duration of model year.
85.2304 Definition of production period.
85.2305 Duration and applicability of certificates of conformity.

Subpart X—Determination of Model Year for Motor Vehicles and Engines Used in Motor Vehicles Under Section 177 and Part A of Title II of the Clean Air Act

§ 85.2301 Applicability.

The definitions provided by this subpart are effective February 23, 1995 and apply to all light-duty motor vehicles and trucks, heavy-duty motor vehicles and heavy-duty engines used in motor vehicles, and on-highway motorcycles as such vehicles and engines are regulated under section 177 and Title II part A of the Clean Air Act.

§ 85.2302 Definition of model year.

Model year means the manufacturer's annual production period (as determined under § 85.2304) which includes January 1 of such calendar year, provided, that if the manufacturer has no annual production period, the term ''model year'' shall mean the calendar year.

§ 85.2303 Duration of model year.

A specific model year must always include January 1 of the calendar year for which it is designated and may not include a January 1 of any other calendar year. Thus, the maximum duration of a model year is one calendar year plus 364 days.

§ 85.2304 Definition of production period.

(a) The ''annual production period'' for all models within an engine family of light-duty motor vehicles, heavy-duty motor vehicles and engines, and on-highway motorcycles begins either: when any vehicle or engine within the engine family is first produced; or on January 2 of the calendar year preceding the year for which the model year is designated, whichever date is later. The annual production period ends either: When the last such vehicle or engine is produced; or on December 31 of the calendar year for which the model year is named, whichever date is sooner.

(b) The date when a vehicle or engine is first produced is the ''Job 1 date,'' which is defined as that calendar date on which a manufacturer completes all manufacturing and assembling processes necessary to produce the first saleable unit of the designated model which is in all material respects the same as the vehicle or engine described in the manufacturer's application for certification. The ''Job 1 date'' may be a date earlier in time than the date on which the certificate of conformity is issued.

§ 85.2305 Duration and applicability of certificates of conformity.

(a) Except as provided in paragraph (b) of this section, a certificate of conformity is deemed to be effective and cover the vehicles or engines named in such certificate and produced during the annual production period, as defined in § 85.2304.

(b) Section 203 of the Clean Air Act prohibits the sale, offering for sale, delivery for introduction into commerce, and introduction into commerce, of any new vehicle or engine not covered by a certificate of conformity unless it is an imported vehicle exempted by the Administrator or otherwise authorized jointly by EPA and U.S. Customs Service regulations. However, the Act does not prohibit the production of vehicles or engines without a certificate of conformity. Vehicles or engines produced prior to the effective date of a certificate of conformity, as defined in paragraph (a) of this section, may also be covered by the certificate if the following conditions are met:

(1) The vehicles or engines conform in all material respects to the vehicles or engines described in the application for the certificate of conformity:

(2) The vehicles or engines are not sold, offered for sale, introduced into commerce, or delivered for introduction into commerce prior to the effective date of the certificate of conformity;

(3) The Agency is notified prior to the beginning of production when such production will start, and the Agency is provided full opportunity to inspect and/or test the vehicles during and after their production; for example, the Agency must have the opportunity to conduct selective enforcement auditing production line testing as if the vehicles had been produced after the effective date of the certificate.

(c) New vehicles or engines imported by an original equipment manufacturer after December 31 of the calendar year for which the model year was named are still covered by the certificate of conformity as long as the production of the vehicle or engine was completed before December 31 of that year. This paragraph does not apply to vehicles that may be covered by certificates held by independent commercial importers unless specifically approved by EPA.

(d) Vehicles or engines produced after December 31 of the calendar year for which the model year is named are not covered by the certificate of conformity for that model year. A new certificate of conformity demonstrating compliance with currently applicable standards must be obtained for these vehicles or engines even if they are identical to vehicles or engines built before December 31.

(e) The extended coverage period described here for a certificate of conformity (i.e., up to one year plus 364 days) is primarily intended to allow flexibility in the introduction of new models. Under no circumstances should it be interpreted that existing models may ''skip'' yearly certification by pulling ahead the production of every other model year.

[FR Doc. 95–1387 Filed 1–23–95; 8:45 am]

BILLING CODE 6560–50–P

federal register

Tuesday
January 24, 1995

Part IV

Department of Health and Human Services

Public Health Service

42 CFR Part 63a
National Institutes of Health Training Grants; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 63a

RIN 0905–AD56

National Institutes of Health Training Grants

AGENCY: National Institutes of Health, Public Health Service, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) proposes to issue regulations governing non-National Research Service Award (NRSA) training grants awarded under Public Health Service (PHS) Act, and the Clean Air Act, as amended. Regulations which at one time governed both NIH training grants and training grants specific to the National Library of Medicine (NLM) were revised in June of 1991 as part of the overall updating of all regulations concerning NLM, and now govern only NLM-specific training grants. New regulations are required to implement other non-NRSA research training grant authorities set forth in the National Institutes of Health Revitalization Act of 1993, the Clean Air Act, and other health research-related legislation.

DATES: Comments must be received on or before March 27, 1995. Any regulations which are adopted will be effective 30 days after publication in the **Federal Register**.

ADDRESSES: Comments should be sent to Mr. Jerry Moore, Regulatory Affairs Officer, National Institutes of Health, Building 31, Room 1B–25, 31 Center DR MSC 2075, 9000 Rockville Pike, Bethesda, Maryland 20892–2340.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Moore at the address above, or telephone (301) 496–4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The principal financial assistance support mechanism for research training by NIH and its constituent award-making organizations is through the NRSA program, authorized by section 487 of the PHS Act and addressed in regulations found at 42 CFR part 66. The regulations which NIH proposes to issue concerning training grants would not affect the NRSA Program or amend the regulations in part 66.

Prior to the advent of the NRSA program, the NIH institutes had used training authority contained in section 301 of the PHS Act and related sections that authorized each institute to conduct or support research training. The NRSA program generally replaced this training authority, except in a few isolated cases.

In 1985, the Congress, in a major revision of NIH's authorities, the Health Research Extension Act of 1985 (Public Law 99–158), authorized the directors of the research institutes of NIH to conduct (at NIH) and support non-NRSA research training. This authority, as set forth in section 405(b)(1)(C) of the PHS Act, is limited to research training for which fellowship support is not provided under the NRSA program and which is not residency training of physicians or other health professionals.

Subsequently, on June 26, 1991, NIH published a final rule in the **Federal Register** (56 FR 29187 et seq.) revising regulations at 42 CFR part 64, (then) entitled National Institutes of Health and National Library of Medicine Training Grants, as part of the overall updating of all regulations concerning the National Library of Medicine. As a result, part 64 now addresses only NLM training grants authorized by section 472 of the PHS Act. NIH needs to provide regulations for research training grant authorities not otherwise addressed in the NLM-specific regulations in part 64.

NIH also needs to provide regulations for training grants authorized by section 901 of the Clean Air Act Amendments of 1990, Public Law 101–549, which amended section 103(h)(2) of the Clean Air Act. Section 901 directs the Director of the National Institute of Environmental Health Sciences (NIEHS) to conduct a program for the education and training of physicians in environmental health.

In 1993, the Congress, in the most recent major revision of NIH's authorities, the NIH Revitalization Act of 1993 (Public Law 103–43), authorized the Director of the National Center for Human Genome Research (NCHGR), as set forth in PHS Act section 485B(b), to conduct and support training in human genome research for which fellowship support is not provided under PHS Act section 487 and that is not residency training of physicians or other health professionals. In codifying the establishment of the Office of AIDS Research (OAR), Public Law 103–43 also authorized the Director of OAR, in carrying out AIDS research, to support the training of American scientists abroad and foreign scientists in the United States, as set forth in section 2354(a)(3)(C) of the PHS Act.

Additionally, section 2315(a)(1) of the PHS Act directs the Secretary, acting through the Director of NIH, to make grants to international organizations concerned with public health to promote and expedite international research and training concerning the natural history and pathogenesis of the human immunodeficiency virus and the development and evaluation of vaccines and treatments for acquired immunodeficiency syndrome (AIDS) and opportunistic infections. The John E. Fogarty International Center for Advanced Study in the Health Sciences (FIC), NIH, also awards grants for training in international cooperative biomedical research endeavors to public and nonprofit private institutions in the United States and participating foreign countries under section 307(b)(3) of the PHS Act.

NIH proposes to issue new regulations at part 63a to govern implementation of these training grant authorities. The regulations are intended to serve as a permanent set of regulations that can be adapted for future training grant programs (both research training and non-research training). Since the rules for training programs are largely the same irrespective of the funding source, it makes sense to have a single set of uniform rules that applies to all NIH training grant programs, with any exceptions or special provisions for particular programs as necessary.

Readers of this notice should understand that in publishing the new regulations, NIH is not initiating any new training programs. Rather, NIH is simply establishing regulations to govern existing training grant authorities.

This Notice of Proposed Rulemaking (NPRM) sets forth what training is covered by the regulations, the nature and purpose of the training, what institutions are eligible to apply, how to apply, how grants are awarded, and conditions imposed on recipients. The purpose of this NPRM is to invite public comment on the proposed regulations. Implementation of the particular training grant programs encompassed by these proposed regulations rests with the statutorily authorized awarding organizations and is subject to the availability of funding for the purpose, as well as programmatic priorities determined by the awarding organizations.

Public Law 103–227, enacted on March 31, 1994, prohibits smoking in certain facilities in which minors will be present. The Department of Health and Human Services is now preparing to implement the provisions of that law. Until those implementation plans are in place, PHS continues to strongly encourage all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products.

The following statements are provided for the information of the public.

Regulatory Impact Statement

Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, requires the Department to prepare an analysis for any rule that meets one of the E. O. 12866 criteria for a significant regulatory action; that is, that may—

Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In addition, the Department prepares a regulatory flexibility analysis, in accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6), if the rule is expected to have a significant impact on a substantial number of small entities.

For the reasons outlined below, we do not believe this NPRM is economically significant nor do we believe that it will have a significant impact on a substantial number of small entities. In addition, this NPRM is not inconsistent with the actions of any other agency.

This NPRM merely codifies internal policies and procedures of the Federal government used to administer non-NRSA training grants awarded by the directors of the national research institutes of NIH under the authority set forth in section 405(b)(1)(C) of the PHS Act; the Director, FIC, under the authority in section 307 of the PHS Act delegated by the Secretary; the Director, NCHGR, under the authority set forth in section 485B(b) of the PHS Act; the Secretary, acting through the Director of NIH, under the authority set forth in section 2315(a)(1) of the PHS Act; the Director of the Office of AIDS Research under the authority set forth in section 2354(a)(3)(C) of the PHS Act; and the Director of NIEHS under the authority set forth in section 103(h)(2) of the Clean Air Act. These grants do not have a significant economic or policy impact on a broad cross-section of the public. Furthermore, the proposed regulations would only affect those highly qualified health professionals and institutions interested in participating in non-NRSA research training programs, subject to the normal accountability requirements for program participation. No individual or institution is obligated to participate in the program.

For these same reasons, the Secretary certifies that this NPRM will not have a significant economic impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis, as defined under the Regulatory Flexibility Act of 1980, is not required.

Paperwork Reduction Act

This NPRM does not contain any information collection requirements which are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) numbered program affected by these proposed regulations is:

93.837—Heart and Vascular Diseases Research

List of Subjects in 42 CFR Part 63a

Environmental health; Grant programs—health; Health; Medical research.

Dated: November 7, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: December 27, 1994.

Donna E. Shalala,

Secretary.

Accordingly, it is proposed to amend chapter 1 of title 42 of the Code of Federal Regulations by adding a new part 63a to read as set forth below.

PART 63a—NATIONAL INSTITUTES OF HEALTH TRAINING GRANTS

Sec.

63a.1 To what programs do these regulations apply?
63a.2 Definitions.
63a.3 What is the purpose of training grants?
63a.4 Who is eligible for a training grant?
63a.5 How to apply for a training grant.
63a.6 How are training grant applications evaluated?
63a.7 Awards.
63a.8 How long does grant support last?
63a.9 What are the terms and conditions of awards?
63a.10 How may training grant funds be spent?
63a.11 Other HHS regulations and policies that apply.

Authority: 42 U.S.C. 216, 242*l*(b)(3), 284(b)(1)(C), 287c(b), 300cc–15(a)(1), 300cc–41(a)(3)(C), 7403(h)(2).

§ 63a.1 To what programs do these regulations apply?

(a) The regulations of this part apply to:

(1) Grants awarded by the John E. Fogarty International Center for Advanced Study in the Health Sciences, NIH, for training in international cooperative biomedical research endeavors, as authorized under section 307(b)(3) of the Act;

(2) Grants awarded by NIH for research training with respect to the human diseases, disorders, or other aspects of human health or biomedical research, for which the institute or other awarding component was established, for which fellowship support is not provided under section 487 of the Act and which is not residency training of physicians or other health professionals, as authorized by sections 405(b)(1)(C), 485B(b), 2315(a)(1), and 2354(a)(3)(C) of the Act; and,

(3) Grants awarded by the National Institute of Environmental Health Sciences, NIH, for the education and training of physicians in environmental health, as authorized under section 103(h)(2) of the Clean Air Act, as amended.

(b) These regulations also apply to cooperative agreements awarded to support the training specified in paragraph (a) of this section. References to ''grant(s)'' shall include ''cooperative agreement(s).''

(c) The regulations of this part do not apply to:

(1) Research training support under the National Research Service Awards Program (see part 66 of this chapter);

(2) Research training support under NIH Center Grants programs (see part 52a of this chapter);

(3) Research training support under traineeship programs (see part 63 of this chapter);

(4) Research training support under the NIH AIDS Research Loan Repayment Program (see section 487A of the Act); or

(5) Research training support under National Library of Medicine training grant programs (see part 64 of this chapter).

§ 63a.2 Definitions.

As used in this part:

''Act'' means the Public Health Service Act, as amended (42 U.S.C. 201 et seq.).

''Cooperative agreement'' See § 63a.1(b).

''HHS'' means the Department of Health and Human Services.

''NIH'' means the National Institutes of Health and its organizational components that award training grants.

''Nonprofit'' as applied to any agency or institution, means an agency or institution which is a corporation or association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

''Program director'' means the single individual named by the grantee in the grant application and approved by the Secretary, who is responsible for the management and conduct of the training program.

''Project period'' See § 63a.8(a).

''Secretary'' means the Secretary of Health and Human Services and any other official of HHS to whom the authority involved is delegated.

''Stipend'' means a payment to an individual that is intended to help meet that individual's subsistence expenses during the training period.

''Training grant'' means an award of funds to an eligible agency or institution for a training program authorized under § 63a.1 to carry out one or more of the purposes set forth in § 63a.3.

§ 63a.3 What is the purpose of training grants?

The purpose of a training grant is to provide financial assistance to an eligible agency or institution to enable it to provide research training to individuals in the diagnosis, prevention, treatment, or control of human diseases or disorders, or other aspects of human health or biomedical research, or in environmental health, in order to increase the number of facilities which provide qualified training and the number of persons having special competence in these fields.

§ 63a.4 Who is eligible for a training grant?

(a) *General.* Except as otherwise provided in this section or prohibited by law, any public or private for-profit or nonprofit agency, institution, or entity is eligible for a training grant.

(b) *International training grants for AIDS research.* Any international organization concerned with public health is eligible for a training grant for projects to support individuals for research training relating to acquired immunodeficiency syndrome (AIDS) authorized under section 2315(b)(1) of the Act. In awarding these grants, preference shall be given to (1) training activities conducted by, or in cooperation with, the World Health Organization and (2), with respect to training activities in the Western Hemisphere, projects conducted by, or in cooperation with, the Pan American Health Organization or the World Health Organization.

§ 63a.5 How to apply for a training grant.

Any agency, institution, or entity interested in applying for a grant under this part must submit an application at the time and in the form and manner that the Secretary may require.

§ 63a.6 How are training grant applications evaluated?

The Secretary shall evaluate applications through the officers and employees, experts, consultants, or groups engaged by the Secretary for that purpose, including review or consultation with the appropriate advisory council or other body as may be required by law. The Secretary's evaluation will be for merit and shall take into account, among other pertinent factors, the significance of the program, the qualifications and competency of the program director and proposed staff, the adequacy of the selection criteria for trainees under the program, the adequacy of the applicant's resources available for the program, and the amount of grant funds necessary for completion of its objectives.

§ 63a.7 Awards.

Criteria. Within the limits of available funds, the Secretary may award training grants for training programs which:

(a) Are determined to be meritorious, and

(b) Best carry out the purposes of the particular statutory program described in § 63a.1 and the regulations of this part.

§ 63a.8 How long does grant support last?

(a) The notice of the grant award specifies how long the Secretary intends to support the project (program) without requiring the grantee to recompete for funds. This period, called the ''project period,'' will usually be for one to five years.

(b) Generally, the grant will be initially for one year and subsequent continuation awards will be for one year at a time. A grantee must submit a separate application at the time and in the form and manner that the Secretary may require to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of these awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require determination by the Secretary that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

(d) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided that a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for that period, the Secretary may adjust the amounts awarded by withdrawing the excess.

§ 63a.9 What are the terms and conditions of awards?

In addition to any requirements imposed by law, grants awarded under this part are subject to any terms and conditions imposed by the Secretary to carry out the purpose of the grant or assure or protect advancement of the approved program, the interests of the public health, or the conservation of grant funds.

§ 63a.10 How may training grant funds be spent?

(a) *Authorized expenditures; general.* A grantee shall expend funds it receives under this part solely in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the grant award, and the applicable cost principles in 45 CFR section 74.27.

(b) *Authorized categories of expenditures.* Subject to any limitations imposed in the approved application and budget or as a condition of the award, grant funds may be expended for costs within the following expense categories:

(1) Expenses of the grantee in providing training and instruction under the particular program, including salaries of faculty and support personnel, and the costs of equipment and supplies;

(2) Stipends and allowances to individuals during the period of their training and instruction; and,

(3) If separately justified and authorized under the particular program, tuition, fees, and trainee travel expenses which are necessary to carry out the purpose of the training grant.

(c) *Expenditures not authorized.* Grant funds may not be expended for:

(1) Compensation for employment or for the performance of personal services by individuals receiving training and instruction; or

(2) Payments to any individual who does not meet the minimum qualifications for training and instruction established by the grantee and approved by the Secretary or who has failed to demonstrate satisfactory participation in the training in accordance with the usual standards and procedures of the grantee.

§ 63a.11 Other HHS regulations and policies that apply.

Several other HHS regulations and policies apply to this part. These include, but are not necessarily limited to:

42 CFR part 50, subpart A—Responsibility of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science
42 CFR part 50, subpart D—Public Health Service grant appeals procedure
45 CFR part 16—Procedures of the Departmental Grant Appeals Board
45 CFR part 46—Protection of human subjects
45 CFR part 74—Administration of grants
45 CFR part 75—Informal grant appeals procedures
45 CFR part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)
45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—effectuation of title VI of the Civil Rights Act of 1964
45 CFR part 81—Practice and procedure for hearings under part 80 of this title
45 CFR part 84—Nondiscrimination on the basis of handicap in programs and activities receiving Federal financial assistance
45 CFR part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance
45 CFR part 92—Uniform administrative requirements for grants and cooperative agreements to State and local governments
45 CFR part 93—New restrictions on lobbying
51 FR 16958 (May 7, 1986)—NIH Guidelines for Research Involving Recombinant DNA Molecules
59 FR 14508 (as republished March 28, 1994)—NIH Guidelines on the Inclusion of Women and Minorities as Subjects in Clinical Research
Public Health Service Grants Policy Statement, DHHS Publication No. (OASH)94–50,000 (Rev.) April 1, 1994.
Public Health Service Policy on Humane Care and Use of Laboratory Animals, Office for Protection from Research Risks, NIH (Revised September 1986).

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federal register

Tuesday
January 24, 1995

Part V

Department of Education

34 CFR Part 645

Upward Bound Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995; Final Rule and Notice

DEPARTMENT OF EDUCATION

34 CFR Part 645

RIN 1840–AB65

Upward Bound Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Upward Bound Program in order to further implement statutory changes made to the Upward Bound Program by the Higher Education Amendments of 1992 and to clarify and simplify certain requirements governing the program. The selection criteria, prior experience criteria, and grantee accountability provisions are affected by these changes.

EFFECTIVE DATE: These regulations take effect February 23, 1995.

FOR FURTHER INFORMATION CONTACT: Prince O. Teal, Jr., U.S. Department of Education, 600 Independence Avenue, S.W., Suite 600, Portals Building, Washington, D.C. 20202–5249. Telephone: (202) 708–4804. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Upward Bound Program provides grants to institutions of higher education; public and private agencies and organizations; combinations of institutions, agencies, and organizations; and secondary schools under special circumstances. The purpose of the program is to generate the skills and motivation necessary for success in education beyond high school.

The purposes and allowable activities of the Upward Bound Program support the National Education Goals. Specifically, the program supports projects designed to increase high school graduation rates; increase competency in challenging subject matters including English, mathematics, science, foreign language, and literature; encourage more students to pursue programs that lead to careers in mathematics and science; and help gain parental participation in the social, emotional, and academic growth of their children.

On September 2, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for the Upward Bound Program in the **Federal Register** (59 FR 45964–70).

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 48 persons submitted comments on the proposed regulations. An analysis of the comments and of the changes made in the regulations since publication of the NPRM is published as an appendix to these final regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 645

Colleges and Universities, Education of disadvantaged, Grant programs-education, Reporting and recordkeeping requirements, Secondary education.

(Catalog of Federal Domestic Assistance Number 84.047, Upward Bound Program)

Dated: January 17, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 645 to read as follows:

PART 645—UPWARD BOUND PROGRAM

Subpart A—General

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645.2 Who is eligible for a grant?
645.3 Who is eligible to participate in an Upward Bound project?
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Subpart B—What Kinds of Projects and Services Does the Secretary Assist Under This Program?

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645.11 What services do all Upward Bound projects provide?
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645.43 What other requirements must a grantee meet?

Authority: 20 U.S.C. 1070a–11 and 1070a–13, unless otherwise noted.

Subpart A—General

§ 645.1 What is the Upward Bound Program?

(a) The Upward Bound Program provides Federal grants to projects designed to generate in program participants the skills and motivation necessary to complete a program of secondary education and to enter and succeed in a program of postsecondary education.

(b) The Upward Bound Program provides Federal grants for the following three types of projects:

(1) Regular Upward Bound projects.

(2) Upward Bound Math and Science Centers.

(3) Veterans Upward Bound projects.

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

§ 645.2 Who is eligible for a grant?

The following entities are eligible to apply for a grant to carry out an Upward Bound project:

(a) Institutions of higher education.

(b) Public or private agencies or organizations.

(c) Secondary schools, in exceptional cases, if there are no other applicants capable of providing this program in the target area or areas to be served by the proposed project.

(d) A combination of the types of institutions, agencies, and organizations described in paragraphs (a) and (b) of this section.

(Authority: 20 U.S.C 1070a–11 and 1070a–13)

§ 645.3 Who is eligible to participate in an Upward Bound project?

An individual is eligible to participate in a Regular, Veterans, or a Math and Science Upward Bound project if the individual meets all of the following requirements:

(a) (1) Is a citizen or national of the United States.

(2) Is a permanent resident of the United States.

(3) Is in the United States for other than a temporary purpose and provides evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident.

(4) Is a permanent resident of Guam, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(5) Is a resident of the Freely Associated States—the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau.

(b) Is—(1) A potential first-generation college student; or

(2) A low-income individual.

(c) Has a need for academic support, as determined by the grantee, in order to pursue successfully a program of education beyond high school.

(d) At the time of initial selection, has completed the eighth grade but has not entered the twelfth grade and is at least 13 years old but not older than 19, although the Secretary may waive the age requirement if the applicant demonstrates that the limitation would defeat the purposes of the Upward Bound program. However, a veteran as defined in § 645.6, regardless of age, is eligible to participate in an Upward Bound project if he or she satisfies the eligibility requirements in paragraphs (a), (b), and (c) of this section.

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

§ 645.4 What are the grantee requirements with respect to low income and first-generation participants?

(a) At least two-thirds of the eligible participants a grantee serves must at the time of initial selection qualify as both low-income individuals and potential first-generation college students. The remaining participants must at the time of initial selection qualify as either low-income individuals or potential first generation college students.

(b) For purposes of documenting a participant's low-income status the following applies:

(1) In the case of a student who is not an independent student, an institution shall document that the student is a low-income individual by obtaining and maintaining—

(i) A signed statement from the student's parent or legal guardian regarding family income;

(ii) Verification of family income from another governmental source;

(iii) A signed financial aid application; or

(iv) A signed United States or Puerto Rican income tax return.

(2) In the case of a student who is an independent student, an institution shall document that the student is a low-income individual by obtaining and maintaining—

(i) A signed statement from the student regarding family income;

(ii) Verification of family income from another governmental source;

(iii) A signed financial aid application; or

(iv) A signed United States or Puerto Rican income tax return.

(c) For purposes of documenting potential first generation college student status, documentation consists of a signed statement from a dependent participant's parent, or a signed statement from an independent participant.

(d) A grantee does not have to revalidate a participant's eligibility after the participant's initial selection.

(Approved by the Office of Management and Budget under control number 1840–0550)

(Authority: 20 U.S.C. 1070a–11)

§ 645.5 What regulations apply?

The following regulations apply to the Upward Bound Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

(2) 34 CFR Part 75 (Direct Grant Programs), except for § 75.511;

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations), except for the definition of ''secondary school'' in 34 CFR 77.1;

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) 34 CFR Part 82 (New Restrictions on Lobbying);

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants));

(7) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this Part 645.

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

§ 645.6 What definitions apply to the Upward Bound Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Budget period
EDGAR
Equipment
Facilities
Grant
Grantee
Project
Project period
Secretary
State
Supplies

(b) *Other Definitions.* The following definitions also apply to this part:

Family taxable income means—

(1) With regard to a dependent student, the taxable income of the individual's parents;

(2) With regard to a dependent student who is an orphan or ward of the court, no taxable income;

(3) With regard to an independent student, the taxable income of the student and his or her spouse.

HEA means the Higher Education Act of 1965, as amended.

Independent student means a student who—

(1) Is an orphan or ward of the court;

(2) Is a veteran of the Armed Forces of the United States (as defined in this section);

(3) Is a married individual; or

(4) Has legal dependents other than a spouse.

Institution of higher education means an educational institution as defined in sections 1201(a) and 481 of the HEA.

Limited English proficiency with reference to an individual, means an individual whose native language is other than English and who has

sufficient difficulty speaking, reading, writing, or understanding the English language to deny that individual the opportunity to learn successfully in classrooms in which English is the language of instruction.

Low-income individual means an individual whose family taxable income did not exceed 150 percent of the poverty level amount in the calendar year preceding the year in which the individual initially participates in the project. The poverty level amount is determined by using criteria of poverty established by the Bureau of the Census of the U.S. Department of Commerce.

Organization/Agency means an entity that is legally authorized to operate programs such as Upward Bound in the State where it is located.

Participant means an individual who—

(1) Is determined to be eligible to participate in the project under § 645.3;

(2) Resides in the target area, or is enrolled in a target school at the time of acceptance into the project; and

(3) Has been determined by the project director to be committed to the project, as evidenced by being allowed to continue in the project for at least—

(i) Ten days in a summer component if the individual first enrolled in an Upward Bound project's summer component; or

(ii) Sixty days if the individual first enrolled in an Upward Bound project's academic year component.

Potential first-generation college student means—

(1) An individual neither of whose natural or adoptive parents received a baccalaureate degree; or

(2) A student who, prior to the age of 18, regularly resided with and received support from only one natural or adoptive parent and whose supporting parent did not receive a baccalaureate degree.

Secondary school means a school that provides secondary education as determined under State law.

Target area means a discrete local or regional geographical area designated by the applicant as the area to be served by an Upward Bound project.

Target school means a school designated by the applicant as a focus of project services.

Veteran means a person who served on active duty as a member of the Armed Forces of the United States—

(1) For a period of more than 180 days, any part of which occurred after January 31, 1955, and who was discharged or released from active duty under conditions other than dishonorable; or

(2) After January 31, 1955, and who was discharged or released from active duty because of a service-connected disability.

(Authority: 20 U.S.C. 1001 et seq., 1070a–11, 1070a–13, 1088, 1141, 1141a, and 3283(a)).

Subpart B—What Kinds of Projects and Services Does the Secretary Assist Under This Program?

§ 645.10 What kinds of projects are supported under the Upward Bound Program?

The Secretary provides grants to the following three types of Upward Bound projects:

(a) Regular Upward Bound projects designed to prepare high school students for programs of postsecondary education.

(b) Upward Bound Math and Science Centers designed to prepare high school students for postsecondary education programs that lead to careers in the fields of math and science.

(c) Veterans Upward Bound projects designed to assist veterans to prepare for a program of postsecondary education.

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

§ 645.11 What services do all Upward Bound projects provide?

(a) An Upward Bound project that has received funds under this part for at least two years shall include as part of its core curriculum, instruction in—

(1) Mathematics through pre-calculus;

(2) Laboratory science;

(3) Foreign language;

(4) Composition; and

(5) Literature.

(b) All Upward Bound projects may provide such services as—

(1) Instruction in subjects other than those listed in § 645.11(a) that are necessary for success in education beyond high school;

(2) Personal counseling;

(3) Academic advice and assistance in secondary school course selection;

(4) Tutorial services;

(5) Exposure to cultural events, academic programs, and other educational activities not usually available to disadvantaged youths;

(6) Activities designed to acquaint youths participating in the project with the range of career options available to them;

(7) Instruction designed to prepare youths participating in the project for careers in which persons from disadvantaged backgrounds are particularly underrepresented;

(8) Mentoring programs involving elementary or secondary school teachers, faculty members at institutions of higher education, students, or any combination of these persons and other professional individuals; and

(9) Programs and activities such as those described in paragraphs (b)(1) through (b)(8) of this section that are specifically designed for individuals with limited proficiency in English.

(Authority: 20 U.S.C. 1070a–13)

§ 645.12 How are regular Upward Bound projects organized?

(a) Regular Upward Bound projects—

(1) Must provide participants with a summer instructional component that is designed to simulate a college-going experience for participants, and an academic year component; and

(2) May provide a summer bridge component to those Upward Bound participants who have graduated from secondary school and intend to enroll in an institution of higher education in the following fall term. A summer bridge component provides participants with services and activities, including college courses, that aid in the transition from secondary education to postsecondary education.

(b) A summer instructional component shall—

(1) Be six weeks in length unless the grantee can demonstrate to the Secretary that a shorter period will not hinder the effectiveness of the project nor prevent the project from achieving its goals and objectives, and the Secretary approves that shorter period; and

(2) Provide participants with one or more of the services described in § 645.11 at least five days per week.

(c)(1) Except as provided in paragraph (c)(2) of this section, an academic year component shall provide program participants with one or more of the services described in § 645.11 on a weekly basis throughout the academic year and, to the extent possible, shall not prevent participants from fully participating in academic and nonacademic activities at the participants' secondary school.

(2) If an Upward Bound project's location or the project's staff are not readily accessible to participants because of distance or lack of transportation, the grantee may, with the Secretary's permission, provide project services to participants every two weeks during the academic year.

(Authority: 20 U.S.C. 1070a–13)

§ 645.13 What additional services do Upward Bound Math and Science Centers provide and how are they organized?

(a) In addition to the services that must be provided under § 645.11(a) and may be provided under § 645.11(b), an Upward Bound Math and Science Center must provide—

(1) Intensive instruction in mathematics and science, including

hands-on experience in laboratories, in computer facilities, and at field-sites;

(2) Activities that will provide participants with opportunities to learn from mathematicians and scientists who are engaged in research and teaching at the applicant institution, or who are engaged in research or applied science at hospitals, governmental laboratories, or other public and private agencies;

(3) Activities that will involve participants with graduate and undergraduate science and mathematics majors who may serve as tutors and counselors for participants; and

(4) A summer instructional component that is designed to simulate a college-going experience that is at least six weeks in length and includes daily coursework and other activities as described in this section as well as in § 645.11.

(b) Math Science Upward Bound Centers may also include—

(1) A summer bridge component consisting of math and science related coursework for those participants who have completed high school and intend on enrolling in an institution of higher education in the following fall term; and

(2) An academic year component designed by the applicant to enhance achievement of project objectives in the most cost-effective way taking into account the distances involved in reaching participants in the project's target area.

(Approved by the Office of Management and Budget under control number 1840–0550)

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

§ 645.14 What additional services do Veterans Upward Bound projects provide?

In addition to the services that must be provided under § 645.11(a) and may be provided under § 645.11(b), a Veterans Upward Bound project must—

(a) Provide intensive basic skills development in those academic subjects required for successful completion of a high school equivalency program and for admission to postsecondary education programs;

(b) Provide short-term remedial or refresher courses for veterans who are high school graduates but who have delayed pursuing postsecondary education. If the grantee is an institution of higher education, these courses shall not duplicate courses otherwise available to veterans at the institution; and

(c) Assist veterans in securing support services from other locally available resources such as the Veterans Administration, State veterans agencies, veterans associations, and other State and local agencies that serve veterans.

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

Subpart C—How Does One Apply for An Award?

§ 645.20 How many applications for an Upward Bound award may an eligible applicant submit?

(a) The Secretary accepts more than one application from an eligible entity so long as an additional application describes a project that serves a different participant population.

(b) Each application for funding under the Upward Bound Program shall state whether the application proposes a Regular Upward Bound project, an Upward Bound Math and Science Center, or a Veterans Upward Bound project.

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

§ 645.21 What assurances must an applicant include in an application?

An applicant must assure the Secretary that—

(a) Not less than two-thirds of the project's participants will be low-income individuals who are potential first generation college students; and

(b) That the remaining participants be either low-income individuals or potential first generation college students.

(Authority 20 U.S.C. 1070a–13)

Subpart D—How Does the Secretary Make a Grant?

§ 645.30 How does the Secretary decide which grants to make?

(a) The Secretary evaluates an application for a grant as follows:

(1)(i) The Secretary evaluates the application on the basis of the selection criteria in § 645.31.

(ii) The maximum score for all the criteria in § 645.31 is 100 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(2)(i) If an applicant for a new grant proposes to continue to serve substantially the same target population or schools that the applicant is serving under an expiring project, the Secretary evaluates the applicant's prior experience in delivering services under the expiring Upward Bound project on the basis of the criteria in § 645.32.

(ii) The maximum score for all the criteria in § 645.32 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(b) The Secretary makes grants in rank order on the basis of the application's total scores under paragraphs (a)(1) and (a)(2) of this section.

(c) If the total scores of two or more applications are the same and there are insufficient funds for these applications after the approval of higher-ranked applications, the Secretary uses whatever remaining funds are available to serve geographic areas that have been underserved by the Upward Bound Program.

(d) The Secretary may decline to make a grant to an applicant that carried out a project that involved the fraudulent use of funds under section 402A(c)(2)(B) of the HEA.

(Authority: 20 U.S.C. 1070a–11, 1070a–13)

§ 645.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application for a grant:

(a) *Need for the project* (24 points). In determining need for an Upward Bound project, the Secretary reviews each type of project (Regular, Math and Science, or Veterans) using different need criteria. The criteria for each type of project contain the same maximum score of 24 points and read as follows:

(1) The Secretary evaluates the need for a Regular Upward Bound project in the proposed target area on the basis of information contained in the application which clearly demonstrates that—

(i) The income level of families in the target area is low;

(ii) The education attainment level of adults in the target area is low;

(iii) Target high school dropout rates are high;

(iv) College-going rates in target high schools are low;

(v) Student/counselor ratios in the target high schools are high; and

(vi) Unaddressed academic, social and economic conditions in the target area pose serious problems for low-income, potentially first-generation college students.

(2) The Secretary evaluates the need for an Upward Bound Math and Science Center in the proposed target area on the basis of—

(i) The extent to which student performance on standardized achievement and assessment tests in mathematics and science in the target area is lower than State or national norms.

(ii) The extent to which potential participants attend schools in the target area that lack the resources and coursework that would help prepare persons for entry into postsecondary programs in mathematics, science, or engineering;

(iii) The extent to which such indicators as attendance data, dropout rates, college-going rates and student/counselor ratios in the target area indicate the importance of having additional educational opportunities available to low-income, first-generation students; and

(iv) The extent to which there are eligible students in the target area who have demonstrated interest and capacity to pursue academic programs and careers in mathematics and science, and who could benefit from an Upward Bound Math and Science program.

(3) The Secretary evaluates the need for a Veterans Upward Bound project in the proposed target area on the basis of clear evidence that shows—

(i) The proposed target area lacks the services for eligible veterans that the applicant proposes to provide;

(ii) A large number of veterans who reside in the target area are low income and potential first generation college students;

(iii) A large number of veterans who reside in the target area who have not completed high school or, have completed high school but have not enrolled in a program of postsecondary education; and

(iv) Other indicators of need for a Veterans Upward Bound project, including the presence of unaddressed academic or socio-economic problems of veterans in the area.

(b) *Objectives* (9 points). The Secretary evaluates the quality of the applicant's proposed project objectives on the basis of the extent to which they—

(1) Include both process and outcome objectives relating to the purpose of the applicable Upward Bound programs for which they are applying;

(2) Address the needs of the target area or target population; and

(3) Are measurable, ambitious, and attainable over the life of the project.

(c) *Plan of operation* (30 points). The Secretary determines the quality of the applicant's plan of operation by assessing the quality of—

(1) The plan to inform the faculty and staff at the applicant institution or agency and the interested individuals and organizations throughout the target area of the goals and objectives of the project;

(2) The plan for identifying, recruiting, and selecting participants to be served by the project;

(3) The plan for assessing individual participant needs and for monitoring the academic progress of participants while they are in Upward Bound;

(4) The plan for locating the project within the applicant's organizational structure;

(5) The curriculum, services and activities that are planned for participants in both the academic year and summer components;

(6) The planned timelines for accomplishing critical elements of the project;

(7) The plan to ensure effective and efficient administration of the project, including, but not limited to, financial management, student records management, and personnel management;

(8) The applicant's plan to use its resources and personnel to achieve project objectives and to coordinate the Upward Bound project with other projects for disadvantaged students;

(9) The plan to work cooperatively with parents and key administrative, teaching, and counseling personnel at the target schools to achieve project objectives; and

(10) A follow-up plan for tracking graduates of Upward Bound as they enter and continue in postsecondary education.

(d) *Applicant and community support* (16 points). The Secretary evaluates the applicant and community support for the proposed project on the basis of the extent to which—

(1) The applicant is committed to supplementing the project with resources that enhance the project such as: space, furniture and equipment, supplies, and the time and effort of personnel other than those employed in the project.

(2) The applicant has secured written commitments of support from schools, community organizations, and businesses, including the commitment of resources that will enhance the project as described in paragraph (d)(1) of this section.

(e) *Quality of personnel* (8 points). To determine the quality of personnel the applicant plans to use, the Secretary looks for information that shows—

(1) The qualifications required of the project director, including formal training or work experience in fields related to the objectives of the project and experience in designing, managing, or implementing similar projects;

(2) The qualifications required of each of the other personnel to be used in the project, including formal training or work experience in fields related to the objectives of the project;

(3) The quality of the applicant's plan for employing personnel who have succeeded in overcoming barriers similar to those confronting the project's target population.

(f) *Budget and cost effectiveness* (5 points). The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support planned project services and activities; and

(2) Costs are reasonable in relation to the objectives and scope of the project.

(g) *Evaluation plan* (8 points). The Secretary evaluates the quality of the evaluation plan for the project on the basis of the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project and include both quantitative and qualitative evaluation measures; and

(2) Examine in specific and measurable ways the success of the project in making progress toward achieving its process and outcomes objectives.

(Approved by the Office of Management and Budget under control number 1840–0550)

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

§ 645.32 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 645.30(a)(2), the Secretary reviews information relating to an applicant's performance under its expiring Upward Bound grant. This information includes information derived from annual performance reports, audit reports, site visit reports, project evaluation reports, and any other verifiable information submitted by the applicant.

(b) The Secretary evaluates the applicant's prior experience in delivering services on the basis of the following criteria:

(1) (3 points) Whether the applicant serves the number of participants agreed to under the approved application;

(2) (3 points) The extent to which project participants have demonstrated improvement in academic skills and competencies as measured by standardized achievement tests and grade point averages;

(3) (3 points) The extent to which project participants continue to participate in the Upward Bound Program until they complete their secondary education program;

(4) The extent to which participants who complete the project, or were scheduled to complete the project, undertake programs of postsecondary education; and

(5) (3 points) The extent to which participants who complete the project, or were scheduled to complete the project, succeed in education beyond high school, including the extent to

which they graduate from postsecondary education programs.

(Approved by the Office of Management and Budget under control number 1840–0550)

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

§ 645.33 How does the Secretary set the amount of a grant?

(a) The Secretary sets the amount of a grant on the basis of—

(1) 34 CFR 75.232 and 75.233, for new grants; and

(2) 34 CFR 75.253, for the second and subsequent years of a project period.

(b) If the circumstances described in section 402A(b)(3) of the HEA exist, the Secretary uses the available funds to set the amount of the grant at the lesser of—

(1) $190,000; or

(2) The amount requested by the applicant.

(Authority: 20 U.S.C. 1070a–11)

§ 645.34 How long is a project period?

(a) Except as provided in paragraph (b) of this section, a project period under the Upward Bound Program is four years.

(b) The Secretary approves a project period of five years for applicants that score in the highest ten percent of all applicants approved for new grants under the criteria in § 645.31.

(Authority: 20 U.S.C. 1070a–11)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 645.40 What are allowable costs?

The cost principles that apply to the Upward Bound Program are in 34 CFR part 74, subpart Q. Allowable costs include the following if they are reasonably related to the objectives of the project:

(a) In-service training of project staff.

(b) Rental of space if space is not available at the host institution and the space rented is not owned by the host institution.

(c) For participants in an Upward Bound residential summer component, room and board—computed on a weekly basis—not to exceed the weekly rate the host institution charges regularly enrolled students at the institution.

(d) Room and board for those persons responsible for dormitory supervision of participants during a residential summer component.

(e) Educational pamphlets and similar materials for distribution at workshops for the parents of participants.

(f) Student activity fees for Upward Bound participants.

(g) Admissions fees, transportation, Upward Bound T-shirts, and other costs necessary to participate in field trips, attend educational activities, visit museums, and attend other events that have as their purpose the intellectual, social, and cultural development of participants.

(h) Costs for one project-sponsored banquet or ceremony.

(i) Tuition costs for postsecondary credit courses at the host institution for participants in the summer bridge component.

(j)(1) Accident insurance to cover any injuries to a project participant while participating in a project activity; and

(2) Medical insurance and health service fees for the project participants while participating full-time in the summer component.

(k) Courses in English language instruction for project participants with limited proficiency in English and for whom English language proficiency is necessary to succeed in postsecondary education.

(l) Transportation costs of participants for regularly scheduled project activities.

(m) Transportation, meals, and overnight accommodations for staff members when they are required to accompany participants in project activities such as field trips.

(n) Purchase of computer hardware, computer software, or other equipment for student development, project administration and recordkeeping, if the applicant demonstrates to the Secretary's satisfaction that the equipment is required to meet the objectives of the project more economically or efficiently.

(o) Fees required for college admissions applications or entrance examinations if—

(1) A waiver of the fee is unavailable;

(2) The fee is paid by the grantee to a third party on behalf of a participant.

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

§ 645.41 What are unallowable costs?

Costs that may not be charged against a grant under this program include the following:

(a) Research not directly related to the evaluation or improvement of the project.

(b) Meals for staff except as provided in § 645.40 (d) and (m) and in paragraph (c) of this section.

(c) Room and board for administrative and instructional staff personnel who do not have responsibility for dormitory supervision of project participants during a residential summer component unless these costs are approved by the Secretary.

(d) Room and board for participants in Veterans Upward Bound projects.

(e) Construction, renovation or remodeling of any facilities.

(f) Tuition, stipends, or any other form of student financial aid for project staff beyond that provided to employees of the grantee as part of its regular fringe benefit package.

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

§ 645.42 What are Upward Bound stipends?

(a) An Upward Bound project may provide stipends for all participants who participate on a full-time basis.

(b) In order to receive the stipend, the participant must show evidence of satisfactory participation in activities of the project including—

(1) Regular attendance; and

(2) Performance in accordance with standards established by the grantee and described in the application.

(c) The grantee may prorate the amount of the stipend according to the number of scheduled sessions in which the student participated.

(d) The following rules govern the amounts of stipends a grantee is permitted to provide:

(1) For Regular Upward Bound projects and Upward Bound Math and Science Centers—

(i) For the academic year component, the stipend may not exceed $40 per month; and

(ii) For the summer component, the stipend may not exceed $60 per month.

(2) For Veterans Upward Bound projects, the stipend may not exceed $40 per month.

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

§ 645.43 What other requirements must a grantee meet?

(a) *Number of participants.* (1) In each budget period, Regular Upward Bound projects shall serve between 50 and 150 participants and Upward Bound Math and Science projects shall serve between 50 and 75 participants.

(2) Veterans Upward Bound projects shall serve a minimum of 120 veterans in each budget period.

(3) The Secretary may waive the requirements of paragraphs (a)(1) and (a)(2) of this section if the applicant can demonstrate that the project will be more cost effective and consistent with the objectives of the program if a greater or lesser number of participants will be served.

(b) *Project director.* (1) A grantee shall employ a full-time project director unless paragraph (b)(3) of this section applies.

(2) The grantee shall give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirement in paragraph (b)(1) of this section if the applicant demonstrates that the requirement will hinder coordination—

(i) Among the Federal TRIO Programs; or

(ii) Between the programs funded under sections 402A through 410 of the HEA and similar programs funded through other sources.

(c) *Recordkeeping.* For each participant, a grantee shall maintain a record of—

(1) The basis for the grantee's determination that the participant is eligible to participate in the project under § 645.3;

(2) The basis for the grantee's determination that the participant has a need for academic support in order to pursue successfully a program of education beyond secondary school;

(3) The services that are provided to the participant;

(4) The educational progress of the participant during high school and, to the degree possible, during the participant's pursuit of a postsecondary education program.

(Authority: 20 U.S.C. 1070a–11 and 1070a–13).

Appendix—Analysis of Comments and Responses

(**Note:** This appendix will not be codified in the Code of Federal Regulations.)

The following is an analysis of the comments and the changes in the regulations since publication of the NPRM on September 2, 1994 (59 FR 45964). Substantive issues are discussed under the section of the regulations to which they pertain. Minor changes made to the language published in the NPRM—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are generally not addressed.

What is the Upward Bound Program? (§ 645.1)

Comments: Many commenters objected to the stated purpose in § 645.1(a) of the proposed regulations because of the phrase ''to generate in program participants the skills and motivation necessary to persist in completing a program of secondary education and enter and complete a program of postsecondary education.'' Some commenters suggested that the phrase extends the stated purpose of the Upward Bound program beyond the scope of the purpose as defined in the law. Other commenters stated that this language would put an unwarranted burden upon grantees to collect enrollment and persistence data on participants through completion of a postsecondary education program.

Discussion: The Secretary does not believe that the regulations extend the purpose of the program beyond that stated in the law. The Secretary believes that the most important measure of success in education beyond secondary school is the completion of a postsecondary education program, but the Secretary recognizes that there may be other measures of success in postsecondary education besides graduation.

Changes: This section of the regulations has been changed to show that the purpose of Upward Bound is to ''complete a program of secondary education and to enter and succeed in a program of postsecondary education.''

Comments: Several commenters objected to the omission of the words ''regional center'' in § 645.1(b)(2) (Upward Bound Math and Science Centers) of the proposed regulations. The commenters did not want projects limited to local target areas.

Discussion: The Secretary believes that it is unwise to add ''regional centers'' to § 645.1(b)(2) of the regulations since it would indicate that the Secretary would fund only projects with a regional concept. The regulations as written do not eliminate the regional concept; in fact, the Secretary supports the regional concept of Upward Bound Math and Science Centers. The Secretary believes, however, that substituting the word ''center'' for the word ''project'' will better emphasize the broader mission and scope of the Upward Bound Math and Science Centers.

Changes: The word ''project'' has been replaced with the word ''center'' throughout the regulations. The definition of ''target area'' has also been revised to reinforce the Secretary's support of regional centers.

Who is eligible to participate in an Upward Bound project? (§ 645.3): Two commenters observed that § 645.3 does not include a waiver that would allow an Upward Bound project to serve youths who are less than 13 or who have not completed eighth grade, if the secondary schools in the project's target area have an unusually high dropout rate. The commenters felt that this waiver, which has been in all Upward Bound regulations since 1977, should be included in these Upward Bound regulations.

Discussion: The Secretary agrees with the commenters.

Changes: Section 645.3 has been revised to include a waiver of the age limit requirement.

Comments: One commenter objected to the omission of a provision that awards additional points, equal to 10 percent of the applicant's score, to applications from Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands. The commenter stated that the bonus points enable the applicants from these areas to compete for TRIO projects.

Discussion: The requirement that priority be given to proposals submitted by the territories was required by the Higher Education Amendments of 1992 but has been deleted from the Higher Education Act by the Higher Education Technical Amendments of 1993.

Changes: None.

Documentation of Low-income Status. (§ 645.4(b) (1) and (2))

Comments: One commenter stated that this section was confusing. The commenter suggested that the section leads one to believe that verification of low-income status must include a signed statement from a parent or guardian, an independent verification of family income, a signed financial aid application, and a signed income tax return. The commenter also stated that high school students would be required to complete financial aid applications. The commenter believes that the Secretary is requesting that all of these items be submitted in determining low-income status.

Discussion: The commenter is in error. The conditions described in § 645.4(b)(1) and (2) are alternative requirements, as indicated by the word ''or'' between the next to last and last conditions. The Secretary does not require all of these forms of documentation for each participant. Low-income status can be determined by submitting any one of the items listed.

Changes: None.

What Definitions Apply to the Upward Bound Program? (§ 645.6)

Comments: Several commenters disagreed with the definition of ''participant.'' Some commenters stated that the proposed definition, which requires that an individual receive more than one month of project services prior to being considered a participant of the project, was too restrictive. Others stated that the new definition would require grantees to devote significant resources for follow-up activities for many more participants. They further stated that the restrictive definition would not allow project staff to determine when an individual has engaged in sufficient project activities necessary to demonstrate the individual's commitment to the project.

Discussion: The Secretary agrees with the commenter that a fixed 30-day period may be too inflexible. Therefore, the Secretary has adopted a dual time period depending on whether the student first participated in a summer component or, an academic year component.

Because summer components only last six weeks and provide intensive services to students, the Secretary believes that if a project director allows a student to participate in that component for at least 10 days, which is approximately 25 percent of the summer component, the project director believes that the student is committed to the project. On the other hand, given the nature of an academic year component, the Secretary believes a 60-day period may be needed to establish an individual's commitment to the program.

Changes: The Secretary has revised the definition of ''participant.''

Comments: Several commenters questioned whether the proposed definition of ''participant,'' which requires that a participant be enrolled in a target school, would prohibit individuals who reside in the target area but attend school outside of the target area from participating in an Upward Bound project. The commenters further stated that individuals whose families choose private education or participate in either voluntary or involuntary desegregation plans might be eliminated from receiving the benefits of an Upward Bound project.

Discussion: The Secretary has determined that limiting participation in an Upward Bound project to individuals who are enrolled in a target school is too restrictive and may prevent some unintended individuals from benefitting from the services of an Upward Bound project. However, the Secretary still believes that it is important that the majority of individuals who are selected as participants be enrolled in a target school so they can benefit from the cooperative relationship that exists between the target school staff and the staff of the project.

Changes: The Secretary has revised the definition of participant to allow individuals who reside in the target area to benefit from the services provided by an Upward Bound project.

Comments: Some commenters stated that the definition of ''Potential first-generation college student'' was not clear and would cause confusion in the field regarding foster parents and stepparents. The commenters suggested that the words ''natural or adoptive'' be inserted before parent(s) in both subparagraph (1) and (2) of the definition.

Discussion: The Secretary agrees with the commenters.

Changes: The definition has been revised to include ''natural or adoptive'' in the definition.

Comments: One commenter expressed concern that the definition of ''veteran'' was restrictive and did not allow all veterans to receive the services provided by an Upward Bound project.

Discussion: The proposed definition of ''veteran'' has been used since the Upward Bound Veterans program was established in 1972. The Secretary believes that this definition remains as valid as it was in 1972 and sees no need to change the definition.

Changes: None.

What Kinds of Projects Are Supported Under the Upward Bound Program? (§ 645.10)

Comments: Several commenters suggested that the Secretary was expanding the expected outcomes of an Upward Bound Math and Science project by stating that a project is designed to prepare high school students for postsecondary education programs and for careers in the fields of math and science. The commenters stated that the Upward Bound Math and Science project should be required to prepare participants to enter postsecondary education programs prepared to study in fields of math and science. Preparation for careers in math and science is then the responsibility of the institution offering the postsecondary program.

Discussion: The Secretary agrees with the commenters.

Changes: The language of this section has been revised to reflect the suggestions of the commenters.

What Services Do All Upward Bound Projects Provide? (§ 645.11)

Comments: Several commenters stated that § 645.11 should be revised to eliminate literature, foreign language, and mathematics through pre-calculus from the required core curriculum of the Upward Bound projects.

Discussion: The requirement for a core curriculum is mandated in section 402 of the Higher Education Act and cannot be revised by the Secretary.

Changes: None.

Comments: Several commenters suggested that the core curriculum required by § 645.11 should be offered during the summer component, the academic year component, or both.

Discussion: The Secretary will not specify when the curriculum should be offered. The Secretary believes that applicants should have the flexibility to design projects around the needs of the participants. Nonetheless, the Secretary clearly expects that most of the core curriculum will be offered in the summer component.

Changes: None.

How Are Regular Upward Bound Projects Organized? (§ 645.12)

Comments: Many commenters felt that § 645.12(b)(2), which requires that the services described in § 645.11 be offered on a daily basis, was not clear. The commenters stated that the regulations require projects to provide all services on a daily basis.

Discussion: The Secretary agrees that the section is unclear. A project must provide some of the project's services and activities at least five days a week. It does not have to provide every service and activity on a daily basis.

Changes: Section 645.12(b)(2) has been revised to require a project to provide participants with one or more of the services as described in § 645.11 at least five days a week in a summer component. Section 645.12 (c)(1) has also been revised to allow a project to provide program participants with one or more of the services on a weekly basis throughout the academic year component.

What Additional Services Do Math and Science Upward Bound Centers Provide and How Are They Organized? (§ 645.13)

Comments: Several commenters objected to the use of ''state-of- the-art'' computer facilities in § 645.13(a)(1) because the phrase is vague and extremely subjective.

Discussion: The Secretary agrees with the commenters.

Changes: The phrase ''state-of-the-art'' has been deleted from this section of the regulations.

Comments: Several commenters suggested that § 645.13(a)(2) was too restrictive. The commenters stated that restricting project participants to contact with research faculty from the applicant institution prevents an institution that does not have research faculty from using persons in the community or private industry who have math and science expertise.

Discussion: The Secretary agrees with the commenters that the language is restrictive and does not allow a project to use professionals in the community.

Changes: Section 645.13(a)(2) has been revised to allow a project to use math and science professionals from the community.

Comments: One commenter suggested that the Math and Science Upward Bound Project should allow participants the opportunity to participate in a summer bridge experience. The commenter felt that participants could benefit from the experience provided by a summer bridge component.

Discussion: The Secretary agrees with the commenter; however, the Secretary feels that the courses offered to participants in a Upward Bound Math and Science bridge component should be courses that are math and science related.

Changes: Language has been added to § 645.13 that allows Upward Bound Math and Science projects to offer a summer bridge component, provided the courses a participant enrolls in are math and science related.

How Many Applications for an Upward Bound Project Award May an Eligible Applicant Submit? (§ 645.20)

Comments: Two commenters stated that the proposed regulations redefined and extended the definition of different populations beyond that used in the Higher Education Amendments of 1992.

Discussion: The Secretary disagrees with the commenters. The Secretary believes that the examples of different populations as defined in the NPRM are valid examples.

Changes: The Secretary has deleted language that provided examples of different populations. The deletion of this language will place the responsibility for demonstrating that the project outlined in a second application will serve a different population on the applicant.

What selection criteria does the Secretary use? (§ 645.31)

Comments: Several commenters proposed that § 645.31(a)(1)(v), which requests information on families within the target area, be changed to the collection of information on individuals. The commenters felt that information on families was not readily available.

Discussion: The Secretary agrees with the commenters.

Changes: The criterion that requests the education attainment levels of adults has been changed to reflect the collection of data on ''adults'' rather than data on families.

Comments: Several commenters suggested that § 645.31(a)(2) be revised to include an Upward Bound Math and Science target area as well as Upward Bound Math and Science target schools. The commenters felt that by adding target areas to the criterion the applicant would be able to better document the need for a project, if that project proposes to serve participants from large geographical areas such as States or regions.

Discussion: The Secretary agrees with the commenters.

Changes: Section 645.31(a)(2) has been revised to allow applicants to provide data that consider the target area as well as the target schools.

Comments: Many commenters suggested that § 645.31(a)(1) and § 645.31(c) could be improved by reordering certain questions to encourage brevity in proposals and a more logical flow in applications. The commenters also expressed the view that reordering the criteria would allow the peer reviewers to better evaluate the application.

Discussion: The Secretary agrees with the commenters.

Changes: Section 645.31 has been revised to address the suggested reordering. The Secretary has also revised several of the subsections to assure that each subsection is clear.

Comments: Several commenters suggested that the numerical score for each individual subsection under the ''need'' and ''plan of operation'' criteria in § 645.31 should be included in the regulations. The commenters feared that without a score, the peer reviewers would not properly score the applications.

Discussion: The Secretary does not agree that the inclusion of subsection scores would greatly assist the peer reviewers in properly scoring applications. The Secretary acknowledges that in these cases the weighting for each subsection is roughly equal.

Changes: None.

Comments: Several commenters suggested that reference to performance on aptitude tests should not be included in § 645.31(a)(2)(i). One commenter suggested that the inclusion of scores from aptitude tests as part of the need criteria may suggest that Upward Bound Math and Science projects are designed to serve only students who are performing at the highest level in their secondary education program. Other commenters suggested that ''aptitude'' testing is too politically sensitive and the term should be avoided.

Discussion: The Secretary disagrees with the commenters. The Secretary does not believe that the inclusion of ''aptitude tests'' in these regulations would in any way suggest that the Math and Science Upward Bound Centers are designed to serve students who are performing at the highest level in their secondary education program. As used in this criterion, the Secretary sought to give greater priority to projects that were serving students who were attending high schools that had relatively low average scores on standardized tests.

Changes: The Secretary has modified the criteria to more fully describe the use of tests in measuring differences in school environments.

Comments: Several commenters suggested that § 645.31(c)(3) should be revised to require a follow-up plan for tracking the academic accomplishments of participants only after they have completed the Upward Bound project. The commenters stated that the proposed regulations would require the project to follow up on all persons who participated in the project. The commenters also felt that requiring the project to follow up on all participants would be extremely costly and place a considerable collection burden on projects.

Discussion: The Secretary agrees that mandatory postsecondary tracking of all persons participating in a project may be cumbersome.

Changes: Section 645.31(c)(3) has been reordered to § 645.31(c)(10) and has been changed to require a follow-up plan for tracking only those participants who are graduates of the Upward Bound project.

Comments: One commenter suggested that ''applicant community'' in § 645.31(c)(4) be changed to ''target area community.'' The commenter felt that the phrase ''applicant community'' left the reader of the regulations confused as to the specific community that needed to be informed, i.e., university target area community, or any other self-described community identified by the applicant.

Discussion: The Secretary agrees that this phrase may be confusing.

Changes: The Secretary has revised the criterion to describe more specifically the applicant's institutional community and the individuals and groups that should be informed throughout the target area.

Comments: One commenter suggested that the word ''appropriate'' as a modifier of ''timelines'' in § 645.31(c)(6) should be deleted because varied and different interpretations can be inferred by the applicant and the peer reviewers.

Discussion: The Secretary agrees with this commenter. The Secretary believes that it is the applicant's responsibility to present a clear and concise plan that contains timelines that cover all of the major services to be provided. The criterion will be amended to make this clarification.

Changes: The Secretary has revised the criterion to read—assessing the quality of the planned timelines for accomplishing critical elements of the project.

Comments: Several commenters suggested that the word ''quality'' be deleted from the applicant's plan in § 645.31(c)(9). The commenters suggest deleting the word ''quality'' because it is redundant and can be interpreted in different ways by the readers.

Discussion: The Secretary agrees with the commenters that use of the term is redundant but at the same time all of the sub-criteria in the Plan of Operation sub-section are about ''quality'' plans which will produce intended project outcomes. The Secretary believes that the evaluation of the quality of all parts of the plan of operation is at the heart of the peer review process.

Changes: Because the word quality is a part of the opening sentence in § 645.31(c), the word quality has been deleted from this section because it is redundant.

Comments: One commenter suggested that the phrase ''quality control'' be deleted from § 645.31(c)(8). The commenter felt that this term was not normally used to define an educational process or procedure. The commenter also indicated that the term could be misinterpreted since no definition is provided.

Discussion: The Secretary disagrees with the commenter. ''Quality control'' is a term used to define processes that lead to improved service delivery and better outcomes. It is not unfamiliar to educators but is probably more associated with the business sector. However, the Secretary will delete the words ''quality control'' from this criterion since the criterion requires that the applicant present an effective and efficient plan for the administrative oversight of the project, which would imply a measure of quality control.

Changes: The criterion has been revised for purposes of greater clarity.

Comments: One commenter noted that the regulations do not include a request for a plan to recruit underrepresented students. The commenter stated that by not including a provision that would require applicants to submit such a plan it might imply that an Upward Bound project would not focus on providing underrepresented students with an opportunity to be successful in postsecondary education.

Discussion: The Secretary disagrees with the commenter. The Secretary believes that the Upward Bound program has and will continue to provide services to exclusively underrepresented populations. Thus a plan to do this is unnecessary.

Changes: None.

Comments: Several commenters felt that § 645.31(e)(1) would prevent projects from considering the work experience of individuals when hiring the project director. Another commenter felt that the requirement that directors have formal training in fields related to the objectives of the projects was too restrictive and would require all Upward Bound Math and Science directors to have formal education degrees in the fields of math and science.

Discussion: The Secretary agrees with the commenters that work experience should be considered when evaluating and determining the suitability of a project director.

Changes: The Secretary has revised this section to include work experience. The inclusion of work experience in this section will allow persons to substitute for formal training in fields related to the objectives of the project.

Comments: Several commenters suggested that clarity of § 645.31(g)(2) could be improved by combining the two subsections.

Discussion: The Secretary agrees with the commenters.

Changes: The two subsections have been combined into one statement.

How Does the Secretary Evaluate Prior Experience? (§ 645.32)

Comments: Several commenters suggested that the word ''consistently'' in § 645.32(b)(1) be deleted. The commenters felt that the word ''consistently'' was not defined and would have to be interpreted by each project.

Discussion: The Secretary agrees with the commenter.

Changes: The word ''consistently'' has been deleted from the section.

Comments: Many commenters suggested that aptitude and motivation as stated in § 645.32(b)(2) are difficult to measure. The commenters further suggested that this section of the regulations should emphasize the achievement levels and academic progress of participants. Several commenters suggested new wording for the section; some asked for the deletion of aptitude and motivation while others suggested that motivation remain a part of the section. One commenter further suggested that project retention, high school graduation, postsecondary enrollment and success in postsecondary education are better indicators of academic growth.

Discussion: The Secretary agrees with the commenters who suggested that improvements in motivation and aptitude are difficult to measure. The Secretary, however, believes that the project must be held accountable for assisting participants in the

project to develop skills that are necessary for entry into an educational program beyond high school. The Secretary also agrees with the commenter who suggested that a project's success should be measured by the success of the project's participants.

Changes: The Secretary has deleted aptitude and motivation from this criterion. The criterion now focuses on demonstrated improvement in academic skills and competencies as measured by standardized achievement tests and grade point averages.

Comments: Many commenters expressed concerns in § 645.32(b)(3) regarding the Department's efforts to highlight the need for retention of participants in the projects throughout their secondary school experience. Some commenters thought that the inclusion of retention in the project as a part of the prior experience criteria would affect the manner in which projects selected participants. They expressed concern that higher risk participants traditionally served by Upward Bound projects would be overlooked. Others felt that if this criterion remains in the prior experience section, some projects will be more likely to serve students who have higher motivation but who may not be the students with the greatest need for project services. One commenter asks that the Secretary consider the harm that this requirement could have on the Upward Bound Program and to delete the inclusion of this requirement until much more discussion and study have taken place.

Discussion: The Secretary disagrees with the commenters. The Secretary believes that the retention of participants in a project is significant for determining the success of a project. The Secretary believes that the consequences suggested by commenters that would arise if this criteria is retained do not override the disadvantages posed by a high turnover of participants. As in many intervention programs, it has been proven that the longer the participation, the far more likely is the chance for success.

Changes: This criteria has been revised for purposes of improved clarity.

Comments: Several commenters suggested that, as written, subsections (b)(4) and (b)(5) require that every participant, whether or not they have completed high school and the Upward Bound program would need to be tracked to determine whether they entered and completed postsecondary education. Instead, they suggested postsecondary continuation should be tracked for only Upward Bound and high school graduates.

Discussion: The Secretary's intent was not to have projects track Upward Bound participants who drop from the project prior to graduation from high school. However, the Secretary believes that § 645.32 (b)(4) and (b)(5) best measure the success of a project by comparing participants who enroll in a postsecondary education program and do well in college against all project participants, both those who complete the project and those who were initially scheduled to complete the project.

Changes: The criterion has been revised for purpose of clarity.

How Long Is a Project Period? (§ 645.34)

Comments: One commenter suggested that the language in § 645.34(b) be changed to include ''highest 10 percent of all applicants approved for new grants''.

Discussion: The length of an Upward Bound project period is defined in the Higher Education Act. Section 645.34(b) of these regulations merely reflects the statutory requirement.

Changes: None.

What Are Allowable Costs? (§ 645.40)

Comments: Many commenters suggested that the Secretary amend § 645.40 of the proposed regulations to include college admission fees and college entrance examination fees in the list of allowable costs.

Discussion: The Secretary has found that college admissions application fees are often barriers that prevent low-income students from filing applications to postsecondary programs. The Secretary has also found that waivers of college admissions application fees are not always available to low-income students. Some State-supported institutions are legally prohibited from waiving admission application fees, and private institutions may or may not waive admissions application fees for low-income applicants. The high cost of admission application fees and the unavailability of fee waivers have the detrimental effect of preventing Upward Bound participants from completing applications to certain four-year colleges and universities. The Secretary has concluded that admissions fees should be included in the list of allowable costs under certain circumstances described in the regulations.

Upward Bound participants have historically benefited from having testing materials available in order to prepare students for the SAT, ACT, and other standardized tests. The Secretary believes that it is also appropriate to allow Upward Bound projects to pay for testing administered by a third party. Therefore, the Secretary has included entrance examination fees in the circumstances described in the regulations in the list of allowable costs.

Changes: The Secretary has changed § 645.40 so that the list of allowable costs includes fees required for college admissions applications or entrance examinations if (1) a waiver of the fee is unavailable; and (2) the fee is paid by the grantee to a third party on behalf of the participant.

Comments: One commenter suggested that allowable costs be expanded to include costs to cover medical insurance and health services fees for participants during the academic year component. The commenter stated that the regulations should be expanded to allow for coverage in the event of accidents during visits to campus sites and while on field trips.

Discussion: The Secretary believes that students participating in an Upward Bound project should be protected by medical insurance and accident insurance at all times while participating in project activities. The Secretary believes that § 645.40(j) (1) and (2) is inclusive enough to cover participants at all times while participating in a project activity.

Changes: None.

Comments: One commenter questioned the requirement of § 645.40(h), which limits the grantee to one project-sponsored banquet or ceremony per year. The commenter suggested that projects be given the flexibility to provide as many banquets or ceremonies as they feel will motivate students toward successful completion of secondary and postsecondary education.

Discussion: The Secretary believes that motivational activities such as banquets should be supported by grant funds. However, the Secretary believes that one banquet paid for out of grant funds is reasonable.

Changes: None.

Comments: One commenter suggested that the word ''bridge'' should be deleted from § 645.40(i). The commenter's justification for deleting the word ''bridge'' is to allow beginning seniors the opportunity to take college credit courses during the summer component. The commenter felt that the program should be responsible for providing funds for participants while they pursue a secondary diploma and postsecondary program concurrently.

Discussion: The Secretary believes that all students who are able to enroll in a secondary education program and postsecondary education program concurrently should do so. However, the Secretary does not believe that program funds should be used to support the cost of tuition until the student has completed a program of secondary education.

Changes: None.

Comments: One commenter stated that § 645.40 should allow the project to pay for meals for parents of participants when these persons volunteer to serve as staff during field trips. The commenter felt that when parents serve as volunteers on field trips they should receive meals like other staff members.

Discussion: The Secretary agrees with the commenter that volunteers, whether parents or other members of the community, should at least receive meals while accompanying students on field trips. The Secretary believes that involvement in the program by parents is key to the success of a project.

Changes: None. Parents will be voluntary staff members and can receive meals as allowed under § 645.40(m) of these regulations.

Comments: Several commenters suggested that § 645.40(k) be deleted since the legislation and § 645.11(b)(9) of the regulations allow and encourage a project to provide programs and activities that are specifically designed for individuals with limited English proficiency. The commenter argued that § 645.40(k) contradicts § 645.11(b)(9).

Discussion: The Secretary partially agrees with the commenters. However, the Secretary does wish to reemphasize the point that instruction in the English language for students who need to improve their proficiency in order to pursue postsecondary education may be offered by the project.

Changes: The section has been revised to agree with 645.11(b)(9).

What Are Unallowable Costs? (§ 645.41)

Comments: One commenter suggested that § 645.41(f) be revised to allow for tuition,

stipends or any other form of student financial support for project staff ''beyond that provided to employees of a grantee as a part of its regular fringe benefit package.'' The commenter did not offer any reason for suggesting the change.

Discussion: The Secretary disagrees with the commenter. A project staff member should receive fringe benefits which are consistent with the standard package offered to other employees of the grantee.

Changes: None.

What Are Upward Bound Stipends? (§ 645.42)

Comments: Several commenters suggested raising the stipend amount given to Upward Bound participants during the summer to $80.00 per month to compete with summer jobs.

Discussion: The legislation authorizing the Upward Bound Program establishes the maximum amounts allowable for monthly payment of stipends.

Changes: None

Comments: One commenter noted that the legislation authorizes the payment of stipends in the amount of up to $60 per month during the months of June, July, and August. However, the proposed regulations (§ 645.42(d)(1)(ii)) do not specify that June, July, and August constitute a summer session.

Discussion: The Secretary agrees with the commenter that the law authorizes the payment of up to $60 per month during the summer component, which occurs for a six-week period sometime during the months of June, July, and August. The regulations authorize the payment of up to $60 per month, prorated as seen necessary, during the time the summer component is in session.

Changes: None.

What Other Requirements Must a Grantee Meet? (§ 645.43)

Comments: One commenter suggested that the word ''academic'' be deleted from § 645.43(c)(2) of the proposed regulations. The commenter stated that in order to take a holistic approach to a participant's need, emotional, cultural, social, as well as academic, support must be included.

Discussion: The Secretary agrees that a Upward Bound project should be designed to meet the needs of each participant. The Secretary believes that the services that a project can provide to participants as outlined in §§ 645.11 and 645.14 allow a project to meet the total needs of a participant. Section 645.43(c) does not establish the required services that a project must provide to participants, but outlines the recordkeeping requirements. All participants of an Upward Bound project must meet the eligibility requirements as defined in § 645.3 of the regulations. Section 645.43(c) establishes that, at a minimum, a project must keep records which document that all participants who enroll in an Upward Bound project have a need for academic support as well as meet the other eligibility requirements of § 645.3. This does not preclude maintaining other information on participants.

Changes: None.

Comments: A number of commenters suggested that following a student's educational progress throughout postsecondary education would be very time consuming and potentially very costly. The commenters also stated that this requirement exceeds the legislative authority for the program.

Discussion: The Secretary believes that section 402(C) of the Higher Education Act gives the Secretary the authority to require that Upward Bound projects establish procedures for follow-up on participants who have completed the Upward Bound project to determine their success in postsecondary education. The Secretary believes that the level of tracking necessary once an Upward Bound graduate is enrolled should consist of annual contacts to determine persistence or completion.

The Secretary believes that a system of follow-up is necessary for determining the effectiveness of the Upward Bound Program. This system should include or provide a method for determining if an Upward Bound participant who completed the project and enrolled in a postsecondary education program remains enrolled in the postsecondary program to completion.

Changes: None.

[FR Doc. 95–1689 Filed 1–23–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.047]

Upward Bound Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program: To enable grantees to generate in low-income, potential first-generation college students the skills and motivation necessary to complete a program of secondary education and to enter and succeed in a program of postsecondary education.

This program supports the National Education Goals. Specifically, the program funds projects designed to improve high school graduation rates, and to improve academic competency of program participants.

Eligible Applicants: Institutions of higher education, public and private agencies and organizations, combinations of institutions, agencies, and organizations, and, in exceptional cases, secondary schools, if there are no other applicants capable of providing an Upward Bound project in the proposed target area.

Deadline for Transmittal of Applications: February 24, 1995 for Regular Upward Bound and Veterans Upward Bound; March 17, 1995 for Math and Science Upward Bound.

Deadline for Intergovernmental Review: April 15, 1995 for Regular and Veterans Upward Bound; May 16, 1995 for Math and Science Upward Bound.

Applications Available: January 24, 1995.

Available Funds: $171 million for Regular and Veterans Upward Bound; $19 million for Math and Science Upward Bound.

Estimated Range of Awards: $190,000–$610,000 for Regular and Veterans Upward Bound; $190,000–$250,000 for Math and Science Upward Bound.

Estimated Average Size of Awards: $300,000 for Regular Upward Bound; $250,000 for Veterans Upward Bound; $240,000 for Math and Science Upward Bound.

Estimated Number of Awards: 550 for Regular Upward Bound; 30 for Veterans Upward Bound; 80 for Math and Science Upward Bound.

Note: The Department is not bound by any estimates in this notice.

Project Period: 48 or 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 645 as amended in this issue of the **Federal Register**.

For Applications or Information Contact: Carlos Stewart, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Suite 600, Washington, D.C. 20202–5249. Telephone: (202) 708–4804. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1070 a–13.

Dated: January 17, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–1690 Filed 1–23–95; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
January 24, 1995

Part VI

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research

Applications for New Awards Under the Research and Demonstration Program for Fiscal Year 1995; Notice

federal register

Tuesday
January 24, 1995

Part VI

Department of Education

Office of Special Education and Rehabilitation Services; National Institute on Disability and Rehabilitation Research

Application for New Awards Under the Research and Demonstration Program for Fiscal Year 1995; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.133A]

Office of Special Education and Rehabilitative Services

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under the Research and Demonstration Program for Fiscal Year (FY) 1995

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On January 17, 1995, a notice inviting applications for new awards under the Research and Demonstration program was published in the **Federal Register** at 60 FR 3499. The deadline for transmittal of applications date was inadvertently omitted from the chart.

Note to Applicants: The notice that was published on January 17, 1995, at 60 FR 3499 contained a complete application package. The notice contained information, application forms, and instructions needed to apply for a grant under those competition. This notice corrects the chart that now includes the deadline for transmittal of applications, which is March 24, 1995, and estimated funding information necessary to apply for an award under this program's competition. Potential applicants should consult the statement of the final priorities published on January 17, 1995, in the **Federal Register** at 60 FR 3494 to ascertain the substantive requirements for their applicants.

Applications Available: January 24, 1995.

APPLICATION NOTICE FOR FISCAL YEAR 1995, RESEARCH AND DEMONSTRATION PROGRAM, CFDA NO. 84.133A

Priority	Deadline for transmittal of applications	Estimated No. of awards	Estimated size of awards (per year)	Project period (months)
Accommodations for individuals with disabilities in adult education programs	March 24, 1995	1	$175,000	36
HIV/AIDS and disability	March 24, 1995	1	$175,000	36

The estimated funding level in this notice does not bind the Department of Education to make awards or to any specific number of awards or funding levels.

FOR FURTHER INFORMATION CONTACT: Dianne Villines, U.S. Department of Education, 600 Independence Avenue SW., Switzer Building, Room 3417, Washington, DC 20202–2704. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition in the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 760–762.

Dated: January 19, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–1712 Filed 1–23–95; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
January 24, 1995

Part VII

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Annual Factors for Determining Public Housing Agency Administrative Fees for the Section 8 Rental Voucher and Rental Certificate Programs; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3859; FR–3830–N–01]

Annual Factors for Determining Public Housing Agency Administrative Fees for the Section 8 Rental Voucher and Rental Certificate Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of factors for determining public housing agency and Indian housing authority administrative fees for the Section 8 rental certificate and rental voucher programs.

SUMMARY: This Notice announces the annual factors for use in determining the on-going administrative fee for housing agencies (HA) administering the rental voucher and rental certificate programs during Federal Fiscal Year 1995.

EFFECTIVE DATE: HUD will use the procedures in this Notice to approve year-end financial statements for housing agency fiscal years ending on December 31, 1994; March 31, 1995; June 30, 1995; and September 30, 1995. Housing agencies also may use these procedures to project earned administrative fees in the annual housing agency budget. Housing agencies with a fiscal year starting October 1, 1994, and January 1, 1995, must submit a revised budget to the field office for approval. The procedures in this Notice only apply to that portion of the housing agency fiscal year that coincides with the Federal FY 1995.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone number (202) 708–0477. Hearing or speech impaired individuals may call HUD's TDD number (202) 708–4594. (These numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and have been assigned OMB control number 2577–0149.

I. Purpose and Substantive Description

(a) The system that HUD used to determine administrative fees before FY 1995 had three different rates that were applied to the Section 8 existing housing fair market rents. The rate used for rental vouchers funded before FY 1989 was 6.5 percent and for rental certificates funded before FY 1989 was 7.65 percent. These rates were also used for non-incremental rental vouchers and certificates funded after FY 1988. The rate used for incremental rental vouchers and certificates funded after FY 1988 was 8.2 percent. The rate for renewal funding increments was the same as the rate initially used for the expired funding increment.

Housing agencies believe that the HUD method of tying fees to fair market rents does not reflect the actual costs of administering these programs. The problems associated with tying fees to fair market rents were most evident in FY 1994 when the fair market rents for most of the country were decreased based on the decennial census. As a result, HUD sought and Congress approved, for FY 1994 only, a ''hold-harmless'' provision so that housing agencies would not suffer a reduction in income and thereby jeopardize their ability to properly administer these programs.

(b) Section 8(q) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(q)) requires the Secretary to establish a fee for the housing agency costs incurred in administering housing assistance under Section 8(b) (rental certificate program) and Section 8(o) (rental voucher program) to the extent provided in appropriations. Section 8(q) is only applicable when so provided in appropriations, and applies only to incremental units funded in FY 1989 and subsequent years. For rental vouchers and certificates subject to Section 8(q), Section 8(q) provides that the on-going fee for each month a dwelling unit is covered by a housing assistance contract is 8.2 percent of the current fair market rent for a two-bedroom dwelling unit subject to appropriations.

(c) All Appropriations Acts, beginning with FY 1989, required that HUD reimburse housing agencies using the formula in Section 8(q) for incremental rental vouchers and certificates provided from those appropriations. The law does not specify the amount of fees for units made available through Appropriations Acts for FY 1988 and earlier or for non-incremental rental vouchers or certificates provided in FY 1989 and subsequent appropriations.

HUD has determined that it is in the best interest of the rental voucher and certificate programs to continue to reimburse housing agencies at a level sufficient to maintain the integrity of these programs. In FY 1995, HUD will reimburse housing agencies for administrative expenses attributable to all incremental and non-incremental rental vouchers and certificates made available from FY 1989 and subsequent appropriations using the formula in Section 8(q). HUD will reimburse housing agencies for pre-FY 1989 units using a new method described below using a fee base developed by HUD, and the resulting per unit fee amounts subsequently will be updated annually using wage and salary data.

II. Supersedure

On September 26, 1994, HUD issued an administrative Notice (PIH–94–68) establishing the procedures for calculating fees under the rental voucher and certificate programs. On September 28, 1994, the VA–HUD and Independent Agencies Appropriations Act (Pub.L. 103–327) was signed; as enacted, the Appropriations Act required HUD to pay administrative fees for FY 1995 incremental rental vouchers and certificates using the 8.2 percent specified in Section 8(q) of the U.S. Housing Act of 1937. The provisions of the HUD Notice PIH–94–68 are superseded for unit months commencing October 1, 1994. Instead, the provisions of this Notice apply.

III. Method to Determine Per Unit On-Going Administrative Fee

(a) Method for Pre-FY 1989 Fees

A housing agency is paid an on-going administrative fee for each month for which a dwelling unit is covered by a housing assistance contract. Under the revised system, the on-going administrative fee for pre-FY 1989 units is calculated using 8.2 percent of a ''base amount'' for the first 600 rental vouchers and certificates in the housing agency's program and 7.79 percent of the base amount for each additional rental voucher and certificate above 600. The base amount is subject to a floor and ceiling. The 600 units are the combined total of the housing agency's rental voucher and certificate programs and not 600 for each program.

The ''base amount'' used by HUD is the higher of (a) the FY 1993 fair market rent for a two-bedroom unit in the housing agency's market area, or (b) the FY 1994 fair market rent for a two-bedroom unit, but not more than 103.5 percent of the FY 1993 fair market rent. HUD established a maximum of $811

and a minimum of $428 for the base amount used to calculate housing agency administrative fees.

To determine these maximum and minimum base amounts, HUD examined available information on administrative expenses and reimbursements for a nationally representative sample of all housing agencies, and established a level of reimbursement to assure that all housing agencies could cover reasonable expenses and generate a modest surplus. In a recent report to Congress on housing agency administrative fees, HUD indicated that data collected by HUD and others over the last decade show distinct differences among various types of housing agencies in their ability to cover administrative costs. The use of a minimum and a maximum base amount, in combination with the other features of the FY 1995 method of reimbursement, are designed to address this inequity.

This ''base amount'' concept builds on the practices used in FY 1994 based on Section 11 of the HUD Demonstration Act of 1993 (Pub.L. 103–120, approved October 27, 1993). The base amount is used only to determine the monthly per unit fee amount for Federal FY 1995. The monthly per unit fee base amounts for pre-FY 1989 rental vouchers and certificates will be updated annually using wage and salary data.

(b) Published Fee Amounts

HUD has attached a schedule of monthly per unit fee amounts for use by HUD and housing agencies when preparing and approving housing agencies' budgets and fiscal year-end financial statements. The tables are organized by the HUD established fair market rent areas and show the monthly fee amounts a housing agency will earn for each unit under a housing assistance contract on the first day of the applicable month. In determining unit months, the same lease-up rate will be applied to pre-FY 1989 rental vouchers and certificates and FY 1989 and subsequent rental vouchers and certificates.

(1) Column A

The amount in this column is the monthly per unit fee amount for up to 7,200 unit months in Federal FY 1995 for rental vouchers and certificates in the housing agency's program from FY 1988 and prior year appropriations. (This amount was developed by multiplying the fee base established by .082.) The monthly per unit fee amount shown on the schedule will be used to reimburse a housing agency for up to 7,200 unit months in Federal FY 1995 for rental vouchers and certificates in its combined program. The reimbursement is computed by multiplying the number of unit months the rental vouchers or certificates in the housing agency programs were under a housing assistance contract during Federal FY 1995 by the per unit amount in column A. The maximum number of unit months in Federal FY 1995 for the housing agency's fiscal year that this revised procedure is implemented depends on the housing agency fiscal year end:

Dec. 31 HA	1,800 unit months	(7,200 × .25 [3 mos.] of FFY 1995).
Mar. 31 HA	3,600 unit months	
June 30 HA	5,400 unit months	
Sept. 30 HA	7,200 unit months	

(2) Column B

The amount in this column is the monthly per unit fee for any unit months in Federal FY 1995 in excess of the amount used in (b)(1) for rental vouchers and certificates made available from FY 1988 and prior year appropriations. This amount was developed by multiplying a fee base established by HUD by .0779 (95 percent of .082). The monthly per unit fee amount shown on the schedule will be used to reimburse housing agencies for any pre-FY 1989 rental vouchers and certificates under housing assistance contract in Federal FY 1995 in excess of the number of unit months for which the fee is calculated from column A. The monthly per unit fee in column B will be multiplied by the number of unit months that rental vouchers and certificates under housing assistance contract exceeds unit months for which a fee is calculated from column A.

(3) Column C

The amount in this column is the monthly per unit fee for rental vouchers and certificates made available from FY 1989 and subsequent appropriations. This amount was developed by multiplying the most recent two-bedroom fair market rent by .082 (8.2 percent) as required by law. The amount shown on the schedule will be used to reimburse housing agencies for all unit months for which FY 1989 and subsequent incremental and non-incremental rental vouchers and certificates were under housing assistance contract by multiplying the number of unit months under housing assistance contract by the per unit amount shown in column C.

(c) Future Year Publication Date

HUD intends to publish an annual Notice in the **Federal Register** establishing the monthly per unit fee amounts for use in determining the on-going administrative fees for housing agencies operating the rental voucher and certificate programs in each metropolitan and each non-metropolitan fair market rent area for that Federal fiscal year. The annual change in the per-unit-month fee amounts for the pre-FY 1989 rental vouchers and certificates will be based on changes in wage data or other objectively measurable data, as determined by HUD, that reflect the costs of administering the program. As long as Section 8(q) is in effect, the annual change in the monthly per unit fee amounts for the FY 1989 and subsequent incremental and non-incremental rental vouchers and certificates will be calculated by multiplying the two-bedroom fair market rent by 8.2 percent (.082).

The amounts shown on the attached schedule do not reflect the authority given to HUD to increase the fee if necessary to reflect the higher costs of administering small programs and programs operating over large geographic areas and for extraordinary expenses because of difficulties some categories of families are having in finding appropriate housing. Furthermore, the amounts shown do not include preliminary fees. HUD may also approve higher fees if necessary to reflect the higher costs of administering the family self-sufficiency program under section 23 of the U.S. Housing Act of 1937. Housing agency requests for administrative fees and special fees as well as higher on-going administrative fees will continue to be considered by HUD using the procedures currently in place for providing increased fees.

Accordingly, the Department publishes these annual factors for determining housing agency administrative fees under the rental voucher and rental certificate programs as set forth on the following schedule:

Dated: January 13, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

PAGE

A L A B A M A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Anniston, AL MSA	35.10	33.34	29.36	Calhoun
Birmingham, AL MSA	36.08	34.28	36.65	Blount, Jefferson, St. Clair, Shelby
Columbus, GA-AL MSA	35.10	33.34	35.92	Russell
Decatur, AL MSA	35.10	33.34	33.13	Lawrence, Morgan
Dothan, AL MSA	35.18	33.42	30.83	Dale, Houston
Florence, AL MSA	35.10	33.34	31.24	Colbert, Lauderdale
Gadsden, AL MSA	35.10	33.34	27.47	Etowah
Huntsville, AL MSA	36.66	34.83	39.52	Limestone, Madison
Mobile, AL MSA	36.65	34.82	33.37	Baldwin, Mobile
Montgomery, AL MSA	35.10	33.34	37.97	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA	35.39	33.62	36.74	Tuscaloosa

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Barbour	35.10	33.34	24.11	Bibb	35.10	33.34	27.55
Bullock	35.10	33.34	18.12	Butler	35.10	33.34	24.68
Chambers	35.10	33.34	25.26	Cherokee	35.10	33.34	24.19
Chilton	35.10	33.34	26.57	Choctaw	35.10	33.34	22.06
Clarke	35.10	33.34	24.60	Clay	35.10	33.34	21.57
Cleburne	35.10	33.34	24.85	Coffee	35.10	33.34	35.59
Conecuh	35.10	33.34	22.06	Coosa	35.10	33.34	24.60
Covington	35.10	33.34	22.80	Crenshaw	35.10	33.34	22.06
Cullman	35.10	33.34	27.55	Dallas	35.10	33.34	27.14
Dekalb	35.10	33.34	25.34	Escambia	35.10	33.34	23.62
Fayette	35.10	33.34	24.03	Franklin	35.10	33.34	24.93
Geneva	35.10	33.34	22.06	Greene	35.10	33.34	17.30
Hale	35.10	33.34	22.06	Henry	35.10	33.34	25.58
Jackson	35.10	33.34	27.39	Lamar	35.10	33.34	22.06
Lee	35.10	33.34	36.90	Lowndes	35.10	33.34	23.86
Macon	35.10	33.34	32.23	Marengo	35.10	33.34	22.06
Marion	35.10	33.34	22.06	Marshall	35.10	33.34	28.45
Monroe	35.10	33.34	24.35	Perry	35.10	33.34	22.06
Pickens	35.10	33.34	25.50	Pike	35.10	33.34	27.39
Randolph	35.10	33.34	23.37	Sumter	35.10	33.34	24.52
Talladega	35.10	33.34	26.16	Tallapoosa	35.10	33.34	26.08
Walker	35.10	33.34	29.27	Washington	35.10	33.34	22.06
Wilcox	35.10	33.34	22.06	Winston	35.10	33.34	25.83

Note: A = First 600 of pre 89 units; B = Remainder of pre 89 units; C = Post 88 units.

120694

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

A L A S K A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Anchorage, AK MSA	55.67	52.89	59.86	Anchorage

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Aleutian East	57.97	55.08	51.25	Aleutian West	57.97	55.08	43.30
Bethel	60.00	57.00	82.57	Bristol Bay	57.97	55.08	54.37
Dillingham	60.00	57.00	68.14	Fairbanks North Star	56.99	54.14	56.09
Haines	57.97	55.08	53.05	Juneau	66.50	63.18	72.65
Kenai Peninsula	53.55	50.87	46.58	Ketchikan Gateway	66.50	63.18	67.65
Kodiak Island	66.50	63.18	77.41	Lake & Peninsula	55.08	52.33	58.63
Matanuska-Susitna	49.28	46.82	44.28	Nome	60.00	57.00	73.72
North Slope	60.00	57.00	76.34	Northwest Arctic	55.08	52.33	80.61
Pr.Wales-Outer Ketchikan	57.97	55.08	51.41	Sitka	65.11	61.85	59.20
Skagway-Yakutat-Angoon	57.97	55.08	45.43	Southeast Fairbanks	47.72	45.34	44.77
Valdez-Cordova	66.50	63.18	57.40	Wade Hampton	57.97	55.08	51.17
Wrangell-Petersburg	65.11	61.85	54.94	Yukon-Koyukuk	57.97	55.08	51.09

A R I Z O N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA	56.33	53.52	53.79	Mohave
Phoenix-Mesa, AZ MSA	42.07	39.96	42.80	Maricopa, Pinal
Tucson, AZ MSA	41.59	39.51	43.54	Pima
Yuma, AZ MSA	46.74	44.40	44.20	Yuma

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Apache	36.24	34.43	25.91	Cochise	36.90	35.05	36.00
Coconino	46.00	43.70	46.41	Gila	37.56	35.68	35.83
Graham	36.90	35.05	29.93	Greenlee	36.90	35.05	28.21
La Paz	46.82	44.48	31.08	Navajo	36.24	34.43	29.93
Santa Cruz	38.19	36.28	39.52	Yavapai	46.00	43.70	41.74

A R K A N S A S

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR MSA	35.10	33.34	35.67	Benton, Washington
Fort Smith, AR-OK MSA	35.10	33.34	31.24	Crawford, Sebastian
Little Rock-North Little Rock, AR MSA	38.29	36.38	38.46	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN-AR-MS MSA	37.88	35.99	37.88	Crittenden
Pine Bluff, AR MSA	35.10	33.34	34.85	Jefferson
Texarkana, TX-Texarkana, AR MSA	35.10	33.34	35.75	Miller

Note: A = First 600 of pre 89 units; B = Remainder of pre 89 units; C = Post 88 units.

120694

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

A R K A N S A S continued

NONMETROPOLITAN COUNTIES	A	B	C
Arkansas	35.10	33.34	28.21
Baxter	35.10	33.34	32.72
Bradley	35.10	33.34	24.68
Carroll	35.10	33.34	28.04
Clark	35.10	33.34	29.03
Cleburne	35.10	33.34	27.14
Columbia	35.10	33.34	28.54
Craighead	35.10	33.34	31.00
Dallas	35.10	33.34	25.75
Drew	35.10	33.34	25.91
Fulton	35.10	33.34	25.09
Grant	35.10	33.34	26.16
Hempstead	35.10	33.34	27.63
Howard	35.10	33.34	28.21
Izard	35.10	33.34	25.09
Johnson	35.10	33.34	25.34
Lawrence	35.10	33.34	25.91
Lincoln	35.10	33.34	29.19
Logan	35.10	33.34	25.09
Marion	35.10	33.34	25.91
Monroe	35.10	33.34	25.91
Nevada	35.10	33.34	28.29
Ouachita	35.10	33.34	28.45
Phillips	35.10	33.34	25.67
Poinsett	35.10	33.34	27.88
Pope	35.10	33.34	31.16
Randolph	35.10	33.34	25.09
Scott	35.10	33.34	25.09
Sevier	35.10	33.34	27.96
Stone	35.10	33.34	23.94
Van Buren	35.10	33.34	28.54
Woodruff	35.10	33.34	25.09

NONMETROPOLITAN COUNTIES	A	B	C
Ashley	35.10	33.34	27.47
Boone	35.10	33.34	29.60
Calhoun	35.10	33.34	25.09
Chicot	35.10	33.34	25.34
Clay	35.10	33.34	25.09
Cleveland	35.10	33.34	24.76
Conway	35.10	33.34	31.16
Cross	35.10	33.34	27.88
Desha	35.10	33.34	27.14
Franklin	35.10	33.34	25.09
Garland	35.10	33.34	32.23
Greene	35.10	33.34	26.16
Hot Spring	35.10	33.34	28.54
Independence	35.10	33.34	25.91
Jackson	35.10	33.34	26.40
Lafayette	35.10	33.34	25.09
Lee	35.10	33.34	28.29
Little River	35.10	33.34	29.11
Madison	35.10	33.34	29.19
Mississippi	35.10	33.34	31.16
Montgomery	35.10	33.34	25.09
Newton	35.10	33.34	25.09
Perry	35.10	33.34	25.09
Pike	35.10	33.34	25.09
Polk	35.10	33.34	25.50
Prairie	35.10	33.34	24.76
St. Francis	35.10	33.34	27.96
Searcy	35.10	33.34	24.60
Sharp	35.10	33.34	26.16
Union	35.10	33.34	30.34
White	35.10	33.34	28.29
Yell	35.10	33.34	27.80

C A L I F O R N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bakersfield, CA MSA	50.68	48.14	43.95	Kern
Chico-Paradise, CA MSA	44.53	42.30	43.79	Butte
Fresno, CA MSA	46.33	44.01	42.31	Fresno, Madera

Note: A = First 600 of pre 89 units; B = Remainder of pre 89 units; C = Post 88 units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

C A L I F O R N I A continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Los Angeles-Long Beach, CA PMSA	66.50	63.18	72.16	Los Angeles
Merced, CA MSA	43.54	41.36	41.90	Merced
Modesto, CA MSA	48.79	46.35	46.49	Stanislaus
Oakland, CA PMSA	66.50	63.18	68.06	Alameda, Contra Costa
Orange County, CA PMSA	66.50	63.18	72.57	Orange
Redding, CA MSA	46.33	44.01	40.34	Shasta
Riverside-San Bernardino, CA PMSA	53.05	50.40	52.07	Riverside, San Bernardino
Sacramento, CA PMSA	50.50	47.97	51.74	El Dorado, Placer, Sacramento
Salinas, CA MSA	57.29	54.42	63.80	Monterey
San Diego, CA MSA	59.45	56.48	56.66	San Diego
San Francisco, CA PMSA	66.50	63.18	83.80	Marin, San Francisco, San Mateo
San Jose, CA PMSA	66.50	63.18	80.28	Santa Clara
San Luis Obispo-Atascadero-Paso Robles, CA PMSA	57.56	54.69	57.07	San Luis Obispo
Santa Barbara-Santa Maria-Lompoc, CA MSA	64.93	61.68	69.62	Santa Barbara
Santa Cruz-Watsonville, CA PMSA	66.50	63.18	78.72	Santa Cruz
Santa Rosa, CA PMSA	64.86	61.62	66.58	Sonoma
Stockton-Lodi, CA MSA	48.46	46.04	49.36	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	57.73	54.84	59.20	Napa, Solano
Ventura, CA PMSA	66.50	63.18	74.87	Ventura
Visalia-Tulare-Porterville, CA MSA	43.21	41.05	39.85	Tulare
Yolo, CA PMSA	50.50	47.97	52.07	Yolo
Yuba City, CA MSA	38.21	36.30	37.72	Sutter, Yuba

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Alpine	50.84	48.30	40.92	Amador	50.84	48.30	49.04
Calaveras	50.84	48.30	46.08	Colusa	38.46	36.54	35.67
Del Norte	46.41	44.09	45.18	Glenn	38.46	36.54	36.41
Humboldt	47.81	45.42	45.92	Imperial	48.22	45.81	41.66
Inyo	50.84	48.30	43.38	Kings	41.82	39.73	40.26
Lake	46.41	44.09	46.74	Lassen	42.48	40.35	39.03
Mariposa	50.84	48.30	42.72	Mendocino	50.02	47.52	50.59
Modoc	42.48	40.35	35.67	Mono	52.62	49.99	58.88
Nevada	56.99	54.14	56.99	Plumas	42.48	40.35	38.05
San Benito	52.62	49.99	53.46	Sierra	56.99	54.14	39.93
Siskiyou	42.48	40.35	36.90	Tehama	42.48	40.35	35.67
Trinity	46.41	44.09	35.75	Tuolumne	50.84	48.30	49.20

Note: A = First 600 of pre 89 units; B = Remainder of pre 89 units; C = Post 88 units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

C O L O R A D O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Boulder-Longmont, CO PMSA	50.27	47.75	53.71	Boulder
Colorado Springs, CO MSA	41.33	39.26	41.57	El Paso
Denver, CO PMSA	44.30	42.09	47.56	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins-Loveland, CO MSA	47.64	45.26	46.17	Larimer
Greeley, CO PMSA	41.08	39.03	40.75	Weld
Pueblo, CO MSA	40.92	38.87	35.18	Pueblo

NONMETROPOLITAN COUNTIES	A	B	C
Alamosa	41.00	38.95	30.83
Baca	35.10	33.34	25.17
Chaffee	45.51	43.23	32.23
Clear Creek	45.51	43.23	38.79
Costilla	41.00	38.95	31.00
Custer	45.51	43.23	31.00
Dolores	41.00	38.95	30.34
Elbert	36.32	34.51	41.00
Garfield	51.82	49.23	43.30
Grand	54.20	51.49	45.10
Hinsdale	54.20	51.49	34.85
Jackson	54.20	51.49	31.00
Kit Carson	35.10	33.34	32.14
La Plata	46.49	44.17	47.15
Lincoln	35.10	33.34	33.13
Mesa	51.82	49.23	34.11
Moffat	51.82	49.23	29.19
Montrose	54.20	51.49	35.10
Otero	35.10	33.34	31.00
Park	45.51	43.23	42.31
Pitkin	56.10	53.29	80.28
Rio Blanco	51.82	49.23	31.00
Routt	54.20	51.49	46.82
San Juan	41.00	38.95	32.23
Sedgwick	35.10	33.34	24.85
Teller	45.76	43.47	46.41
Yuma	35.10	33.34	29.93

NONMETROPOLITAN COUNTIES	A	B	C
Archuleta	41.00	38.95	36.16
Bent	35.10	33.34	31.08
Cheyenne	35.10	33.34	31.08
Conejos	41.00	38.95	25.91
Crowley	35.10	33.34	25.91
Delta	54.20	51.49	31.00
Eagle	56.10	53.29	59.20
Fremont	45.51	43.23	33.37
Gilpin	47.10	44.75	49.53
Gunnison	54.20	51.49	35.59
Huerfano	41.00	38.95	31.00
Kiowa	35.10	33.34	29.19
Lake	45.51	43.23	36.90
Las Animas	41.00	38.95	35.26
Logan	35.10	33.34	31.00
Mineral	41.00	38.95	27.22
Montezuma	41.00	38.95	36.00
Morgan	35.10	33.34	32.55
Ouray	54.20	51.49	38.46
Phillips	35.10	33.34	25.75
Prowers	35.10	33.34	29.36
Rio Grande	41.00	38.95	31.00
Saguache	41.00	38.95	30.26
San Miguel	56.10	53.29	85.69
Summit	54.20	51.49	52.89
Washington	35.10	33.34	31.00

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

C O N N E C T I C U T

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Bridgeport, CT PMSA	62.04	58.94	70.11	Fairfield county towns of Bridgeport town, Easton town Fairfield town, Monroe town, Shelton town Stratford town, Trumbull town New Haven county towns of Ansonia town, Beacon Falls town Derby town, Milford town, Oxford town, Seymour town
Danbury, CT PMSA	66.50	63.18	79.29	Fairfield county towns of Bethel town, Brookfield town Danbury town, New Fairfield town, Newtown town Redding town, Ridgefield town, Sherman town Litchfield county towns of Bridgewater town New Milford town, Roxbury town, Washington town
Hartford, CT PMSA	58.47	55.54	59.04	Hartford county towns of Avon town, Berlin town Bloomfield town, Bristol town, Burlington town Canton town, East Granby town, East Hartford town East Windsor town, Enfield town, Farmington town Glastonbury town, Granby town, Hartford town Manchester town, Marlborough town, New Britain town Newington town, Plainville town, Rocky Hill town Simsbury town, Southington town, South Windsor town Suffield town, West Hartford town, Wethersfield town Windsor town, Windsor Locks town Litchfield county towns of Barkhamsted town Harwinton town, New Hartford town, Plymouth town Winchester town Middlesex county towns of Cromwell town, Durham town East Haddam town, East Hampton town, Haddam town Middlefield town, Middletown town, Portland town New London county towns of Colchester town, Lebanon town Tolland county towns of Andover town, Bolton town Columbia town, Coventry town, Ellington town Hebron town, Mansfield town, Somers town, Stafford town Tolland town, Vernon town, Willington town Windham county towns of Ashford town, Chaplin town Windham town
New Haven-Meriden, CT PMSA	64.45	61.23	66.17	Middlesex county towns of Clinton town, Killingworth town New Haven county towns of Bethany town, Branford town Cheshire town, East Haven town, Guilford town Hamden town, Madison town, Meriden town, New Haven town North Branford tow, North Haven town, Orange town Wallingford town, West Haven town, Woodbridge town
New London-Norwich, CT-RI MSA	57.40	54.53	58.22	Middlesex county towns of Old Saybrook town New London county towns of Bozrah town, East Lyme town Franklin town, Griswold town, Groton town, Ledyard town Lisbon town, Montville town, New London town North Stonington t, Norwich town, Old Lyme town Preston town, Salem town, Sprague town, Stonington town Waterford town Windham county towns of Canterbury town, Plainfield town

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

C O N N E C T I C U T continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Stamford-Norwalk, CT PMSA	66.50	63.18	94.22	Fairfield county towns of Darien town, Greenwich town New Canaan town, Norwalk town, Stamford town Weston town, Westport town, Wilton town
Waterbury, CT MSA	52.62	49.99	56.25	Litchfield county towns of Bethlehem town, Thomaston town Watertown town, Woodbury town New Haven county towns of Middlebury town, Naugatuck town Prospect town, Southbury town, Waterbury town Wolcott town
Worcester, MA-CT	55.50	52.73	57.73	Windham county towns of Thompson town

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Hartford	52.23	49.62	51.66	Hartland town
Litchfield	55.42	52.65	59.78	Canaan town, Colebrook town, Cornwall town, Goshen town Kent town, Litchfield town, Morris town, Norfolk town North Canaan town, Salisbury town, Sharon town Torrington town, Warren town
Middlesex	62.12	59.02	73.72	Chester town, Deep River town, Essex town Westbrook town
New London	44.56	42.33	57.48	Lyme town, Voluntown town
Tolland	58.06	55.15	51.66	Union town
Windham	51.41	48.84	51.66	Brooklyn town, Eastford town, Hampton town Killingly town, Pomfret town, Putnam town, Scotland town Sterling town, Woodstock town

D E L A W A R E

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Dover, DE MSA	45.10	42.84	43.05	Kent
Wilmington-Newark, DE-MD PMSA	52.97	50.32	52.07	New Castle

NONMETROPOLITAN COUNTIES	A	B	C
Sussex	45.10	42.84	41.08

D I S T . O F C O L U M B I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Washington, DC-MD-VA	66.50	63.18	69.78	District of Columbia

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

F L O R I D A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Daytona Beach, FL MSA	44.64	42.41	45.92	Flagler, Volusia
Fort Lauderdale, FL PMSA	56.58	53.75	58.79	Broward
Fort Myers-Cape Coral, FL MSA	46.82	44.48	47.56	Lee
Fort Pierce-Port Lucie, FL MSA	47.44	45.07	50.02	Martin, St. Lucie
Fort Walton Beach, FL MSA	35.10	33.34	36.98	Okaloosa
Gainesville, FL MSA	40.02	38.02	40.67	Alachua
Jacksonville, FL MSA	42.18	40.07	43.21	Clay, Duval, Nassau, St. Johns
Lakeland-Winter Haven, FL MSA	37.06	35.21	37.64	Polk
Melbourne-Titusville-Palm Bay, FL MSA	42.94	40.80	45.67	Brevard
Miami, FL PMSA	60.43	57.41	62.81	Dade
Naples, FL MSA	48.72	46.28	55.68	Collier
Ocala, FL MSA	36.49	34.67	36.33	Marion
Orlando, FL MSA	46.51	44.18	50.51	Lake, Orange, Osceola, Seminole
Panama City, FL MSA	35.10	33.34	34.93	Bay
Pensacola, FL MSA	36.49	34.67	35.10	Escambia, Santa Rosa
Punta Gorda, FL MSA	45.59	43.31	46.33	Charlotte
Sarasota-Bradenton, FL MSA	48.87	46.43	49.69	Manatee, Sarasota
Tallahassee, FL MSA	39.63	37.65	45.76	Gadsden, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	44.53	42.30	45.84	Hernando, Hillsborough, Pasco, Pinellas
West Palm Beach-Boca Raton, FL MSA	47.19	44.83	58.88	Palm Beach

NONMETROPOLITAN COUNTIES	A	B	C
Baker	35.10	33.34	31.73
Calhoun	35.10	33.34	24.11
Columbia	35.10	33.34	27.47
Dixie	35.10	33.34	24.35
Gilchrist	35.10	33.34	29.52
Gulf	35.10	33.34	31.08
Hardee	35.10	33.34	35.59
Highlands	35.10	33.34	37.23
Indian River	47.27	44.91	49.20
Jefferson	35.10	33.34	27.31
Levy	35.10	33.34	27.47
Madison	35.10	33.34	24.11
Okeechobee	35.10	33.34	36.90
Sumter	35.10	33.34	31.24
Taylor	35.10	33.34	32.23
Wakulla	35.10	33.34	28.04
Washington	35.10	33.34	24.11

NONMETROPOLITAN COUNTIES	A	B	C
Bradford	38.79	36.85	29.60
Citrus	35.10	33.34	35.83
Desoto	35.10	33.34	34.44
Franklin	35.10	33.34	32.96
Glades	44.28	42.07	35.83
Hamilton	35.10	33.34	24.11
Hendry	44.28	42.07	39.20
Holmes	35.10	33.34	23.78
Jackson	35.10	33.34	24.11
Lafayette	35.10	33.34	26.90
Liberty	35.10	33.34	25.58
Monroe	60.34	57.33	63.63
Putnam	35.10	33.34	28.45
Suwannee	35.10	33.34	28.78
Union	35.10	33.34	27.88
Walton	35.10	33.34	29.11

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

G E O R G I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Albany, GA MSA	35.10	33.34	31.90	Dougherty, Lee
Athens, GA MSA	35.98	34.19	39.44	Clarke, Madison, Oconee
Atlanta, GA	48.30	45.88	49.69	Barrow, Bartow, Cherokee, Clayton, Cobb, Coweta, Dekalb Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry Newton, Paulding, Rockdale
Augusta-Aiken, GA-SC MSA	35.98	34.19	38.13	Columbia, Mcduffie, Richmond
Carroll County, GA	35.10	33.34	34.69	Carroll
Chattanooga, TN-GA MSA	37.72	35.83	36.98	Catoosa, Dade, Walker
Columbus, GA-AL MSA	35.10	33.34	35.92	Chattahoochee, Harris, Muscogee
Macon, GA MSA	35.67	33.89	36.24	Bibb, Houston, Jones, Peach, Twiggs
Pickens County, GA	35.10	33.34	32.47	Pickens
Savannah, GA MSA	36.66	34.83	40.75	Bryan, Chatham, Effingham
Spalding County, GA	47.56	45.18	37.64	Spalding
Walton County, GA	47.56	45.18	37.23	Walton

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Appling	35.10	33.34	26.32	Atkinson	35.10	33.34	22.71
Bacon	35.10	33.34	26.32	Baker	35.10	33.34	22.06
Baldwin	35.10	33.34	34.44	Banks	35.10	33.34	27.72
Ben Hill	35.10	33.34	26.32	Berrien	35.10	33.34	26.32
Bleckley	35.10	33.34	26.32	Brantley	35.10	33.34	28.54
Brooks	35.10	33.34	26.32	Bulloch	35.10	33.34	35.75
Burke	35.10	33.34	23.70	Butts	47.56	45.18	37.64
Calhoun	35.10	33.34	17.96	Camden	35.10	33.34	39.20
Candler	35.10	33.34	26.32	Charlton	35.10	33.34	28.54
Chattooga	35.10	33.34	27.88	Clay	35.10	33.34	23.21
Clinch	35.10	33.34	25.17	Coffee	35.10	33.34	26.32
Colquitt	35.10	33.34	26.32	Cook	35.10	33.34	26.32
Crawford	35.10	33.34	27.88	Crisp	35.10	33.34	26.32
Dawson	35.10	33.34	38.54	Decatur	35.10	33.34	26.32
Dodge	35.10	33.34	26.32	Dooly	35.10	33.34	22.88
Early	35.10	33.34	26.32	Echols	35.10	33.34	26.32
Elbert	35.10	33.34	25.83	Emanuel	35.10	33.34	25.58
Evans	35.10	33.34	26.32	Fannin	35.10	33.34	26.32
Floyd	35.10	33.34	33.21	Franklin	35.10	33.34	27.55
Gilmer	35.10	33.34	28.45	Glascock	35.10	33.34	22.39
Glynn	35.10	33.34	39.93	Gordon	35.10	33.34	33.87
Grady	35.10	33.34	26.32	Greene	35.10	33.34	32.55
Habersham	35.10	33.34	30.59	Hall	38.79	36.85	41.74
Hancock	35.10	33.34	30.09	Haralson	35.10	33.34	28.86
Hart	35.10	33.34	29.03	Heard	35.10	33.34	28.95

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

G E O R G I A continued

NONMETROPOLITAN COUNTIES	A	B	C
Irwin	35.10	33.34	26.32
Jasper	35.10	33.34	33.21
Jefferson	35.10	33.34	22.71
Johnson	35.10	33.34	26.32
Lanier	35.10	33.34	26.32
Liberty	35.10	33.34	35.18
Long	35.10	33.34	32.47
Lumpkin	35.10	33.34	33.78
Macon	35.10	33.34	26.49
Meriwether	35.10	33.34	28.04
Mitchell	35.10	33.34	24.44
Montgomery	35.10	33.34	25.99
Murray	35.10	33.34	31.41
Pierce	35.10	33.34	26.32
Polk	35.10	33.34	31.90
Putnam	35.10	33.34	29.85
Rabun	35.10	33.34	28.62
Schley	35.10	33.34	26.32
Seminole	35.10	33.34	26.32
Stewart	35.10	33.34	26.32
Talbot	35.10	33.34	26.08
Tattnall	35.10	33.34	26.32
Telfair	35.10	33.34	26.32
Thomas	35.10	33.34	29.44
Toombs	35.10	33.34	26.98
Treutlen	35.10	33.34	21.07
Turner	35.10	33.34	28.21
Upson	35.10	33.34	29.77
Warren	35.10	33.34	26.32
Wayne	35.10	33.34	25.83
Wheeler	35.10	33.34	26.08
Whitfield	35.10	33.34	34.85
Wilkes	35.10	33.34	26.32
Worth	35.10	33.34	29.85

NONMETROPOLITAN COUNTIES	A	B	C
Jackson	35.10	33.34	31.98
Jeff Davis	35.10	33.34	26.32
Jenkins	35.10	33.34	26.32
Lamar	35.10	33.34	30.50
Laurens	35.10	33.34	29.27
Lincoln	35.10	33.34	26.32
Lowndes	35.10	33.34	33.62
Mcintosh	35.10	33.34	26.65
Marion	35.10	33.34	25.83
Miller	35.10	33.34	26.32
Monroe	35.10	33.34	29.93
Morgan	35.10	33.34	32.23
Oglethorpe	35.10	33.34	26.32
Pike	35.10	33.34	34.11
Pulaski	35.10	33.34	25.09
Quitman	35.10	33.34	24.85
Randolph	35.10	33.34	25.01
Screven	35.10	33.34	27.88
Stephens	35.10	33.34	29.60
Sumter	35.10	33.34	32.72
Taliaferro	35.10	33.34	21.89
Taylor	35.10	33.34	23.37
Terrell	35.10	33.34	26.49
Tift	35.10	33.34	28.04
Towns	35.10	33.34	26.90
Troup	35.10	33.34	34.52
Union	35.10	33.34	34.28
Ware	35.10	33.34	27.55
Washington	35.10	33.34	26.32
Webster	35.10	33.34	26.32
White	35.10	33.34	30.09
Wilcox	35.10	33.34	24.19
Wilkinson	35.10	33.34	26.98

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

H A W A I I

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Honolulu, HI MSA	66.50	63.18	90.94	Honolulu

NONMETROPOLITAN COUNTIES	A	B	C
Hawaii	59.04	56.09	57.15
Maui	66.50	63.18	92.33
Kauai	66.50	63.18	87.82

I D A H O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Boise City, ID MSA	48.71	46.27	41.25	Ada, Canyon

NONMETROPOLITAN COUNTIES	A	B	C
Adams	37.88	35.99	24.76
Bear Lake	39.20	37.24	26.65
Bingham	39.20	37.24	29.44
Boise	37.88	35.99	31.57
Bonneville	42.39	40.27	37.64
Butte	42.39	40.27	24.76
Caribou	39.20	37.24	24.19
Clark	42.39	40.27	25.58
Custer	42.39	40.27	27.55
Franklin	39.20	37.24	25.58
Gem	37.88	35.99	25.09
Idaho	39.20	37.24	26.90
Jerome	40.18	38.17	26.16
Latah	39.20	37.24	31.16
Lewis	39.20	37.24	25.17
Madison	42.39	40.27	28.45
Nez Perce	39.20	37.24	31.65
Owyhee	37.88	35.99	24.11
Power	39.20	37.24	27.06
Teton	42.39	40.27	31.57
Valley	37.88	35.99	30.59
Bannock	39.20	37.24	31.65
Benewah	39.20	37.24	24.85
Blaine	41.59	39.51	49.12
Bonner	39.20	37.24	38.05
Boundary	39.20	37.24	28.86
Camas	40.18	38.17	24.76
Cassia	40.18	38.17	26.98
Clearwater	39.20	37.24	25.34
Elmore	37.88	35.99	25.91
Fremont	42.39	40.27	24.85
Gooding	40.18	38.17	24.93
Jefferson	42.39	40.27	28.21
Kootenai	40.57	38.54	42.07
Lemhi	42.39	40.27	26.57
Lincoln	40.18	38.17	25.09
Minidoka	40.18	38.17	25.26
Oneida	39.20	37.24	29.27
Payette	37.88	35.99	25.09
Shoshone	39.20	37.24	25.58
Twin Falls	40.18	38.17	32.80
Washington	37.88	35.99	24.52

Note: A = First 600 of pre 89 units; B = Remainder of pre 89 units; C = Post 88 units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I L L I N O I S

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	40.26	38.25	40.34	Mclean
Champaign-Urbana, IL MSA	40.40	38.38	42.07	Champaign
Chicago, IL	57.32	54.45	58.71	Cook, Dupage, Kane, Lake, Mchenry, Will
Davenport-Moline-Rock Island, IA-IL MSA	43.30	41.13	35.51	Henry, Rock Island
Decatur, IL MSA	39.03	37.08	34.69	Macon
De Kalb County, IL	45.43	43.16	46.58	Dekalb
Grundy County, IL	58.47	55.54	42.56	Grundy
Kankakee, IL PMSA	39.11	37.16	40.18	Kankakee
Kendall County, Il	57.81	54.92	52.32	Kendall
Peoria-Pekin, IL MSA	45.26	43.00	37.97	Peoria, Tazewell, Woodford
Rockford, IL MSA	41.16	39.11	38.87	Boone, Ogle, Winnebago
St. Louis, MO-IL MSA	41.25	39.18	39.03	Clinton, Jersey, Madison, Monroe, St. Clair
Springfield, IL MSA	41.25	39.18	39.69	Menard, Sangamon

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Adams	35.10	33.34	29.60	Alexander	35.10	33.34	26.08
Bond	35.10	33.34	27.47	Brown	35.10	33.34	26.65
Bureau	37.23	35.37	30.67	Calhoun	35.10	33.34	22.88
Carroll	35.10	33.34	26.08	Cass	35.10	33.34	28.29
Christian	35.10	33.34	29.52	Clark	35.10	33.34	26.08
Clay	35.10	33.34	26.08	Coles	35.10	33.34	34.36
Crawford	35.10	33.34	26.65	Cumberland	35.10	33.34	26.08
De Witt	35.10	33.34	28.54	Douglas	35.10	33.34	28.04
Edgar	35.10	33.34	26.49	Edwards	35.10	33.34	26.08
Effingham	35.10	33.34	29.68	Fayette	35.10	33.34	26.08
Ford	35.10	33.34	26.57	Franklin	35.51	33.73	27.14
Fulton	37.23	35.37	28.29	Gallatin	35.10	33.34	24.27
Greene	35.10	33.34	26.08	Hamilton	35.10	33.34	26.08
Hancock	35.10	33.34	26.16	Hardin	35.10	33.34	26.08
Henderson	35.10	33.34	26.08	Iroquois	35.10	33.34	27.55
Jackson	35.51	33.73	31.82	Jasper	35.10	33.34	25.42
Jefferson	35.10	33.34	30.50	Jo Daviess	35.10	33.34	29.19
Johnson	35.10	33.34	25.58	Knox	35.83	34.04	28.54
La Salle	41.98	39.88	32.39	Lawrence	35.10	33.34	24.03
Lee	41.98	39.88	31.73	Livingston	35.10	33.34	33.46
Logan	35.10	33.34	32.47	Mcdonough	35.10	33.34	28.70
Macoupin	35.10	33.34	29.19	Marion	35.10	33.34	27.63
Marshall	37.23	35.37	27.14	Mason	35.10	33.34	27.31
Massac	35.10	33.34	25.83	Mercer	35.10	33.34	28.70
Montgomery	35.10	33.34	27.22	Morgan	35.10	33.34	34.60

Note: A = First 600 of pre 89 units; B = Remainder of pre 89 units; C = Post 88 units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I L L I N O I S continued

NONMETROPOLITAN COUNTIES	A	B	C
Moultrie	35.10	33.34	29.19
Piatt	35.10	33.34	32.80
Pope	35.10	33.34	21.73
Putnam	37.23	35.37	26.32
Richland	35.10	33.34	25.83
Schuyler	35.10	33.34	26.32
Shelby	35.10	33.34	28.29
Stephenson	35.10	33.34	31.65
Vermilion	35.10	33.34	33.05
Warren	35.10	33.34	29.52
Wayne	35.10	33.34	24.60
Whiteside	41.98	39.88	32.47

NONMETROPOLITAN COUNTIES	A	B	C
Perry	35.10	33.34	24.52
Pike	35.10	33.34	23.29
Pulaski	35.10	33.34	24.27
Randolph	35.10	33.34	28.04
Saline	35.10	33.34	26.65
Scott	35.10	33.34	27.47
Stark	37.23	35.37	25.99
Union	35.10	33.34	25.09
Wabash	35.10	33.34	28.37
Washington	35.10	33.34	33.13
White	35.10	33.34	25.09
Williamson	35.51	33.73	30.42

I N D I A N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bloomington, IN MSA	37.34	35.48	43.54	Monroe
Cincinnati, OH-KY-IN	40.10	38.09	40.59	Dearborn
Elkhart-Goshen, IN MSA	36.41	34.59	41.74	Elkhart
Evansville-Henderson, IN-KY MSA	36.16	34.35	35.51	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	37.68	35.80	39.36	Adams, Allen, De Kalb, Huntington, Wells, Whitley
Gary, IN PMSA	46.00	43.70	43.21	Lake, Porter
Indianapolis, IN MSA	41.66	39.57	42.80	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison Marion, Morgan, Shelby
Kokomo, IN MSA	36.65	34.82	35.42	Howard, Tipton
Lafayette, IN MSA	40.23	38.22	41.90	Clinton, Tippecanoe
Louisville, KY-IN MSA	35.10	33.34	35.01	Clark, Floyd, Harrison, Scott
Muncie, IN MSA	35.10	33.34	33.70	Delaware
Ohio County, IN	35.10	33.34	28.70	Ohio
South Bend, IN MSA	37.09	35.23	43.62	St. Joseph
Terre Haute, IN MSA	35.10	33.34	33.37	Clay, Vermillion, Vigo

NONMETROPOLITAN COUNTIES	A	B	C
Bartholomew	38.02	36.12	40.43
Blackford	35.10	33.34	32.96
Carroll	35.10	33.34	29.03
Crawford	35.10	33.34	26.90
Decatur	36.74	34.90	33.29
Fayette	35.10	33.34	31.98
Franklin	35.10	33.34	30.75

NONMETROPOLITAN COUNTIES	A	B	C
Benton	35.10	33.34	28.04
Brown	38.02	36.12	38.70
Cass	35.10	33.34	29.03
Daviess	35.10	33.34	30.42
Dubois	35.10	33.34	30.91
Fountain	35.10	33.34	27.63
Fulton	35.10	33.34	30.91

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I N D I A N A continued

NONMETROPOLITAN COUNTIES	A	B	C
Gibson	35.10	33.34	27.72
Greene	35.10	33.34	27.47
Jackson	36.74	34.90	33.05
Jay	35.10	33.34	26.90
Jennings	36.74	34.90	30.59
Kosciusko	35.10	33.34	35.34
La Porte	36.33	34.51	36.82
Marshall	35.10	33.34	35.75
Miami	35.10	33.34	28.37
Newton	35.10	33.34	31.32
Orange	35.10	33.34	26.90
Parke	35.10	33.34	30.09
Pike	35.10	33.34	26.90
Putnam	35.18	33.42	34.52
Ripley	35.10	33.34	30.09
Spencer	35.10	33.34	27.31
Steuben	35.10	33.34	36.57
Switzerland	35.10	33.34	27.39
Wabash	35.10	33.34	28.54
Washington	36.08	34.28	28.95
White	35.10	33.34	30.34

NONMETROPOLITAN COUNTIES	A	B	C
Grant	35.10	33.34	32.06
Henry	35.10	33.34	27.88
Jasper	35.10	33.34	30.09
Jefferson	35.10	33.34	28.13
Knox	35.10	33.34	33.05
Lagrange	35.10	33.34	33.21
Lawrence	35.10	33.34	31.32
Martin	35.10	33.34	26.90
Montgomery	35.10	33.34	33.95
Noble	35.10	33.34	32.06
Owen	35.59	33.81	28.86
Perry	35.10	33.34	26.90
Pulaski	35.10	33.34	28.21
Randolph	35.10	33.34	27.88
Rush	35.10	33.34	29.03
Starke	35.10	33.34	30.75
Sullivan	35.10	33.34	29.11
Union	35.10	33.34	26.90
Warren	35.10	33.34	26.65
Wayne	35.10	33.34	31.00

I O W A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Cedar Rapids, IA MSA	41.82	39.73	38.13	Linn
Davenport-Moline-Rock Island, IA-IL MSA	43.30	41.13	35.51	Scott
Des Moines, IA MSA	43.20	41.04	44.53	Dallas, Polk, Warren
Dubuque, IA MSA	38.70	36.77	34.77	Dubuque
Iowa City, IA MSA	44.03	41.83	41.98	Johnson
Omaha, NE-IA MSA	39.38	37.41	41.49	Pottawattamie
Sioux City, IA-NE MSA	37.80	35.91	36.57	Woodbury
Waterloo-Cedar Falls, IA MSA	41.98	39.88	33.46	Black Hawk

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I O W A continued

NONMETROPOLITAN COUNTIES	A	B	C
Adair	35.10	33.34	30.09
Allamakee	35.10	33.34	25.75
Audubon	35.10	33.34	25.91
Boone	37.64	35.76	32.23
Buchanan	35.10	33.34	31.32
Butler	35.10	33.34	28.04
Carroll	35.10	33.34	31.65
Cedar	36.98	35.13	29.77
Cherokee	35.10	33.34	25.50
Clarke	35.10	33.34	30.75
Clayton	35.10	33.34	28.29
Crawford	35.10	33.34	27.39
Decatur	35.10	33.34	29.27
Des Moines	35.10	33.34	34.36
Emmet	35.10	33.34	25.50
Floyd	35.10	33.34	31.98
Fremont	35.10	33.34	30.59
Grundy	35.10	33.34	26.90
Hamilton	35.10	33.34	32.88
Hardin	35.10	33.34	29.27
Henry	35.10	33.34	33.70
Humboldt	35.10	33.34	27.80
Iowa	35.10	33.34	30.59
Jasper	35.10	33.34	33.62
Jones	35.10	33.34	26.65
Kossuth	35.10	33.34	30.75
Louisa	35.10	33.34	30.42
Lyon	35.10	33.34	25.26
Mahaska	35.10	33.34	31.16
Marshall	35.10	33.34	31.82
Mitchell	35.10	33.34	27.22
Monroe	35.10	33.34	32.23
Muscatine	35.10	33.34	34.36
Osceola	35.10	33.34	31.16
Palo Alto	35.10	33.34	25.99
Pocahontas	35.10	33.34	28.78
Ringgold	35.10	33.34	27.31
Shelby	35.10	33.34	29.44
Story	38.13	36.22	38.95
Taylor	35.10	33.34	31.08

NONMETROPOLITAN COUNTIES	A	B	C
Adams	35.10	33.34	30.91
Appanoose	35.10	33.34	29.36
Benton	35.10	33.34	29.27
Bremer	41.98	39.88	30.09
Buena Vista	35.10	33.34	32.23
Calhoun	35.10	33.34	27.39
Cass	35.10	33.34	29.93
Cerro Gordo	35.10	33.34	33.95
Chickasaw	35.10	33.34	27.31
Clay	35.10	33.34	30.67
Clinton	36.98	35.13	32.96
Davis	35.10	33.34	29.27
Delaware	36.98	35.13	29.27
Dickinson	35.10	33.34	31.32
Fayette	35.10	33.34	28.86
Franklin	35.10	33.34	30.26
Greene	35.10	33.34	27.80
Guthrie	35.10	33.34	28.70
Hancock	35.10	33.34	30.83
Harrison	35.10	33.34	30.67
Howard	35.10	33.34	30.01
Ida	35.10	33.34	29.68
Jackson	36.98	35.13	32.72
Jefferson	35.10	33.34	35.18
Keokuk	35.10	33.34	25.99
Lee	35.10	33.34	33.54
Lucas	35.10	33.34	28.13
Madison	35.10	33.34	33.78
Marion	35.10	33.34	35.18
Mills	35.10	33.34	33.05
Monona	35.10	33.34	29.85
Montgomery	35.10	33.34	30.59
O'Brien	35.10	33.34	25.34
Page	35.10	33.34	27.31
Plymouth	35.10	33.34	33.95
Poweshiek	35.10	33.34	35.18
Sac	35.10	33.34	24.35
Sioux	35.10	33.34	27.80
Tama	35.10	33.34	31.32
Union	35.10	33.34	30.67

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I O W A continued

NONMETROPOLITAN COUNTIES	A	B	C
Van Buren	35.10	33.34	27.14
Washington	35.10	33.34	29.27
Webster	35.10	33.34	32.96
Winneshiek	35.10	33.34	30.75
Wright	35.10	33.34	30.09
Wapello	36.90	35.05	33.13
Wayne	35.10	33.34	25.34
Winnebago	35.10	33.34	31.08
Worth	35.10	33.34	30.67

K A N S A S

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Kansas City, MO-KS MSA	40.10	38.09	40.10	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	42.31	40.20	41.66	Douglas
Topeka, KS MSA	38.29	36.38	38.46	Shawnee
Wichita, KS MSA	41.25	39.18	40.59	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	A	B	C
Allen	35.10	33.34	23.12
Atchison	35.10	33.34	29.19
Barton	35.10	33.34	27.31
Brown	35.10	33.34	26.98
Chautauqua	35.10	33.34	26.98
Cheyenne	35.10	33.34	22.88
Clay	35.10	33.34	26.98
Coffey	35.10	33.34	28.37
Cowley	35.10	33.34	30.75
Decatur	35.10	33.34	26.98
Doniphan	35.10	33.34	27.22
Elk	35.10	33.34	23.21
Ellsworth	35.10	33.34	26.32
Ford	35.10	33.34	33.70
Geary	35.10	33.34	34.11
Graham	35.10	33.34	20.58
Gray	35.10	33.34	26.98
Greenwood	35.10	33.34	26.98
Harper	35.10	33.34	26.40
Hodgeman	35.10	33.34	26.98
Jefferson	35.10	33.34	31.57
Kearny	35.10	33.34	31.90
Kiowa	35.10	33.34	26.98
Lane	35.10	33.34	24.03
Linn	35.10	33.34	26.98
Lyon	35.10	33.34	30.34
Anderson	35.10	33.34	26.98
Barber	35.10	33.34	25.83
Bourbon	35.10	33.34	26.98
Chase	35.10	33.34	26.98
Cherokee	35.10	33.34	26.81
Clark	35.10	33.34	29.36
Cloud	35.10	33.34	23.70
Comanche	35.10	33.34	22.63
Crawford	35.10	33.34	31.90
Dickinson	35.10	33.34	28.45
Edwards	35.10	33.34	26.98
Ellis	35.10	33.34	26.98
Finney	35.10	33.34	35.67
Franklin	35.10	33.34	31.32
Gove	35.10	33.34	25.58
Grant	35.10	33.34	30.59
Greeley	35.10	33.34	26.98
Hamilton	35.10	33.34	26.98
Haskell	35.10	33.34	28.37
Jackson	35.10	33.34	26.98
Jewell	35.10	33.34	21.65
Kingman	35.10	33.34	27.31
Labette	35.10	33.34	28.45
Lincoln	35.10	33.34	23.21
Logan	35.10	33.34	23.04
Mcpherson	35.10	33.34	29.27

Note: A = First 600 of pre 89 units; B = Remainder of pre 89 units; C = Post 88 units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

K A N S A S continued

NONMETROPOLITAN COUNTIES	A	B	C
Marion	35.10	33.34	26.98
Meade	35.10	33.34	26.90
Montgomery	35.10	33.34	28.45
Morton	35.10	33.34	29.19
Neosho	35.10	33.34	26.98
Norton	35.10	33.34	26.98
Osborne	35.10	33.34	19.68
Pawnee	35.10	33.34	26.98
Pottawatomie	35.10	33.34	27.80
Rawlins	35.10	33.34	23.70
Republic	35.10	33.34	22.80
Riley	35.10	33.34	38.38
Rush	35.10	33.34	23.21
Saline	35.10	33.34	31.90
Seward	35.10	33.34	34.77
Sherman	35.10	33.34	26.98
Stafford	35.10	33.34	25.34
Stevens	35.10	33.34	27.88
Thomas	35.10	33.34	26.98
Wabaunsee	35.10	33.34	26.98
Washington	35.10	33.34	22.96
Wilson	35.10	33.34	26.49

NONMETROPOLITAN COUNTIES	A	B	C
Marshall	35.10	33.34	25.99
Mitchell	35.10	33.34	25.50
Morris	35.10	33.34	26.98
Nemaha	35.10	33.34	25.83
Ness	35.10	33.34	26.98
Osage	35.10	33.34	26.98
Ottawa	35.10	33.34	26.49
Phillips	35.10	33.34	26.98
Pratt	35.10	33.34	30.83
Reno	35.10	33.34	29.85
Rice	35.10	33.34	25.09
Rooks	35.10	33.34	22.71
Russell	35.10	33.34	27.47
Scott	35.10	33.34	29.36
Sheridan	35.10	33.34	21.48
Smith	35.10	33.34	23.78
Stanton	35.10	33.34	27.06
Sumner	35.10	33.34	30.09
Trego	35.10	33.34	26.98
Wallace	35.10	33.34	25.91
Wichita	35.10	33.34	31.90
Woodson	35.10	33.34	26.98

K E N T U C K Y

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Cincinnati, OH-KY-IN	40.10	38.09	40.59	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSA	38.38	36.46	33.70	Christian
Evansville-Henderson, IN-KY MSA	36.16	34.35	35.51	Henderson
Gallatin County, KY	35.10	33.34	32.55	Gallatin
Grant County, KY	35.10	33.34	31.73	Grant
Huntington-Ashland, WV-KY-OH MSA	37.72	35.83	31.32	Boyd, Carter, Greenup
Lexington, KY MSA	38.87	36.92	38.54	Bourbon, Clark, Fayette, Jessamine, Madison, Scott Woodford
Louisville, KY-IN MSA	35.10	33.34	35.01	Bullitt, Jefferson, Oldham
Owensboro, KY MSA	35.10	33.34	30.91	Daviess
Pendleton County, KY	35.10	33.34	30.91	Pendleton

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	A	B	C
Adair	35.10	33.34	27.55
Anderson	35.75	33.96	30.26
Barren	35.10	33.34	27.96
Bell	35.10	33.34	29.11
Bracken	35.10	33.34	24.52
Breckinridge	35.10	33.34	28.21
Caldwell	35.10	33.34	22.22
Carlisle	35.10	33.34	24.44
Casey	35.10	33.34	23.45
Clinton	35.10	33.34	22.55
Cumberland	35.10	33.34	22.71
Elliott	35.10	33.34	21.89
Fleming	35.10	33.34	24.93
Franklin	35.75	33.96	35.42
Garrard	35.10	33.34	24.52
Grayson	35.10	33.34	23.04
Hancock	35.10	33.34	27.39
Harlan	35.10	33.34	23.37
Hart	35.10	33.34	24.44
Hickman	35.10	33.34	22.14
Jackson	35.10	33.34	23.37
Knott	35.10	33.34	21.89
Larue	35.10	33.34	23.21
Lawrence	35.10	33.34	23.70
Leslie	35.10	33.34	21.89
Lewis	35.10	33.34	22.06
Livingston	35.10	33.34	31.16
Lyon	35.10	33.34	26.40
Mccreary	35.10	33.34	21.16
Magoffin	35.10	33.34	21.89
Marshall	35.10	33.34	27.80
Mason	35.10	33.34	27.31
Menifee	35.10	33.34	21.89
Metcalfe	35.10	33.34	21.89
Montgomery	35.10	33.34	27.14
Muhlenberg	35.10	33.34	22.63
Nicholas	35.10	33.34	28.21
Owen	35.10	33.34	26.16
Perry	35.10	33.34	30.09
Powell	35.10	33.34	24.27

NONMETROPOLITAN COUNTIES	A	B	C
Allen	35.10	33.34	25.42
Ballard	35.10	33.34	21.98
Bath	35.10	33.34	24.27
Boyle	35.10	33.34	31.90
Breathitt	35.10	33.34	25.67
Butler	35.10	33.34	21.89
Calloway	35.10	33.34	28.21
Carroll	35.10	33.34	24.85
Clay	35.10	33.34	23.94
Crittenden	35.10	33.34	21.89
Edmonson	35.10	33.34	23.21
Estill	35.10	33.34	27.55
Floyd	35.10	33.34	29.44
Fulton	35.10	33.34	28.13
Graves	35.10	33.34	27.63
Green	35.10	33.34	28.13
Hardin	35.10	33.34	32.06
Harrison	35.10	33.34	29.60
Henry	35.10	33.34	24.44
Hopkins	35.10	33.34	25.50
Johnson	35.10	33.34	27.63
Knox	35.10	33.34	27.14
Laurel	35.10	33.34	27.06
Lee	35.10	33.34	21.98
Letcher	35.10	33.34	23.62
Lincoln	35.10	33.34	27.63
Logan	35.10	33.34	28.86
Mccracken	35.10	33.34	31.16
Mclean	35.10	33.34	21.89
Marion	35.10	33.34	22.39
Martin	35.10	33.34	24.68
Meade	35.10	33.34	29.60
Mercer	35.75	33.96	27.47
Monroe	35.10	33.34	21.48
Morgan	35.10	33.34	27.47
Nelson	35.10	33.34	29.77
Ohio	35.10	33.34	26.08
Owsley	35.10	33.34	23.12
Pike	35.10	33.34	29.77
Pulaski	35.10	33.34	29.27

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K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	A	B	C
Robertson	35.10	33.34	21.89
Rowan	35.10	33.34	27.31
Shelby	35.10	33.34	29.60
Spencer	35.10	33.34	28.37
Todd	35.10	33.34	24.11
Trimble	35.10	33.34	23.37
Warren	35.10	33.34	34.60
Wayne	35.10	33.34	23.70
Whitley	35.10	33.34	27.06
Rockcastle	35.10	33.34	24.68
Russell	35.10	33.34	24.68
Simpson	35.10	33.34	29.27
Taylor	35.10	33.34	26.49
Trigg	35.10	33.34	24.35
Union	35.10	33.34	26.49
Washington	35.10	33.34	26.65
Webster	35.10	33.34	25.83
Wolfe	35.10	33.34	21.89

L O U I S I A N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Alexandria, LA MSA	35.10	33.34	34.28	Rapides
Acadia Parishes, LA	35.10	33.34	26.49	Acadia
Baton Rouge, LA MSA	41.33	39.26	36.00	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma, LA MSA	36.65	34.82	32.23	Lafourche, Terrebonne
Lafayette, LA MSA	41.33	39.26	32.80	Lafayette, St. Martin
Lake Charles, LA MSA	35.10	33.34	35.75	Calcasieu
Monroe, LA MSA	35.10	33.34	35.26	Ouachita
New Orleans, LA	38.28	36.36	40.02	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles St. John the Baptist, St. Tammany
St. James Parish, LA	35.10	33.34	33.05	St. James
St. Landry Parish, LA	35.10	33.34	26.16	St. Landry
Shreveport-Bossier City, LA MSA	37.47	35.60	35.67	Bossier, Caddo, Webster

NONMETROPOLITAN COUNTIES	A	B	C
Allen	35.10	33.34	25.26
Avoyelles	35.10	33.34	22.39
Bienville	35.10	33.34	26.98
Cameron	35.10	33.34	25.26
Claiborne	35.10	33.34	26.32
De Soto	35.10	33.34	25.26
East Feliciana	35.10	33.34	27.39
Franklin	35.10	33.34	25.26
Iberia	35.10	33.34	29.03
Jackson	35.10	33.34	25.17
La Salle	35.10	33.34	25.26
Madison	35.10	33.34	23.94
Natchitoches	35.10	33.34	29.77
Red River	35.10	33.34	25.26
Assumption	35.10	33.34	29.36
Beauregard	35.10	33.34	33.29
Caldwell	35.10	33.34	25.26
Catahoula	35.10	33.34	25.26
Concordia	35.10	33.34	26.32
East Carroll	35.10	33.34	17.55
Evangeline	35.10	33.34	23.12
Grant	35.10	33.34	25.26
Iberville	35.10	33.34	25.83
Jefferson Davis	35.10	33.34	26.08
Lincoln	35.10	33.34	31.16
Morehouse	35.10	33.34	27.72
Pointe Coupee	35.10	33.34	27.31
Richland	35.10	33.34	25.26

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

L O U I S I A N A continued

NONMETROPOLITAN COUNTIES	A	B	C
Sabine	35.10	33.34	26.40
St. Mary	35.10	33.34	28.29
Tensas	35.10	33.34	22.55
Vermilion	35.10	33.34	25.50
Washington	35.10	33.34	23.53
West Feliciana	35.10	33.34	36.65
St. Helena	35.10	33.34	24.19
Tangipahoa	35.10	33.34	30.18
Union	35.10	33.34	25.26
Vernon	35.10	33.34	30.42
West Carroll	35.10	33.34	25.34
Winn	35.10	33.34	25.26

M A I N E

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Bangor, ME MSA	43.54	41.36	44.20	Penobscot county towns of Bangor city, Brewer city Eddington town, Glenburn town, Hampden town, Hermon town Holden town, Kenduskeag town, Milford town Old Town city, Orono town, Orrington town Penobscot Indian I, Veazie town Waldo county towns of Winterport town
Lewiston-Auburn, ME MSA	42.89	40.74	40.34	Androscoggin county towns of Auburn city, Greene town Lewiston city, Lisbon town, Mechanic Falls tow Poland town, Sabattus town, Turner town, Wales town
Portland, ME MSA	59.94	56.94	56.25	Cumberland county towns of Cape Elizabeth tow, Casco town Cumberland town, Falmouth town, Freeport town Gorham town, Gray town, North Yarmouth tow Portland city, Raymond town, Scarborough town South Portland cit, Standish town, Westbrook city Windham town, Yarmouth town York county towns of Buxton town, Hollis town Limington town, Old Orchard Beach
Portsmouth-Rochester, NH-ME PMSA	57.15	54.30	56.01	York county towns of Berwick town, Eliot town Kittery town, South Berwick town, York town

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Androscoggin	39.63	37.65	41.57	Durham town, Leeds town, Livermore town Livermore Falls to, Minot town
Aroostook	40.02	38.02	34.93	
Cumberland	45.83	43.54	50.35	Baldwin town, Bridgton town, Brunswick town Harpswell town, Harrison town, Naples town New Gloucester tow, Pownal town, Sebago town
Franklin	39.28	37.31	36.00	
Hancock	41.08	39.03	41.41	
Kennebec	42.07	39.96	39.61	
Knox	42.01	39.91	42.39	
Lincoln	41.33	39.27	41.74	
Oxford	39.28	37.31	36.90	

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M A I N E continued

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Penobscot	40.59	38.56	36.90	Alton town, Argyle unorg., Bradford town, Bradley town Burlington town, Carmel town, Carroll plantation Charleston town, Chester town, Clifton town Corinna town, Corinth town, Dexter town, Dixmont town Drew plantation, East Central Penob, East Millinocket t Edinburg town, Enfield town, Etna town, Exeter town Garland town, Greenbush town, Greenfield town Howland town, Hudson town, Kingman unorg., Lagrange town Lakeville town, Lee town, Levant town, Lincoln town Lowell town, Mattawamkeag town, Maxfield town Medway town, Millinocket town, Mount Chase town Newburgh town, Newport town, North Penobscot un Passadumkeag town, Patten town, Plymouth town Prentiss plantatio, Seboeis plantation, Springfield town Stacyville town, Stetson town, Twombly unorg. Webster plantation, Whitney unorg., Winn town Woodville town
Piscataquis	35.26	33.50	35.51	
Sagadahoc	48.04	45.63	50.35	
Somerset	39.93	37.94	35.92	
Waldo	40.59	38.56	37.64	Belfast city, Belmont town, Brooks town, Burnham town Frankfort town, Freedom town, Islesboro town Jackson town, Knox town, Liberty town, Lincolnville town Monroe town, Montville town, Morrill town Northport town, Palermo town, Prospect town Searsmont town, Searsport town, Stockton Springs t Swanville town, Thorndike town, Troy town, Unity town Waldo town
Washington	40.59	38.56	36.57	
York	52.73	50.09	48.05	Acton town, Alfred town, Arundel town, Biddeford city Cornish town, Dayton town, Kennebunk town Kennebunkport town, Lebanon town, Limerick town Lyman town, Newfield town, North Berwick town Ogunquit town, Parsonsfield town, Saco city Sanford town, Shapleigh town, Waterboro town, Wells town

M A R Y L A N D

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Baltimore, MD	49.45	46.97	50.59	Anne Arundel, Baltimore, Carroll, Harford, Howard Queen Anne's, Baltimore city
Columbia, MD	65.35	62.08	68.31	Columbia
Cumberland, MD-WV MSA	35.10	33.34	31.24	Allegany
Hagerstown, MD PMSA	38.79	36.85	39.20	Washington
Washington, DC-MD-VA	66.50	63.18	69.78	Calvert, Charles, Frederick, Montgomery, Prince George's

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M A R Y L A N D continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Wilmington-Newark, DE-MD PMSA	52.97	50.32	52.07	Cecil

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Caroline	35.83	34.04	36.41	Dorchester	37.39	35.52	38.13
Garrett	35.10	33.34	31.73	Kent	39.38	37.41	42.80
St. Mary's	52.81	50.17	53.87	Somerset	37.39	35.52	35.75
Talbot	43.03	40.88	48.22	Wicomico	44.44	42.22	43.21
Worcester	38.54	36.61	39.28				

M A S S A C H U S E T T S

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Barnstable-Yarmouth, MA MSA	66.50	63.18	66.99	Barnstable county towns of Barnstable town, Brewster town Chatham town, Dennis town, Eastham town, Harwich town Mashpee town, Orleans town, Sandwich town, Yarmouth town
Boston, MA-NH PMSA	66.34	63.02	65.93	Bristol county towns of Berkley town, Dighton town Mansfield town, Norton town, Taunton city Essex county towns of Amesbury town, Beverly city Danvers town, Essex town, Gloucester city, Hamilton town Ipswich town, Lynn city, Lynnfield town, Manchester town Marblehead town, Middleton town, Nahant town Newbury town, Newburyport city, Peabody city Rockport town, Rowley town, Salem city, Salisbury town Saugus town, Swampscott town, Topsfield town Wenham town Middlesex county towns of Acton town, Arlington town Ashland town, Ayer town, Bedford town, Belmont town Boxborough town, Burlington town, Cambridge city Carlisle town, Concord town, Everett city Framingham town, Holliston town, Hopkinton town Hudson town, Lexington town, Lincoln town Littleton town, Malden city, Marlborough city Maynard town, Medford city, Melrose city, Natick town Newton city, North Reading town, Reading town Sherborn town, Shirley town, Somerville city Stoneham town, Stow town, Sudbury town, Townsend town Wakefield town, Waltham city, Watertown town Wayland town, Weston town, Wilmington town Winchester town, Woburn city Norfolk county towns of Bellingham town, Braintree town Brookline town, Canton town, Cohasset town, Dedham town Dover town, Foxborough town, Franklin town Holbrook town, Medfield town, Medway town, Millis town Milton town, Needham town, Norfolk town, Norwood town Plainville town, Quincy city, Randolph town, Sharon town

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
				Stoughton town, Walpole town, Wellesley town Westwood town, Weymouth town, Wrentham town Plymouth county towns of Carver town, Duxbury town Hanover town, Hingham town, Hull town, Kingston town Marshfield town, Norwell town, Pembroke town Plymouth town, Rockland town, Scituate town Wareham town Suffolk county towns of Boston city, Chelsea city Revere city, Winthrop town Worcester county towns of Berlin town, Blackstone town Bolton town, Harvard town, Hopedale town, Lancaster town Mendon town, Milford town, Millville town Southborough town, Upton town
Brockton, MA PMSA	55.19	52.43	55.76	Bristol county towns of Easton town, Raynham town Norfolk county towns of Avon town Plymouth county towns of Abington town, Bridgewater town Brockton city, East Bridgewater t, Halifax town Hanson town, Lakeville town, Middleborough town Plympton town, West Bridgewater t, Whitman town
Fitchburg-Leominster, MA MSA	55.60	52.82	56.09	Middlesex county towns of Ashby town Worcester county towns of Ashburnham town, Fitchburg city Gardner city, Leominster city, Lunenburg town Templeton town, Westminster town, Winchendon town
Lawrence, MA-NH PMSA	53.30	50.64	53.87	Essex county towns of Andover town, Boxford town Georgetown town, Groveland town, Haverhill city Lawrence city, Merrimac town, Methuen town North Andover town, West Newbury town
Lowell, MA-NH PMSA	55.68	52.89	56.25	Middlesex county towns of Billerica town, Chelmsford town Dracut town, Dunstable town, Groton town, Lowell city Pepperell town, Tewksbury town, Tyngsborough town Westford town
New Bedford, MA MSA	48.13	45.73	46.00	Bristol county towns of Acushnet town, Dartmouth town Fairhaven town, Freetown town, New Bedford city Plymouth county towns of Marion town, Mattapoisett town Rochester town
Pittsfield, MA MSA	50.92	48.38	48.22	Berkshire county towns of Adams town, Cheshire town Dalton town, Hinsdale town, Lanesborough town, Lee town Lenox town, Pittsfield city, Richmond town Stockbridge town
Providence-Fall River-Warwick, RI-MA PMSA	53.55	50.87	54.04	Bristol county towns of Attleboro city, Fall River city North Attleborough, Rehoboth town, Seekonk town Somerset town, Swansea town, Westport town
Springfield, MA MSA	49.86	47.36	50.59	Franklin county towns of Sunderland town Hampden county towns of Agawam town, Chicopee city East Longmeadow to, Hampden town, Holyoke city Longmeadow town, Ludlow town, Monson town Montgomery town, Palmer town, Russell town

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
				Southwick town, Springfield city, Westfield city
				West Springfield t, Wilbraham town
				Hampshire county towns of Amherst town, Belchertown town
				Easthampton town, Granby town, Hadley town
				Hatfield town, Huntington town, Northampton city
				Southampton town, South Hadley town, Ware town
				Williamsburg town
Worcester, MA-CT	55.50	52.73	57.73	Hampden county towns of Holland town
				Worcester county towns of Auburn town, Barre town
				Boylston town, Brookfield town, Charlton town
				Clinton town, Douglas town, Dudley town
				East Brookfield to, Grafton town, Holden town
				Leicester town, Millbury town, Northborough town
				Northbridge town, North Brookfield t, Oakham town
				Oxford town, Paxton town, Princeton town, Rutland town
				Shrewsbury town, Southbridge town, Spencer town
				Sterling town, Sturbridge town, Sutton town
				Uxbridge town, Webster town, Westborough town
				West Boylston town, West Brookfield to, Worcester city

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Barnstable	66.50	63.18	65.85	Bourne town, Falmouth town, Provincetown town
				Truro town, Wellfleet town
Berkshire	44.85	42.61	42.64	Alford town, Becket town, Clarksburg town, Egremont town
				Florida town, Great Barrington t, Hancock town
				Monterey town, Mount Washington t, New Ashford town
				New Marlborough to, North Adams city, Otis town
				Peru town, Sandisfield town, Savoy town, Sheffield town
				Tyringham town, Washington town, West Stockbridge t
				Williamstown town, Windsor town
Dukes	66.50	63.18	64.62	
Franklin	50.51	47.99	50.92	Ashfield town, Bernardston town, Buckland town
				Charlemont town, Colrain town, Conway town
				Deerfield town, Erving town, Gill town, Greenfield town
				Hawley town, Heath town, Leverett town, Leyden town
				Monroe town, Montague town, New Salem town
				Northfield town, Orange town, Rowe town, Shelburne town
				Shutesbury town, Warwick town, Wendell town
				Whately town
Hampden	48.55	46.12	58.88	Blandford town, Brimfield town, Chester town
				Granville town, Tolland town, Wales town
Hampshire	60.93	57.88	61.42	Chesterfield town, Cummington town, Goshen town
				Middlefield town, Pelham town, Plainfield town
				Westhampton town, Worthington town
Nantucket	66.50	63.18	102.42	
Worcester	49.77	47.29	50.18	Athol town, Hardwick town, Hubbardston town

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M A S S A C H U S E T T S continued

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
				New Braintree town, Petersham town, Phillipston town Royalston town, Warren town

M I C H I G A N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Ann Arbor, MI PMSA	52.79	50.15	53.96	Lenawee, Livingston, Washtenaw
Benton Harbor, MI MSA	38.62	36.69	38.95	Berrien
Detroit, MI PMSA	44.30	42.09	47.07	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
Flint, MI PMSA	38.13	36.22	38.95	Genesee
Grand Rapids-Muskegon-Holland, MI MSA	41.82	39.73	43.05	Allegan, Kent, Muskegon, Ottawa
Jackson, MI MSA	38.29	36.38	38.95	Jackson
Kalamazoo-Battle Creek, MI MSA	39.93	37.94	41.08	Calhoun, Kalamazoo, Van Buren
Lansing-East Lansing, MI MSA	42.48	40.35	43.71	Clinton, Eaton, Ingham
Saginaw-Bay City-Midland, MI MSA	37.88	35.99	38.95	Bay, Midland, Saginaw

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Alcona	35.10	33.34	31.65	Alger	35.10	33.34	31.00
Alpena	35.10	33.34	30.01	Antrim	37.64	35.76	31.16
Arenac	35.10	33.34	30.42	Baraga	35.10	33.34	25.75
Barry	36.58	34.75	37.56	Benzie	37.64	35.76	31.90
Branch	35.34	33.57	33.46	Cass	35.10	33.34	33.70
Charlevoix	37.64	35.76	35.59	Cheboygan	35.10	33.34	30.26
Chippewa	35.10	33.34	31.73	Clare	35.10	33.34	30.18
Crawford	35.10	33.34	33.78	Delta	35.10	33.34	28.86
Dickinson	35.10	33.34	34.69	Emmet	37.64	35.76	36.16
Gladwin	35.10	33.34	30.67	Gogebic	35.10	33.34	28.04
Grand Traverse	38.96	37.01	43.21	Gratiot	37.88	35.99	32.31
Hillsdale	37.47	35.60	31.08	Houghton	35.10	33.34	28.04
Huron	35.10	33.34	28.62	Ionia	35.18	33.42	35.51
Iosco	35.10	33.34	31.24	Iron	35.10	33.34	28.04
Isabella	37.88	35.99	36.82	Kalkaska	37.64	35.76	33.21
Keweenaw	35.10	33.34	28.04	Lake	35.10	33.34	30.50
Leelanau	38.70	36.77	39.28	Luce	35.10	33.34	31.00
Mackinac	35.10	33.34	30.18	Manistee	37.64	35.76	28.62
Marquette	37.64	35.76	32.23	Mason	35.10	33.34	29.36
Mecosta	35.10	33.34	33.29	Menominee	37.64	35.76	29.19
Missaukee	37.64	35.76	30.50	Montcalm	35.10	33.34	32.31
Montmorency	35.10	33.34	31.73	Newaygo	35.10	33.34	33.21
Oceana	35.10	33.34	30.91	Ogemaw	35.10	33.34	30.26

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I C H I G A N continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Ontonagon	35.10	33.34	25.83	Osceola	35.10	33.34	31.08
Oscoda	35.10	33.34	28.45	Otsego	35.10	33.34	35.42
Presque Isle	35.10	33.34	28.37	Roscommon	35.10	33.34	32.39
St. Joseph	35.34	33.57	32.96	Sanilac	35.10	33.34	31.90
Schoolcraft	35.10	33.34	28.04	Shiawassee	37.39	35.52	34.60
Tuscola	35.22	33.46	35.75	Wexford	37.64	35.76	34.60

M I N N E S O T A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Duluth-Superior, MN-WI MSA	38.21	36.30	35.59	St. Louis
Fargo-Moorhead, ND-MN MSA	39.20	37.24	38.29	Clay
Grand Forks, ND-MN MSA	37.47	35.60	37.80	Polk
La Crosse, WI-MN MSA	41.66	39.57	35.75	Houston
Minneapolis-St. Paul, MN-WI MSA	51.66	49.08	50.43	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey Scott, Sherburne, Washington, Wright
Rochester, MN MSA	42.77	40.64	44.03	Olmsted
St. Cloud, MN MSA	39.36	37.39	39.61	Benton, Stearns

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Aitkin	36.24	34.43	36.74	Becker	35.10	33.34	34.19
Beltrami	35.10	33.34	35.51	Big Stone	35.10	33.34	27.80
Blue Earth	38.38	36.46	38.38	Brown	35.10	33.34	30.42
Carlton	35.10	33.34	31.41	Cass	35.10	33.34	31.24
Chippewa	35.10	33.34	25.26	Clearwater	35.10	33.34	31.24
Cook	35.10	33.34	33.54	Cottonwood	35.10	33.34	27.39
Crow Wing	35.10	33.34	34.11	Dodge	35.10	33.34	29.11
Douglas	35.10	33.34	29.27	Faribault	35.10	33.34	25.58
Fillmore	35.10	33.34	27.22	Freeborn	38.29	36.38	33.54
Goodhue	35.10	33.34	36.08	Grant	35.10	33.34	29.85
Hubbard	35.10	33.34	30.26	Itasca	35.10	33.34	35.42
Jackson	35.10	33.34	25.26	Kanabec	35.10	33.34	34.28
Kandiyohi	36.82	34.98	32.47	Kittson	35.10	33.34	26.40
Koochiching	35.10	33.34	34.44	Lac qui Parle	35.10	33.34	25.83
Lake	35.10	33.34	27.06	Lake of the Woods	35.10	33.34	28.86
Le Sueur	36.49	34.67	32.23	Lincoln	35.10	33.34	21.24
Lyon	35.10	33.34	29.93	Mcleod	36.82	34.98	36.00
Mahnomen	35.10	33.34	29.44	Marshall	35.10	33.34	25.99
Martin	35.10	33.34	27.63	Meeker	36.82	34.98	29.77
Mille Lacs	35.10	33.34	32.47	Morrison	35.10	33.34	30.09
Mower	35.10	33.34	29.85	Murray	35.10	33.34	25.50

Note: A = First 600 of pre 89 units; B = Remainder of pre 89 units; C = Post 88 units.

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I N N E S O T A continued

NONMETROPOLITAN COUNTIES	A	B	C
Nicollet	36.98	35.13	37.47
Norman	35.10	33.34	29.52
Pennington	35.10	33.34	31.16
Pipestone	35.10	33.34	25.58
Red Lake	35.10	33.34	30.09
Renville	36.82	34.98	27.55
Rock	35.10	33.34	25.26
Sibley	36.49	34.67	24.60
Stevens	35.10	33.34	35.18
Todd	35.10	33.34	25.91
Wabasha	35.10	33.34	30.18
Waseca	35.10	33.34	31.49
Wilkin	35.10	33.34	25.42
Yellow Medicine	35.10	33.34	25.26

NONMETROPOLITAN COUNTIES	A	B	C
Nobles	35.10	33.34	30.18
Otter Tail	35.10	33.34	31.00
Pine	35.10	33.34	30.67
Pope	35.10	33.34	25.26
Redwood	35.10	33.34	25.58
Rice	39.44	37.47	40.02
Roseau	35.10	33.34	33.95
Steele	38.29	36.38	34.93
Swift	35.10	33.34	25.26
Traverse	35.10	33.34	25.34
Wadena	35.10	33.34	25.26
Watonwan	35.10	33.34	25.26
Winona	35.59	33.81	36.08

M I S S I S S I P P I

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Biloxi-Gulfport-Pascagpula, MS MSA	35.10	33.34	36.16	Hancock, Harrison, Jackson
Hattiesburg, MS MSA	35.10	33.34	29.77	Forrest, Lamar
Jackson, MS MSA	41.41	39.34	40.92	Hinds, Madison, Rankin
Memphis, TN-AR-MS MSA	37.88	35.99	37.88	Desoto

NONMETROPOLITAN COUNTIES	A	B	C
Adams	35.10	33.34	29.44
Amite	35.10	33.34	25.42
Benton	35.10	33.34	25.42
Calhoun	35.10	33.34	25.42
Chickasaw	35.10	33.34	23.53
Claiborne	35.10	33.34	26.98
Clay	35.10	33.34	25.99
Copiah	35.10	33.34	27.88
Franklin	35.10	33.34	25.42
Greene	35.10	33.34	25.42
Holmes	35.10	33.34	25.42
Issaquena	35.10	33.34	38.21
Jasper	35.10	33.34	24.11
Jefferson Davis	35.10	33.34	25.42
Kemper	35.10	33.34	25.58
Lauderdale	35.10	33.34	32.39

NONMETROPOLITAN COUNTIES	A	B	C
Alcorn	35.10	33.34	26.40
Attala	35.10	33.34	24.60
Bolivar	35.10	33.34	30.83
Carroll	35.10	33.34	24.19
Choctaw	35.10	33.34	26.57
Clarke	35.10	33.34	25.42
Coahoma	35.10	33.34	31.32
Covington	35.10	33.34	25.42
George	35.10	33.34	28.21
Grenada	35.10	33.34	29.03
Humphreys	35.10	33.34	24.85
Itawamba	35.10	33.34	25.42
Jefferson	35.10	33.34	25.42
Jones	35.10	33.34	25.42
Lafayette	35.10	33.34	37.31
Lawrence	35.10	33.34	25.42

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I S S I S S I P P I continued

NONMETROPOLITAN COUNTIES	A	B	C
Leake	35.10	33.34	25.42
Leflore	35.10	33.34	27.39
Lowndes	35.10	33.34	31.90
Marshall	35.10	33.34	26.16
Montgomery	35.10	33.34	25.42
Newton	35.10	33.34	21.65
Oktibbeha	35.10	33.34	31.16
Pearl River	35.10	33.34	28.13
Pike	35.10	33.34	25.83
Prentiss	35.10	33.34	24.27
Scott	35.10	33.34	25.42
Simpson	35.10	33.34	25.42
Stone	35.10	33.34	25.42
Tallahatchie	35.10	33.34	22.71
Tippah	35.10	33.34	24.44
Tunica	35.10	33.34	25.42
Walthall	35.10	33.34	25.42
Washington	35.10	33.34	33.95
Webster	35.10	33.34	24.19
Winston	35.10	33.34	25.34
Yazoo	35.10	33.34	28.13

NONMETROPOLITAN COUNTIES	A	B	C
Lee	35.10	33.34	32.80
Lincoln	35.10	33.34	25.42
Marion	35.10	33.34	25.42
Monroe	35.10	33.34	26.08
Neshoba	35.10	33.34	24.27
Noxubee	35.10	33.34	20.42
Panola	35.10	33.34	26.08
Perry	35.10	33.34	25.42
Pontotoc	35.10	33.34	25.42
Quitman	35.10	33.34	25.42
Sharkey	35.10	33.34	21.57
Smith	35.10	33.34	25.42
Sunflower	35.10	33.34	27.96
Tate	35.10	33.34	31.24
Tishomingo	35.10	33.34	21.98
Union	35.10	33.34	25.42
Warren	35.10	33.34	32.55
Wayne	35.10	33.34	25.42
Wilkinson	35.10	33.34	25.42
Yalobusha	35.10	33.34	24.52

M I S S O U R I

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Columbia, MO MSA	35.31	33.54	36.90	Boone
Joplin, MO MSA	35.10	33.34	30.34	Jasper, Newton
Kansas City, MO-KS MSA	40.10	38.09	40.10	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	35.10	33.34	30.91	Andrew, Buchanan
St. Louis, MO-IL MSA	41.25	39.18	39.03	Crawford-Sullivan (part), Franklin, Jefferson, Lincoln St. Charles, St. Louis, Warren, St. Louis city
Springfield, MO MSA	35.10	33.34	33.87	Christian, Greene, Webster

NONMETROPOLITAN COUNTIES	A	B	C
Adair	35.10	33.34	31.65
Audrain	35.10	33.34	27.47
Barton	35.10	33.34	23.94
Benton	35.10	33.34	29.19
Butler	35.10	33.34	26.65
Callaway	35.10	33.34	30.42

NONMETROPOLITAN COUNTIES	A	B	C
Atchison	35.10	33.34	23.29
Barry	35.10	33.34	27.55
Bates	35.10	33.34	26.16
Bollinger	35.10	33.34	23.53
Caldwell	35.10	33.34	28.62
Camden	35.10	33.34	33.54

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I S S O U R I continued

NONMETROPOLITAN COUNTIES	A	B	C
Cape Girardeau	35.10	33.34	31.73
Carter	35.10	33.34	22.39
Chariton	35.10	33.34	22.39
Cole	35.10	33.34	33.54
Crawford	35.10	33.34	28.37
Dallas	35.10	33.34	25.58
Dekalb	35.10	33.34	26.81
Douglas	35.10	33.34	23.94
Gasconade	35.10	33.34	27.39
Grundy	35.10	33.34	26.24
Henry	35.10	33.34	29.60
Holt	35.10	33.34	22.55
Howell	35.10	33.34	25.58
Johnson	35.10	33.34	33.37
Laclede	35.10	33.34	27.14
Lewis	35.10	33.34	23.53
Livingston	35.10	33.34	26.40
Macon	35.10	33.34	27.96
Maries	35.10	33.34	24.03
Mercer	35.10	33.34	22.39
Mississippi	35.10	33.34	23.86
Monroe	35.10	33.34	24.85
Morgan	35.10	33.34	26.16
Nodaway	35.10	33.34	29.68
Osage	35.10	33.34	23.86
Pemiscot	35.10	33.34	23.29
Pettis	35.10	33.34	32.47
Pike	35.10	33.34	26.98
Pulaski	35.10	33.34	29.68
Ralls	35.10	33.34	24.35
Reynolds	35.10	33.34	22.55
St. Clair	35.10	33.34	23.78
St. Francois	35.10	33.34	31.73
Schuyler	35.10	33.34	23.70
Scott	35.10	33.34	30.83
Shelby	35.10	33.34	22.63
Stone	35.10	33.34	29.27
Taney	35.10	33.34	30.59
Vernon	35.10	33.34	27.22
Wayne	35.10	33.34	23.21

NONMETROPOLITAN COUNTIES	A	B	C
Carroll	35.10	33.34	22.80
Cedar	35.10	33.34	24.03
Clark	35.10	33.34	22.96
Cooper	35.10	33.34	25.91
Dade	35.10	33.34	22.39
Daviess	35.10	33.34	24.85
Dent	35.10	33.34	25.26
Dunklin	35.10	33.34	22.39
Gentry	35.10	33.34	23.04
Harrison	35.10	33.34	22.88
Hickory	35.10	33.34	26.24
Howard	35.10	33.34	25.83
Iron	35.10	33.34	25.09
Knox	35.10	33.34	22.88
Lawrence	35.10	33.34	26.90
Linn	35.10	33.34	25.42
Mcdonald	35.10	33.34	23.62
Madison	35.10	33.34	26.08
Marion	35.10	33.34	26.08
Miller	35.10	33.34	28.21
Moniteau	35.10	33.34	24.44
Montgomery	35.10	33.34	27.39
New Madrid	35.10	33.34	26.32
Oregon	35.10	33.34	21.57
Ozark	35.10	33.34	22.39
Perry	35.10	33.34	30.09
Phelps	35.10	33.34	30.01
Polk	35.10	33.34	27.80
Putnam	35.10	33.34	22.96
Randolph	35.10	33.34	27.39
Ripley	35.10	33.34	23.29
Ste. Genevieve	35.10	33.34	29.19
Saline	35.10	33.34	29.03
Scotland	35.10	33.34	24.35
Shannon	35.10	33.34	22.39
Stoddard	35.10	33.34	24.19
Sullivan	35.10	33.34	22.39
Texas	35.10	33.34	23.78
Washington	35.10	33.34	30.26
Worth	35.10	33.34	21.65

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I S S O U R I continued

NONMETROPOLITAN COUNTIES	A	B	C
Wright	35.10	33.34	22.71

M O N T A N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Billings, MT MSA	45.10	42.84	35.67	Yellowstone
Great Falls, MT MSA	39.93	37.94	34.36	Cascade

NONMETROPOLITAN COUNTIES	A	B	C
Beaverhead	39.77	37.78	29.27
Blaine	36.98	35.13	30.34
Carbon	37.47	35.60	29.85
Chouteau	36.98	35.13	30.83
Daniels	36.98	35.13	31.08
Deer Lodge	39.77	37.78	27.80
Fergus	37.47	35.60	30.26
Gallatin	44.61	42.38	36.24
Glacier	36.98	35.13	32.72
Granite	39.77	37.78	29.36
Jefferson	39.77	37.78	32.39
Lake	40.59	38.56	28.13
Liberty	36.98	35.13	26.81
Mccone	37.47	35.60	28.45
Meagher	39.77	37.78	31.08
Missoula	40.59	38.56	39.61
Park	39.77	37.78	31.98
Phillips	36.98	35.13	31.08
Powder River	37.47	35.60	28.95
Prairie	37.47	35.60	24.35
Richland	37.47	35.60	27.96
Rosebud	37.47	35.60	31.08
Sheridan	36.98	35.13	25.99
Stillwater	37.47	35.60	31.08
Teton	36.98	35.13	28.78
Treasure	37.47	35.60	31.08
Wheatland	37.47	35.60	23.45

NONMETROPOLITAN COUNTIES	A	B	C
Big Horn	37.47	35.60	30.18
Broadwater	39.77	37.78	34.28
Carter	37.47	35.60	25.01
Custer	37.47	35.60	28.04
Dawson	37.47	35.60	29.44
Fallon	37.47	35.60	24.60
Flathead	40.59	38.56	34.85
Garfield	37.47	35.60	28.62
Golden Valley	37.47	35.60	27.31
Hill	36.98	35.13	31.08
Judith Basin	37.47	35.60	31.08
Lewis and Clark	46.25	43.94	34.36
Lincoln	40.59	38.56	31.08
Madison	39.77	37.78	31.08
Mineral	40.59	38.56	32.80
Musselshell	37.47	35.60	28.29
Petroleum	37.47	35.60	29.85
Pondera	36.98	35.13	28.62
Powell	39.77	37.78	29.44
Ravalli	40.59	38.56	31.08
Roosevelt	36.98	35.13	29.44
Sanders	40.59	38.56	31.08
Silver Bow	39.77	37.78	31.08
Sweet Grass	37.47	35.60	25.91
Toole	36.98	35.13	31.08
Valley	36.98	35.13	25.58
Wibaux	37.47	35.60	31.08

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N E B R A S K A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Lincoln, NE MSA	38.87	36.92	38.29	Lancaster
Omaha, NE-IA MSA	39.38	37.41	41.49	Cass, Douglas, Sarpy, Washington
Sioux City, IA-NE MSA	37.80	35.91	36.57	Dakota

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Adams	35.10	33.34	33.78	Antelope	35.10	33.34	20.83
Arthur	35.10	33.34	30.83	Banner	35.10	33.34	28.45
Blaine	35.10	33.34	16.24	Boone	35.10	33.34	24.93
Box Butte	35.10	33.34	27.80	Boyd	35.10	33.34	22.71
Brown	35.10	33.34	26.49	Buffalo	35.10	33.34	34.69
Burt	35.10	33.34	25.42	Butler	35.10	33.34	28.13
Cedar	35.10	33.34	22.55	Chase	35.10	33.34	25.42
Cherry	35.10	33.34	27.88	Cheyenne	35.10	33.34	28.45
Clay	35.10	33.34	27.14	Colfax	35.10	33.34	24.93
Cuming	35.10	33.34	26.57	Custer	35.10	33.34	26.08
Dawes	35.10	33.34	27.63	Dawson	35.10	33.34	30.91
Deuel	35.10	33.34	24.11	Dixon	35.10	33.34	27.39
Dodge	35.10	33.34	31.82	Dundy	35.10	33.34	28.45
Fillmore	35.10	33.34	28.45	Franklin	35.10	33.34	23.04
Frontier	35.10	33.34	24.35	Furnas	35.10	33.34	21.65
Gage	35.10	33.34	27.55	Garden	35.10	33.34	20.91
Garfield	35.10	33.34	23.21	Gosper	35.10	33.34	28.86
Grant	35.10	33.34	28.45	Greeley	35.10	33.34	23.70
Hall	35.10	33.34	33.29	Hamilton	35.10	33.34	27.31
Harlan	35.10	33.34	28.45	Hayes	35.10	33.34	22.22
Hitchcock	35.10	33.34	27.31	Holt	35.10	33.34	28.04
Hooker	35.10	33.34	28.45	Howard	35.10	33.34	28.37
Jefferson	35.10	33.34	27.96	Johnson	35.10	33.34	28.45
Kearney	35.10	33.34	28.45	Keith	35.10	33.34	28.70
Keya Paha	35.10	33.34	28.45	Kimball	35.10	33.34	28.45
Knox	35.10	33.34	21.57	Lincoln	35.10	33.34	29.85
Logan	35.10	33.34	24.44	Loup	35.10	33.34	18.61
Mcpherson	35.10	33.34	28.45	Madison	35.10	33.34	33.13
Merrick	35.10	33.34	28.04	Morrill	35.10	33.34	25.99
Nance	35.10	33.34	23.37	Nemaha	35.10	33.34	28.45
Nuckolls	35.10	33.34	25.01	Otoe	35.10	33.34	28.70
Pawnee	35.10	33.34	24.03	Perkins	35.10	33.34	28.37
Phelps	35.10	33.34	28.45	Pierce	35.10	33.34	26.57
Platte	35.10	33.34	30.91	Polk	35.10	33.34	26.32
Red Willow	35.10	33.34	28.78	Richardson	35.10	33.34	26.90

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Rock	35.10	33.34	23.70	Saline	35.10	33.34	30.18
Saunders	35.10	33.34	29.19	Scotts Bluff	35.10	33.34	31.82
Seward	35.10	33.34	31.49	Sheridan	35.10	33.34	27.96
Sherman	35.10	33.34	23.21	Sioux	35.10	33.34	28.45
Stanton	35.10	33.34	28.45	Thayer	35.10	33.34	24.68
Thomas	35.10	33.34	28.45	Thurston	35.10	33.34	23.62
Valley	35.10	33.34	28.45	Wayne	35.10	33.34	27.31
Webster	35.10	33.34	23.78	Wheeler	35.10	33.34	28.45
York	35.10	33.34	31.32				

N E V A D A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA	56.33	53.52	53.79	Clark, Nye
Reno, NV MSA	48.80	46.36	53.79	Washoe

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Churchill	49.20	46.74	46.58	Douglas	50.92	48.38	56.99
Elko	49.20	46.74	47.56	Esmeralda	49.20	46.74	40.02
Eureka	49.20	46.74	45.59	Humboldt	49.20	46.74	47.07
Lander	49.20	46.74	36.24	Lincoln	49.20	46.74	32.06
Lyon	49.20	46.74	38.13	Mineral	49.20	46.74	46.74
Pershing	49.20	46.74	47.56	Storey	49.20	46.74	47.56
White Pine	49.20	46.74	46.08	Carson City	49.20	46.74	48.79

N E W H A M P S H I R E

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Boston, MA-NH PMSA	66.34	63.02	65.93	Rockingham county towns of Seabrook town South Hampton town
Lawrence, MA-NH PMSA	53.30	50.64	53.87	Rockingham county towns of Atkinson town, Chester town Danville town, Derry town, Fremont town, Hampstead town Kingston town, Newton town, Plaistow town, Raymond town Salem town, Sandown town, Windham town
Lowell, MA-NH PMSA	55.68	52.89	56.25	Hillsborough county towns of Pelham town
Manchester, NH PMSA	55.19	52.43	51.09	Hillsborough county towns of Bedford town, Goffstown town Manchester city, Weare town Merrimack county towns of Allenstown town, Hooksett town Rockingham county towns of Auburn town, Candia town Londonderry town
Nashua, NH PMSA	58.63	55.70	59.04	Hillsborough county towns of Amherst town, Brookline town Greenville town, Hollis town, Hudson town

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N E W H A M P S H I R E continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
				Litchfield town, Mason town, Merrimack town Milford town, Mont Vernon town, Nashua city New Ipswich town, Wilton town
Portsmouth-Rochester, NH-ME PMSA	57.15	54.30	56.01	Rockingham county towns of Brentwood town East Kingston town, Epping town, Exeter town Greenland town, Hampton town, Hampton Falls town Kensington town, New Castle town, Newfields town Newington town, Newmarket town, North Hampton town Portsmouth city, Rye town, Stratham town Strafford county towns of Barrington town, Dover city Durham town, Farmington town, Lee town, Madbury town Milton town, Rochester city, Rollinsford town Somersworth city

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Belknap	48.38	45.96	51.74	
Carroll	48.63	46.20	51.99	
Cheshire	57.40	54.53	53.63	
Coos	44.03	41.83	33.87	
Grafton	49.94	47.44	50.35	
Hillsborough	62.32	59.20	55.68	Antrim town, Bennington town, Deering town Francestown town, Greenfield town, Hancock town Hillsborough town, Lyndeborough town, New Boston town Peterborough town, Sharon town, Temple town Windsor town
Merrimack	61.42	58.35	52.40	Andover town, Boscawen town, Bow town, Bradford town Canterbury town, Chichester town, Concord city Danbury town, Dunbarton town, Epsom town, Franklin city Henniker town, Hill town, Hopkinton town, Loudon town Newbury town, New London town, Northfield town Pembroke town, Pittsfield town, Salisbury town Sutton town, Warner town, Webster town, Wilmot town
Rockingham	60.19	57.18	57.15	Deerfield town, Northwood town, Nottingham town
Strafford	55.50	52.73	58.55	Middleton town, New Durham town, Strafford town
Sullivan	46.90	44.56	44.77	

N E W J E R S E Y

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Atlantic-Cape May, NJ PMSA	54.91	52.17	64.12	Atlantic, Cape May
Bergen-Passaic, NJ PMSA	66.50	63.18	75.93	Bergen, Passaic
Jersey City, NJ PMSA	55.42	52.65	67.40	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	66.50	63.18	78.80	Hunterdon, Middlesex, Somerset

Note: A = First 600 of pre 89 units; B = Remainder of pre 89 units; C = Post 88 units.

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N E W J E R S E Y continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Monmouth-Ocean, NJ PMSA	65.10	61.84	72.57	Monmouth, Ocean
Newark, NJ PMSA	64.93	61.68	70.77	Essex, Morris, Sussex, Union, Warren
Philadelphia, PA-NJ PMSA	53.81	51.12	57.15	Burlington, Camden, Gloucester, Salem
Trenton, NJ PMSA	63.80	60.61	65.11	Mercer
Vineland-Millville-Bridgeton, NJ PMSA	52.79	50.15	53.55	Cumberland

N E W M E X I C O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Albuquerque, NM MSA	46.08	43.78	42.56	Bernalillo, Sandoval, Valencia
Las Cruces, NM MSA	36.57	34.74	34.19	Dona Ana
Santa Fe, NM MSA	54.53	51.80	56.58	Los Alamos, Santa Fe

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Catron	35.10	33.34	28.45	Chaves	35.51	33.73	32.06
Cibola	35.10	33.34	24.85	Colfax	35.10	33.34	25.67
Curry	35.10	33.34	32.14	Debaca	35.10	33.34	28.54
Eddy	39.20	37.24	29.44	Grant	35.10	33.34	29.36
Guadalupe	35.10	33.34	29.77	Harding	35.10	33.34	23.62
Hidalgo	35.10	33.34	28.45	Lea	39.20	37.24	28.45
Lincoln	35.51	33.73	32.80	Luna	35.10	33.34	28.45
Mckinley	45.35	43.08	34.03	Mora	35.10	33.34	27.80
Otero	35.51	33.73	30.67	Quay	35.10	33.34	34.77
Rio Arriba	35.10	33.34	31.41	Roosevelt	35.10	33.34	27.31
San Juan	45.35	43.08	31.90	San Miguel	35.10	33.34	31.98
Sierra	35.51	33.73	28.45	Socorro	35.51	33.73	29.36
Taos	37.43	35.56	39.52	Torrance	35.10	33.34	29.77
Union	35.10	33.34	29.85				

N E W Y O R K

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	46.42	44.10	48.05	Albany, Montgomery, Rensselaer, Saratoga, Schenectady Schoharie
Binghamton, NY MSA	40.51	38.48	39.69	Broome, Tioga
Buffalo-Niagara Falls, NY PMSA	39.93	37.94	41.41	Erie, Niagara
Dutchess County, NY PMSA	63.96	60.76	65.68	Dutchess
Elmira, NY MSA	41.25	39.18	39.03	Chemung
Glens Falls, NY MSA	43.95	41.75	44.53	Warren, Washington
Jamestown, NY MSA	38.21	36.30	32.55	Chautauqua

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N E W Y O R K continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Nassau-Suffolk, NY PMSA	66.50	63.18	84.62	Nassau, Suffolk
New York, NY PMSA	57.80	54.91	68.88	Bronx, Kings, New York, Putnam, Queens, Richmond Rockland
Westchester County, NY	66.50	63.18	82.08	Westchester
Newburgh, NY-PA PMSA	59.41	56.44	66.26	Orange
Rochester, NY MSA	48.87	46.43	47.97	Genesee, Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	42.72	40.59	43.30	Cayuga, Madison, Onondaga, Oswego
Utica-Rome, NY MSA	39.11	37.16	37.64	Herkimer, Oneida

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Allegany	36.08	34.28	30.50	Cattaraugus	36.08	34.28	31.90
Chenango	42.39	40.27	35.75	Clinton	40.51	38.48	41.49
Columbia	41.84	39.75	47.64	Cortland	44.12	41.91	41.82
Delaware	39.61	37.63	36.49	Essex	38.95	37.00	39.85
Franklin	38.95	37.00	34.85	Fulton	36.24	34.43	37.31
Greene	44.85	42.61	43.46	Hamilton	38.95	37.00	39.03
Jefferson	43.95	41.75	42.23	Lewis	41.98	39.88	36.90
Otsego	39.61	37.63	38.05	St. Lawrence	40.02	38.02	36.98
Schuyler	40.43	38.40	38.62	Seneca	43.05	40.90	38.79
Steuben	40.43	38.40	36.98	Sullivan	47.36	44.99	51.17
Tompkins	45.66	43.38	51.09	Ulster	52.28	49.67	58.06
Wyoming	40.02	38.02	34.28	Yates	40.18	38.17	37.56

N O R T H C A R O L I N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Asheville, NC MSA	35.10	33.34	37.06	Buncombe, Madison
Charlotte-Gastonia-Rock Hill, NC-SC MSA	38.45	36.52	42.31	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	35.67	33.89	36.24	Cumberland
Goldsboro, NC MSA	35.10	33.34	30.18	Wayne
Greensboro--Winston-Salem--High Point, NC MSA	36.32	34.51	38.46	Alamance, Davidson, Davie, Forsyth, Guilford, Randolph Stokes, Yadkin
Greenville, NC MSA	35.10	33.34	36.98	Pitt
Hickory-Morganton, NC MSA	36.98	35.13	37.56	Alexander, Burke, Caldwell, Catawba
Jacksonville, NC MSA	35.10	33.34	35.26	Onslow
Norfolk-Virginia Beach-Newport News, VA-NC MSA	45.10	42.84	45.51	Currituck
Raleigh-Durham-Chapel Hill, NC MSA	41.93	39.83	45.26	Chatham, Durham, Franklin, Johnston, Orange, Wake
Rocky Mount, NC MSA	35.10	33.34	31.82	Edgecombe, Nash
Wilmington, NC MSA	35.10	33.34	40.67	Brunswick, New Hanover

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N O R T H C A R O L I N A continued

NONMETROPOLITAN COUNTIES	A	B	C
Alleghany	35.10	33.34	26.65
Ashe	35.10	33.34	24.52
Beaufort	35.10	33.34	30.18
Bladen	35.10	33.34	24.52
Carteret	35.10	33.34	35.18
Cherokee	35.10	33.34	24.52
Clay	35.10	33.34	24.52
Columbus	35.10	33.34	25.34
Dare	35.10	33.34	44.03
Gates	35.10	33.34	24.52
Granville	35.10	33.34	31.41
Halifax	35.10	33.34	28.54
Haywood	35.10	33.34	31.73
Hertford	35.10	33.34	29.19
Hyde	35.10	33.34	29.44
Jackson	35.10	33.34	27.72
Lee	35.42	33.65	34.85
Mcdowell	35.10	33.34	27.14
Martin	35.10	33.34	28.70
Montgomery	35.10	33.34	30.59
Northampton	35.10	33.34	23.62
Pasquotank	35.10	33.34	36.16
Perquimans	35.10	33.34	29.03
Polk	35.10	33.34	33.46
Robeson	35.10	33.34	31.16
Rutherford	35.10	33.34	30.18
Scotland	35.10	33.34	30.91
Surry	35.10	33.34	28.04
Transylvania	35.10	33.34	35.18
Vance	35.10	33.34	31.32
Washington	35.10	33.34	27.14
Wilkes	35.75	33.96	27.88
Yancey	35.10	33.34	25.67

NONMETROPOLITAN COUNTIES	A	B	C
Anson	35.10	33.34	30.42
Avery	35.10	33.34	29.85
Bertie	35.10	33.34	24.52
Camden	35.10	33.34	40.10
Caswell	35.10	33.34	26.65
Chowan	35.10	33.34	29.11
Cleveland	35.10	33.34	33.21
Craven	35.10	33.34	35.42
Duplin	35.10	33.34	24.52
Graham	35.10	33.34	24.27
Greene	35.10	33.34	31.98
Harnett	35.10	33.34	31.24
Henderson	35.10	33.34	34.77
Hoke	35.10	33.34	30.01
Iredell	38.29	36.38	38.29
Jones	35.10	33.34	26.57
Lenoir	35.10	33.34	29.36
Macon	35.10	33.34	31.57
Mitchell	35.10	33.34	29.36
Moore	35.10	33.34	34.52
Pamlico	35.10	33.34	28.45
Pender	35.10	33.34	31.98
Person	35.10	33.34	35.26
Richmond	35.10	33.34	31.00
Rockingham	35.10	33.34	31.82
Sampson	35.10	33.34	27.96
Stanly	35.10	33.34	33.05
Swain	35.10	33.34	24.52
Tyrrell	35.10	33.34	26.08
Warren	35.10	33.34	26.49
Watauga	42.64	40.51	39.11
Wilson	35.10	33.34	33.37

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N O R T H D A K O T A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bismarck, ND MSA	39.28	37.31	35.18	Burleigh, Morton
Fargo-Moorhead, ND-MN MSA	39.20	37.24	38.29	Cass
Grand Forks, ND-MN MSA	37.47	35.60	37.80	Grand Forks

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Adams	35.10	33.34	24.52	Barnes	35.10	33.34	29.27
Benson	35.10	33.34	26.98	Billings	35.10	33.34	24.11
Bottineau	35.10	33.34	25.42	Bowman	35.10	33.34	24.11
Burke	35.10	33.34	24.11	Cavalier	35.10	33.34	30.01
Dickey	35.10	33.34	24.11	Divide	35.10	33.34	24.52
Dunn	35.10	33.34	24.19	Eddy	35.10	33.34	24.27
Emmons	35.10	33.34	19.11	Foster	35.10	33.34	28.54
Golden Valley	35.10	33.34	29.93	Grant	35.10	33.34	20.75
Griggs	35.10	33.34	24.35	Hettinger	35.10	33.34	24.11
Kidder	35.10	33.34	24.11	Lamoure	35.10	33.34	24.11
Logan	35.10	33.34	22.30	Mchenry	35.10	33.34	24.11
Mcintosh	35.10	33.34	24.68	Mckenzie	35.10	33.34	21.57
Mclean	35.10	33.34	24.11	Mercer	35.10	33.34	25.83
Mountrail	35.10	33.34	24.60	Nelson	35.10	33.34	24.11
Oliver	35.10	33.34	24.11	Pembina	35.10	33.34	27.88
Pierce	35.10	33.34	27.31	Ramsey	35.10	33.34	32.06
Ransom	35.10	33.34	26.49	Renville	35.10	33.34	26.57
Richland	35.10	33.34	29.44	Rolette	35.10	33.34	29.11
Sargent	35.10	33.34	24.27	Sheridan	35.10	33.34	24.11
Sioux	35.10	33.34	18.70	Slope	35.10	33.34	24.11
Stark	35.10	33.34	25.67	Steele	35.10	33.34	23.37
Stutsman	35.10	33.34	28.37	Towner	35.10	33.34	29.93
Traill	35.10	33.34	27.47	Walsh	35.10	33.34	30.91
Ward	35.10	33.34	31.73	Wells	35.10	33.34	24.93
Williams	35.10	33.34	25.09				

O H I O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Akron, OH PMSA	40.74	38.70	42.72	Portage, Summit
Brown County, OH	35.10	33.34	31.57	Brown
Canton-Massillon, OH MSA	35.10	33.34	36.74	Carroll, Stark
Cincinnati, OH-KY-IN	40.10	38.09	40.59	Clermont, Hamilton, Warren
Cleveland-Lorain-Elyria, OH PMSA	41.41	39.34	42.39	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH MSA	39.28	37.31	40.43	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

O H I O continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Dayton-Springfield, OH MSA	36.58	34.75	41.82	Clark, Greene, Miami, Montgomery
Hamilton-Middletown, OH PMSA	41.67	39.59	43.30	Butler
Huntington-Ashland, WV-KY-OH MSA	37.72	35.83	31.32	Lawrence
Lima, OH MSA	35.67	33.89	34.77	Allen, Auglaize
Mansfield, OH MSA	35.10	33.34	33.62	Crawford, Richland
Parkersburg-Marietta, WV-OH MSA	35.10	33.34	31.82	Washington
Steubenville-Weirton, OH-WV MSA	35.92	34.12	30.09	Jefferson
Toledo, OH MSA	41.16	39.11	40.92	Fulton, Lucas, Wood
Wheeling, WV-OH MSA	35.51	33.73	32.47	Belmont
Youngstown-Warren, OH MSA	35.67	33.89	34.11	Columbiana, Mahoning, Trumbull

NONMETROPOLITAN COUNTIES	A	B	C
Adams	35.10	33.34	27.31
Athens	35.10	33.34	34.93
Clinton	35.10	33.34	33.95
Darke	35.10	33.34	32.80
Erie	36.57	34.74	36.16
Gallia	35.10	33.34	28.54
Hancock	35.18	33.42	35.67
Harrison	35.10	33.34	26.40
Highland	35.10	33.34	29.19
Holmes	35.10	33.34	28.45
Jackson	35.10	33.34	27.88
Logan	35.10	33.34	33.78
Meigs	35.10	33.34	24.93
Monroe	35.10	33.34	26.49
Morrow	35.10	33.34	31.16
Noble	35.10	33.34	28.62
Paulding	36.08	34.28	27.06
Pike	35.10	33.34	28.29
Putnam	35.10	33.34	30.91
Sandusky	36.57	34.74	36.16
Seneca	35.10	33.34	30.01
Tuscarawas	35.10	33.34	34.44
Van Wert	35.10	33.34	31.65
Wayne	35.26	33.50	35.75
Wyandot	35.10	33.34	30.01

NONMETROPOLITAN COUNTIES	A	B	C
Ashland	35.10	33.34	34.36
Champaign	35.10	33.34	34.52
Coshocton	35.10	33.34	27.06
Defiance	36.08	34.28	34.44
Fayette	35.10	33.34	30.75
Guernsey	35.10	33.34	31.65
Hardin	35.10	33.34	27.47
Henry	36.08	34.28	32.88
Hocking	35.10	33.34	30.50
Huron	35.10	33.34	34.60
Knox	35.10	33.34	32.31
Marion	35.10	33.34	31.24
Mercer	35.10	33.34	31.16
Morgan	35.10	33.34	29.44
Muskingum	35.10	33.34	30.09
Ottawa	36.90	35.05	37.39
Perry	35.10	33.34	28.29
Preble	35.18	33.42	30.01
Ross	35.10	33.34	31.98
Scioto	35.10	33.34	29.19
Shelby	35.90	34.11	36.49
Union	39.11	37.16	39.69
Vinton	35.10	33.34	28.62
Williams	36.08	34.28	30.09

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O K L A H O M A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Enid, OK MSA	38.79	36.85	31.16	Garfield
Fort Smith, AR-OK MSA	35.10	33.34	31.24	Sequoyah
Lawton, OK MSA	35.10	33.34	36.16	Comanche
Oklahoma City, OK MSA	36.08	34.28	35.26	Canadian, Cleveland, Logan, Mcclain, Oklahoma Pottawatomie
Tulsa, OK MSA	35.10	33.34	39.77	Creek, Osage, Rogers, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Adair	35.10	33.34	24.11	Alfalfa	35.10	33.34	24.11
Atoka	35.10	33.34	24.11	Beaver	35.10	33.34	25.58
Beckham	35.10	33.34	27.31	Blaine	35.10	33.34	24.11
Bryan	35.10	33.34	26.24	Caddo	35.10	33.34	25.09
Carter	35.10	33.34	28.37	Cherokee	35.10	33.34	26.24
Choctaw	35.10	33.34	23.04	Cimarron	35.10	33.34	20.99
Coal	35.10	33.34	23.53	Cotton	35.10	33.34	25.17
Craig	35.10	33.34	27.39	Custer	35.10	33.34	28.21
Delaware	35.10	33.34	26.32	Dewey	35.10	33.34	21.98
Ellis	35.10	33.34	26.57	Garvin	35.10	33.34	26.08
Grady	35.10	33.34	28.86	Grant	35.10	33.34	24.11
Greer	35.10	33.34	25.50	Harmon	35.10	33.34	25.34
Harper	35.10	33.34	24.11	Haskell	35.10	33.34	24.11
Hughes	35.10	33.34	24.11	Jackson	35.10	33.34	30.83
Jefferson	35.10	33.34	22.55	Johnston	35.10	33.34	23.62
Kay	35.10	33.34	30.67	Kingfisher	35.10	33.34	28.45
Kiowa	35.10	33.34	24.11	Latimer	35.10	33.34	25.17
Le Flore	35.10	33.34	25.67	Lincoln	35.10	33.34	26.40
Love	35.10	33.34	28.21	Mccurtain	35.10	33.34	24.11
Mcintosh	35.10	33.34	25.75	Major	35.10	33.34	27.88
Marshall	35.10	33.34	27.47	Mayes	35.10	33.34	30.50
Murray	35.10	33.34	24.11	Muskogee	35.10	33.34	28.04
Noble	35.10	33.34	25.75	Nowata	35.10	33.34	25.75
Okfuskee	35.10	33.34	24.11	Okmulgee	35.10	33.34	27.31
Ottawa	35.10	33.34	24.11	Pawnee	35.10	33.34	29.19
Payne	35.10	33.34	33.95	Pittsburg	35.10	33.34	26.16
Pontotoc	35.10	33.34	27.14	Pushmataha	35.10	33.34	25.91
Roger Mills	35.10	33.34	23.86	Seminole	35.10	33.34	24.11
Stephens	35.10	33.34	26.98	Texas	35.10	33.34	26.81
Tillman	35.10	33.34	22.80	Washington	35.10	33.34	32.96
Washita	35.10	33.34	24.11	Woods	35.10	33.34	25.01
Woodward	35.10	33.34	25.91				

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O R E G O N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Eugene-Springfield, OR MSA	49.86	47.36	45.59	Lane
Medford-Ashland, OR MSA	49.53	47.05	42.89	Jackson
Portland-Vancouver, OR-WA PMSA	43.38	41.21	44.94	Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR PMSA	46.58	44.25	41.41	Marion, Polk

NONMETROPOLITAN COUNTIES	A	B	C
Baker	45.26	43.00	32.64
Clatsop	44.03	41.83	37.56
Crook	47.89	45.49	33.54
Deschutes	47.89	45.49	45.51
Gilliam	45.26	43.00	35.51
Harney	43.21	41.05	27.96
Jefferson	47.89	45.49	36.08
Klamath	43.21	41.05	36.90
Lincoln	44.03	41.83	39.77
Malheur	43.21	41.05	32.64
Sherman	47.89	45.49	28.21
Umatilla	45.26	43.00	29.60
Wallowa	45.26	43.00	30.42
Wheeler	45.26	43.00	25.75

NONMETROPOLITAN COUNTIES	A	B	C
Benton	46.17	43.86	41.49
Coos	47.31	44.95	39.28
Curry	47.31	44.95	43.71
Douglas	47.31	44.95	33.95
Grant	45.26	43.00	33.54
Hood River	47.89	45.49	40.84
Josephine	47.31	44.95	37.80
Lake	43.21	41.05	29.77
Linn	46.17	43.86	35.67
Morrow	45.26	43.00	30.09
Tillamook	44.03	41.83	34.36
Union	45.26	43.00	32.39
Wasco	47.89	45.49	31.16

P E N N S Y L V A N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA MSA	45.83	43.54	47.81	Carbon, Lehigh, Northampton
Altoona, PA MSA	39.69	37.70	31.73	Blair
Erie, PA MSA	45.59	43.31	33.95	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	46.90	44.56	43.95	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	38.54	36.61	29.19	Cambria, Somerset
Lancaster, PA MSA	47.64	45.26	44.61	Lancaster
Newburgh, NY-PA PMSA	54.40	51.68	66.26	Pike
Philadelphia, PA-NJ PMSA	53.81	51.12	57.15	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA PMSA	37.56	35.68	38.46	Allegheny, Beaver, Butler, Fayette, Washington Westmoreland
Reading, PA MSA	44.69	42.46	43.30	Berks
Scranton--Wilkes-Barre--Hazleton, PA MSA	36.41	34.59	36.57	Columbia, Lackawanna, Luzerne, Wyoming
Sharon, PA MSA	42.31	40.20	30.75	Mercer
State College, PA MSA	51.09	48.53	48.13	Centre
Williamsport, PA MSA	38.54	36.61	34.28	Lycoming
York, PA MSA	43.05	40.90	41.41	York

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

P E N N S Y L V A N I A continued

NONMETROPOLITAN COUNTIES	A	B	C
Adams	43.05	40.90	39.52
Bedford	35.67	33.89	26.90
Cameron	37.15	35.29	27.31
Clearfield	37.97	36.07	29.11
Crawford	37.64	35.76	29.93
Forest	36.33	34.51	28.13
Fulton	35.67	33.89	30.26
Huntingdon	35.67	33.89	27.80
Jefferson	37.97	36.07	28.13
Lawrence	37.64	35.76	32.06
Mifflin	37.56	35.68	30.83
Montour	37.97	36.07	35.26
Potter	37.15	35.29	28.70
Snyder	36.74	34.90	33.87
Susquehanna	36.65	34.82	33.54
Union	42.97	40.82	36.98
Warren	37.64	35.76	31.16

NONMETROPOLITAN COUNTIES	A	B	C
Armstrong	44.12	41.91	33.70
Bradford	36.65	34.82	31.98
Clarion	36.33	34.51	29.93
Clinton	36.82	34.98	28.29
Elk	37.15	35.29	32.88
Franklin	40.59	38.56	34.19
Greene	37.97	36.07	24.44
Indiana	44.12	41.91	32.23
Juniata	36.74	34.90	28.62
Mc Kean	37.15	35.29	31.08
Monroe	48.46	46.04	51.99
Northumberland	37.97	36.07	36.08
Schuylkill	41.00	38.95	34.93
Sullivan	36.65	34.82	30.67
Tioga	36.65	34.82	27.72
Venango	36.33	34.51	31.49
Wayne	44.94	42.69	40.51

R H O D E I S L A N D

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
New London-Norwich, CT-RI MSA	57.40	54.53	58.22	Washington county towns of Hopkinton town, Westerly town
Providence-Fall River-Warwick, RI-MA PMSA	53.55	50.87	54.04	Bristol county towns of Barrington town, Bristol town Warren town Kent county towns of Coventry town, East Greenwich tow Warwick city, West Greenwich tow, West Warwick town Newport county towns of Jamestown town Little Compton tow, Tiverton town Providence county towns of Burrillville town Central Falls city, Cranston city, Cumberland town East Providence ci, Foster town, Glocester town Johnston town, Lincoln town, North Providence t North Smithfield t, Pawtucket city, Providence city Scituate town, Smithfield town, Woonsocket city Washington county towns of Charlestown town, Exeter town Narragansett town, North Kingstown to, Richmond town South Kingstown to

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

R H O D E I S L A N D continued

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Newport	63.06	59.91	65.85	Middletown town, Newport city, Portsmouth town
Washington	48.21	45.80	61.99	New Shoreham town

S O U T H C A R O L I N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Augusta-Aiken, GA-SC MSA	35.98	34.19	38.13	Aiken, Edgefield
Charleston-North Charleston, SC MSA	39.21	37.25	40.51	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA	38.45	36.52	42.31	York
Columbia, SC MSA	39.63	37.65	41.33	Lexington, Richland
Florence, SC MSA	35.10	33.34	36.08	Florence
Greenville-Spartanburg-Anderson, SC MSA	35.10	33.34	35.34	Anderson, Cherokee, Greenville, Pickens, Spartanburg
Myrtle Beach, SC MSA	35.10	33.34	41.74	Horry
Sumter, SC MSA	35.10	33.34	32.88	Sumter

NONMETROPOLITAN COUNTIES	A	B	C
Abbeville	35.10	33.34	27.14
Bamberg	35.10	33.34	25.99
Beaufort	35.82	34.02	46.66
Chester	35.10	33.34	28.45
Clarendon	35.10	33.34	31.73
Darlington	35.10	33.34	30.59
Fairfield	35.10	33.34	35.26
Greenwood	35.10	33.34	31.32
Jasper	35.10	33.34	28.54
Lancaster	35.10	33.34	30.83
Lee	35.10	33.34	28.45
Marion	35.10	33.34	27.39
Newberry	35.10	33.34	28.45
Orangeburg	35.10	33.34	28.45
Union	35.10	33.34	27.96

NONMETROPOLITAN COUNTIES	A	B	C
Allendale	35.10	33.34	25.83
Barnwell	35.10	33.34	32.96
Calhoun	35.10	33.34	27.06
Chesterfield	35.10	33.34	28.45
Colleton	35.10	33.34	29.11
Dillon	35.10	33.34	25.91
Georgetown	35.10	33.34	33.05
Hampton	35.10	33.34	28.45
Kershaw	35.10	33.34	31.16
Laurens	35.10	33.34	29.60
Mccormick	35.10	33.34	31.24
Marlboro	35.10	33.34	28.95
Oconee	35.10	33.34	29.36
Saluda	35.10	33.34	27.47
Williamsburg	35.10	33.34	30.01

S O U T H D A K O T A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Rapid City, SD MSA	36.32	34.51	39.36	Pennington
Sioux Falls, SD MSA	38.79	36.85	41.16	Lincoln, Minnehaha

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

S O U T H D A K O T A continued

NONMETROPOLITAN COUNTIES	A	B	C
Aurora	35.10	33.34	22.22
Bennett	35.10	33.34	29.93
Brookings	35.10	33.34	31.41
Brule	35.10	33.34	28.29
Butte	35.10	33.34	31.90
Charles Mix	35.10	33.34	23.70
Clay	35.10	33.34	32.55
Corson	35.10	33.34	23.86
Davison	35.10	33.34	32.55
Deuel	35.10	33.34	28.04
Douglas	35.10	33.34	25.42
Fall River	35.10	33.34	29.93
Grant	35.10	33.34	29.93
Haakon	35.10	33.34	29.93
Hand	35.10	33.34	25.01
Harding	35.10	33.34	29.93
Hutchinson	35.10	33.34	23.86
Jackson	35.10	33.34	27.31
Jones	35.10	33.34	28.95
Lake	35.10	33.34	25.91
Lyman	35.10	33.34	28.37
Mcpherson	35.10	33.34	24.52
Meade	35.10	33.34	31.82
Miner	35.10	33.34	22.63
Perkins	35.10	33.34	25.91
Roberts	35.10	33.34	24.19
Shannon	35.10	33.34	25.75
Stanley	38.13	36.22	29.93
Todd	35.10	33.34	29.36
Turner	35.10	33.34	25.26
Walworth	35.10	33.34	29.93
Ziebach	35.10	33.34	29.93

NONMETROPOLITAN COUNTIES	A	B	C
Beadle	35.10	33.34	29.93
Bon Homme	35.10	33.34	26.81
Brown	35.10	33.34	31.98
Buffalo	35.10	33.34	30.83
Campbell	35.10	33.34	28.04
Clark	35.10	33.34	26.40
Codington	35.10	33.34	30.09
Custer	35.10	33.34	30.18
Day	35.10	33.34	26.90
Dewey	35.10	33.34	30.34
Edmunds	35.10	33.34	29.93
Faulk	35.10	33.34	34.36
Gregory	35.10	33.34	27.22
Hamlin	35.10	33.34	25.09
Hanson	35.10	33.34	36.33
Hughes	38.13	36.22	34.36
Hyde	35.10	33.34	27.55
Jerauld	35.10	33.34	22.06
Kingsbury	35.10	33.34	24.93
Lawrence	35.10	33.34	32.06
Mccook	35.10	33.34	23.29
Marshall	35.10	33.34	23.70
Mellette	35.10	33.34	26.81
Moody	35.10	33.34	26.40
Potter	35.10	33.34	29.27
Sanborn	35.10	33.34	29.93
Spink	35.10	33.34	33.21
Sully	35.10	33.34	25.99
Tripp	35.10	33.34	28.78
Union	35.10	33.34	28.70
Yankton	35.10	33.34	29.93

T E N N E S S E E

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	37.72	35.83	36.98	Hamilton, Marion
Clarksville-Hopkinsville, TN-KY MSA	38.38	36.46	33.70	Montgomery
Jackson, TN MSA	35.10	33.34	35.01	Madison

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

T E N N E S S E E continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Johnson City-Kingsport-Bristol, TN-VA MSA	35.10	33.34	30.26	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA	35.34	33.57	35.92	Anderson, Blount, Knox, Loudon, Sevier, Union
Memphis, TN-AR-MS MSA	37.88	35.99	37.88	Fayette, Shelby, Tipton
Nashville, TN MSA	41.98	39.88	42.64	Cheatham, Davidson, Dickson, Robertson, Rutherford Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	A	B	C
Bedford	35.10	33.34	30.09
Bledsoe	35.10	33.34	24.68
Campbell	35.10	33.34	24.85
Carroll	35.10	33.34	26.16
Claiborne	35.10	33.34	24.68
Cocke	35.10	33.34	24.68
Crockett	35.10	33.34	24.68
Decatur	35.10	33.34	25.01
Dyer	35.10	33.34	32.31
Franklin	35.10	33.34	28.04
Giles	35.10	33.34	30.18
Greene	35.10	33.34	27.96
Hamblen	35.10	33.34	29.52
Hardeman	35.10	33.34	26.65
Haywood	35.10	33.34	31.16
Henry	35.10	33.34	25.26
Houston	35.10	33.34	24.68
Jackson	35.10	33.34	24.68
Johnson	35.10	33.34	23.70
Lauderdale	35.10	33.34	28.54
Lewis	35.10	33.34	24.44
Mcminn	35.10	33.34	27.06
Macon	35.10	33.34	25.75
Maury	35.10	33.34	37.23
Monroe	35.10	33.34	24.68
Morgan	35.10	33.34	25.50
Overton	35.10	33.34	24.68
Pickett	35.10	33.34	20.58
Putnam	35.10	33.34	30.18
Roane	35.10	33.34	28.04
Sequatchie	37.72	35.83	24.68
Stewart	35.10	33.34	24.68
Van Buren	35.10	33.34	22.71

NONMETROPOLITAN COUNTIES	A	B	C
Benton	35.10	33.34	26.32
Bradley	35.10	33.34	32.23
Cannon	35.10	33.34	25.01
Chester	35.10	33.34	25.17
Clay	35.10	33.34	24.68
Coffee	35.10	33.34	30.01
Cumberland	35.10	33.34	29.36
Dekalb	35.10	33.34	27.39
Fentress	35.10	33.34	25.83
Gibson	35.10	33.34	27.22
Grainger	35.10	33.34	24.68
Grundy	35.10	33.34	22.30
Hancock	35.10	33.34	21.65
Hardin	35.10	33.34	24.68
Henderson	35.10	33.34	25.50
Hickman	35.10	33.34	30.42
Humphreys	35.10	33.34	27.55
Jefferson	35.10	33.34	29.03
Lake	35.10	33.34	24.76
Lawrence	35.10	33.34	24.93
Lincoln	35.10	33.34	28.62
Mcnairy	35.10	33.34	23.04
Marshall	35.10	33.34	32.06
Meigs	35.10	33.34	25.01
Moore	35.10	33.34	25.83
Obion	35.10	33.34	28.78
Perry	35.10	33.34	25.26
Polk	35.10	33.34	27.88
Rhea	35.10	33.34	27.22
Scott	35.10	33.34	24.68
Smith	35.10	33.34	26.57
Trousdale	35.10	33.34	31.32
Warren	35.10	33.34	28.95

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

T E N N E S S E E continued

NONMETROPOLITAN COUNTIES	A	B	C
Wayne	35.10	33.34	24.60
White	35.10	33.34	25.01
Weakley	35.10	33.34	26.57

T E X A S

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Abilene, TX MSA	35.10	33.34	32.96	Taylor
Amarillo, TX MSA	35.10	33.34	34.28	Potter, Randall
Austin-San Marcos, TX MSA	45.66	43.38	52.15	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	40.10	38.09	36.24	Hardin, Jefferson, Orange
Brazoria, TX PMSA	44.73	42.49	46.74	Brazoria
Brownsville-Harlingen-San Benito, TX MSA	35.59	33.81	40.43	Cameron
Bryan-College Station, TX MSA	46.90	44.56	42.31	Brazos
Corpus Christi, TX MSA	40.92	38.87	39.52	Nueces, San Patricio
Dallas, TX	46.82	44.48	47.81	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	38.79	36.85	40.26	El Paso
Fort Worth-Arlington, TX PMSA	43.62	41.44	43.79	Hood, Johnson, Parker, Tarrant
Galveston-Texas City, TX PMSA	40.23	38.22	43.79	Galveston
Henderson County, TX	35.10	33.34	33.46	Henderson
Houston, TX PMSA	41.42	39.35	46.74	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen-Temple, TX MSA	35.10	33.34	36.49	Bell, Coryell
Laredo, TX MSA	35.10	33.34	37.88	Webb
Longview-Marshall, TX MSA	39.36	37.39	34.36	Gregg, Harrison, Upshur
Lubbock, TX MSA	35.10	33.34	38.62	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	35.18	33.42	34.85	Hidalgo
Odessa-Midland, TX MSA	45.10	42.84	36.16	Ector, Midland
San Angelo, TX MSA	35.10	33.34	33.46	Tom Green
San Antonio, TX MSA	40.14	38.14	42.89	Bexar, Comal, Guadalupe, Wilson
Sherman-Denison, TX MSA	35.10	33.34	35.92	Grayson
Texarkana, TX-Texarkana, AR MSA	35.10	33.34	35.75	Bowie
Tyler, TX MSA	40.02	38.02	36.74	Smith
Victoria, TX MSA	48.63	46.19	34.85	Victoria
Waco, TX MSA	35.10	33.34	38.29	Mclennan
Wichita Falls, TX MSA	35.92	34.12	35.26	Archer, Wichita

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

T E X A S continued

NONMETROPOLITAN COUNTIES	A	B	C
Anderson	35.10	33.34	33.29
Angelina	35.10	33.34	31.16
Armstrong	35.10	33.34	33.13
Austin	35.18	33.42	30.09
Bandera	35.10	33.34	29.85
Bee	35.10	33.34	29.36
Borden	35.10	33.34	25.67
Brewster	35.10	33.34	30.09
Brooks	35.10	33.34	19.11
Burleson	35.10	33.34	32.06
Calhoun	35.10	33.34	30.42
Camp	35.10	33.34	37.39
Cass	35.10	33.34	26.98
Cherokee	35.10	33.34	31.00
Clay	35.10	33.34	28.95
Coke	35.10	33.34	26.24
Collingsworth	35.10	33.34	26.08
Comanche	35.10	33.34	25.67
Cooke	35.10	33.34	32.14
Crane	35.10	33.34	30.09
Crosby	35.10	33.34	25.67
Dallam	35.10	33.34	28.95
Deaf Smith	35.10	33.34	28.86
Dewitt	35.10	33.34	26.24
Dimmit	35.10	33.34	24.93
Duval	35.10	33.34	25.67
Edwards	35.10	33.34	26.65
Falls	35.10	33.34	26.32
Fayette	35.10	33.34	28.21
Floyd	35.10	33.34	26.57
Franklin	35.10	33.34	30.09
Frio	35.10	33.34	25.67
Garza	35.10	33.34	24.44
Glasscock	35.10	33.34	25.67
Gonzales	35.10	33.34	25.67
Grimes	35.10	33.34	30.18
Hall	35.10	33.34	22.39
Hansford	35.10	33.34	29.19
Hartley	35.10	33.34	26.24
Hemphill	35.10	33.34	31.57

NONMETROPOLITAN COUNTIES	A	B	C
Andrews	35.10	33.34	27.96
Aransas	35.10	33.34	35.92
Atascosa	35.10	33.34	27.31
Bailey	35.10	33.34	25.67
Baylor	35.10	33.34	25.67
Blanco	35.10	33.34	32.31
Bosque	35.10	33.34	30.09
Briscoe	35.10	33.34	28.95
Brown	35.10	33.34	30.59
Burnet	35.10	33.34	31.08
Callahan	35.10	33.34	26.40
Carson	35.10	33.34	29.85
Castro	35.10	33.34	27.88
Childress	35.10	33.34	25.75
Cochran	35.10	33.34	21.57
Coleman	35.10	33.34	22.55
Colorado	35.18	33.42	25.67
Concho	35.10	33.34	26.81
Cottle	35.10	33.34	24.03
Crockett	35.10	33.34	25.67
Culberson	35.10	33.34	25.67
Dawson	35.10	33.34	25.67
Delta	35.10	33.34	29.19
Dickens	35.10	33.34	24.03
Donley	35.10	33.34	28.29
Eastland	35.10	33.34	25.67
Erath	35.10	33.34	33.29
Fannin	35.10	33.34	29.52
Fisher	35.10	33.34	23.86
Foard	35.10	33.34	25.83
Freestone	35.10	33.34	27.31
Gaines	35.10	33.34	28.45
Gillespie	35.10	33.34	35.75
Goliad	35.10	33.34	27.14
Gray	35.10	33.34	32.47
Hale	35.10	33.34	29.77
Hamilton	35.10	33.34	25.67
Hardeman	35.10	33.34	25.67
Haskell	35.10	33.34	24.60
Hill	35.10	33.34	29.44

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

T E X A S continued

NONMETROPOLITAN COUNTIES	A	B	C
Hockley	35.10	33.34	29.77
Houston	35.10	33.34	27.63
Hudspeth	35.10	33.34	33.37
Irion	35.10	33.34	28.21
Jackson	35.10	33.34	28.54
Jeff Davis	35.10	33.34	30.01
Jim Wells	35.10	33.34	28.78
Karnes	35.10	33.34	24.93
Kenedy	35.10	33.34	25.67
Kerr	35.10	33.34	35.42
King	35.10	33.34	28.54
Kleberg	35.10	33.34	33.70
Lamar	35.10	33.34	31.65
Lampasas	35.10	33.34	29.85
Lavaca	35.10	33.34	24.85
Leon	35.10	33.34	31.49
Lipscomb	35.10	33.34	27.22
Llano	35.10	33.34	37.47
Lynn	35.10	33.34	25.67
Mcmullen	35.10	33.34	25.67
Marion	35.10	33.34	29.44
Mason	35.10	33.34	24.60
Maverick	35.10	33.34	29.19
Menard	35.10	33.34	25.67
Mills	35.10	33.34	26.49
Montague	35.10	33.34	25.67
Morris	35.10	33.34	27.80
Nacogdoches	35.67	33.89	36.16
Newton	35.10	33.34	27.47
Ochiltree	35.10	33.34	26.40
Palo Pinto	35.10	33.34	29.93
Parmer	35.10	33.34	28.13
Polk	35.10	33.34	31.00
Rains	35.10	33.34	34.19
Real	35.10	33.34	25.58
Reeves	35.10	33.34	25.67
Roberts	35.10	33.34	28.54
Runnels	35.10	33.34	25.67
Sabine	35.10	33.34	26.08
San Jacinto	35.10	33.34	29.11

NONMETROPOLITAN COUNTIES	A	B	C
Hopkins	35.10	33.34	31.98
Howard	35.10	33.34	29.60
Hutchinson	35.10	33.34	31.57
Jack	35.10	33.34	25.26
Jasper	35.10	33.34	31.08
Jim Hogg	35.10	33.34	25.67
Jones	35.10	33.34	26.08
Kendall	35.10	33.34	35.92
Kent	35.10	33.34	21.89
Kimble	35.10	33.34	33.29
Kinney	35.10	33.34	25.67
Knox	35.10	33.34	24.76
Lamb	35.10	33.34	25.67
La Salle	35.10	33.34	25.01
Lee	35.10	33.34	31.32
Limestone	35.10	33.34	27.80
Live Oak	35.10	33.34	25.67
Loving	35.10	33.34	25.67
Mcculloch	35.10	33.34	30.26
Madison	35.10	33.34	29.27
Martin	35.10	33.34	25.67
Matagorda	35.18	33.42	34.19
Medina	35.10	33.34	27.80
Milam	35.10	33.34	28.13
Mitchell	35.10	33.34	25.67
Moore	35.10	33.34	28.86
Motley	35.10	33.34	25.67
Navarro	35.10	33.34	33.21
Nolan	35.10	33.34	30.34
Oldham	35.10	33.34	33.13
Panola	35.10	33.34	28.95
Pecos	35.10	33.34	29.60
Presidio	35.10	33.34	23.78
Reagan	35.10	33.34	37.64
Red River	35.10	33.34	31.24
Refugio	35.10	33.34	26.90
Robertson	35.10	33.34	32.39
Rusk	35.10	33.34	28.86
San Augustine	35.10	33.34	27.80
San Saba	35.10	33.34	23.12

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

T E X A S continued

NONMETROPOLITAN COUNTIES	A	B	C
Schleicher	35.10	33.34	25.67
Shackelford	35.10	33.34	25.67
Sherman	35.10	33.34	26.16
Starr	35.10	33.34	25.34
Sterling	35.10	33.34	26.40
Sutton	35.10	33.34	26.24
Terrell	35.10	33.34	25.67
Throckmorton	35.10	33.34	24.93
Trinity	35.10	33.34	28.78
Upton	35.10	33.34	25.67
Val Verde	35.10	33.34	34.11
Walker	37.34	35.48	38.38
Washington	35.10	33.34	36.90
Wheeler	35.10	33.34	25.67
Willacy	35.10	33.34	24.19
Wise	35.18	33.42	30.67
Yoakum	35.10	33.34	35.42
Zapata	35.10	33.34	25.67

NONMETROPOLITAN COUNTIES	A	B	C
Scurry	35.10	33.34	31.65
Shelby	35.10	33.34	25.50
Somervell	35.10	33.34	31.57
Stephens	35.10	33.34	27.14
Stonewall	35.10	33.34	25.67
Swisher	35.10	33.34	25.67
Terry	35.10	33.34	27.22
Titus	35.10	33.34	32.39
Tyler	35.10	33.34	32.55
Uvalde	35.10	33.34	26.32
Van Zandt	35.10	33.34	31.65
Ward	35.10	33.34	25.67
Wharton	35.18	33.42	30.18
Wilbarger	35.10	33.34	29.36
Winkler	35.10	33.34	25.75
Wood	35.10	33.34	31.57
Young	35.10	33.34	28.78
Zavala	35.10	33.34	23.78

U T A H

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Provo-Orem, UT MSA	37.88	35.99	35.59	Utah
Salt Lake City-Ogden, UT MSA	35.92	34.12	38.13	Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES	A	B	C
Beaver	41.74	39.65	28.04
Cache	38.38	36.46	31.41
Daggett	47.48	45.10	45.02
Emery	47.48	45.10	28.04
Grand	47.48	45.10	30.01
Juab	41.74	39.65	26.08
Millard	41.74	39.65	27.88
Piute	41.74	39.65	25.67
San Juan	47.48	45.10	28.04
Sevier	41.74	39.65	29.85
Tooele	38.38	36.46	32.88
Wasatch	47.48	45.10	32.47
Wayne	41.74	39.65	31.65

NONMETROPOLITAN COUNTIES	A	B	C
Box Elder	38.38	36.46	32.88
Carbon	47.48	45.10	30.83
Duchesne	47.48	45.10	27.88
Garfield	41.74	39.65	29.52
Iron	41.74	39.65	38.46
Kane	41.74	39.65	32.47
Morgan	47.48	45.10	32.23
Rich	38.38	36.46	28.04
Sanpete	41.74	39.65	28.04
Summit	49.14	46.68	51.82
Uintah	47.48	45.10	32.96
Washington	45.18	42.92	45.84

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

V E R M O N T

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Burlington, VT MSA	56.09	53.28	53.63	Chittenden county towns of Burlington city Charlotte town, Colchester town, Essex town Hinesburg town, Jericho town, Milton town, Richmond town St. George town, Shelburne town, South Burlington c Williston town, Winooski city Franklin county towns of Fairfax town, Georgia town St. Albans city, St. Albans town, Swanton town Grand Isle county towns of Grand Isle town South Hero town

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Addison	44.69	42.46	43.54	
Bennington	46.25	43.94	46.66	
Caledonia	37.97	36.07	34.93	
Chittenden	51.74	49.15	48.71	Bolton town, Buels gore, Huntington town, Underhill town Westford town
Essex	37.97	36.07	34.60	
Franklin	42.56	40.43	34.77	Bakersfield town, Berkshire town, Enosburg town Fairfield town, Fletcher town, Franklin town Highgate town, Montgomery town, Richford town Sheldon town
Grand Isle	37.97	36.07	35.67	Alburg town, Isle La Motte town, North Hero town
Lamoille	45.92	43.62	42.31	
Orange	45.51	43.23	41.33	
Orleans	37.97	36.07	31.49	
Rutland	49.36	46.90	45.67	
Washington	45.76	43.47	46.00	
Windham	47.72	45.34	47.56	
Windsor	48.87	46.43	46.74	

V I R G I N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Charlottesville, VA MSA	45.74	43.46	47.48	Albemarle, Fluvanna, Greene, Charlottesville city
Clarke County, VA	36.49	34.67	43.05	Clarke
Culpeper County, VA	38.02	36.12	49.28	Culpeper
Danville, VA MSA	35.10	33.34	30.91	Pittsylvania, Danville city
Johnson City-Kingsport-Bristol, TN-VA MSA	35.10	33.34	30.26	Scott, Washington, Bristol city
King George County, VA	42.56	40.43	43.05	King George
Lynchburg, VA MSA	36.41	34.59	33.54	Amherst, Bedford, Campbell, Bedford city, Lynchburg city
Norfolk-Virginia Beach-Newport News, VA-NC MSA	45.10	42.84	45.51	Gloucester, Isle of Wight, James City, Mathews, York Chesapeake city, Hampton city, Newport News city Norfolk city, Poquoson city, Portsmouth city

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

V I R G I N I A continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
				Suffolk city, Virginia Beach city, Williamsburg city
Richmond-Petersburg, VA MSA	40.91	38.86	44.20	Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights city, Hopewell city, Petersburg city Richmond city
Roanoke, VA MSA	36.00	34.20	36.65	Botetourt, Roanoke, Roanoke city, Salem city
Warren County, VA	36.49	34.67	42.89	Warren
Washington, DC-MD-VA	66.50	63.18	69.78	Arlington, Fairfax, Loudoun, Prince William, Spotsylvania Stafford, Alexandria city, Fairfax city Falls Church city, Fauquier, Fredericksburg city Manassas city, Manassas Park city

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Accomack	35.10	33.34	34.03	Alleghany	35.18	33.42	29.93
Amelia	35.10	33.34	27.80	Appomattox	35.10	33.34	27.96
Augusta	35.18	33.42	35.51	Bath	35.18	33.42	31.82
Bland	35.10	33.34	25.75	Brunswick	35.10	33.34	26.57
Buchanan	35.10	33.34	26.49	Buckingham	35.10	33.34	27.47
Caroline	42.56	40.43	43.38	Carroll	35.10	33.34	26.57
Charlotte	35.10	33.34	25.34	Craig	35.10	33.34	26.49
Cumberland	35.10	33.34	36.08	Dickenson	35.10	33.34	26.49
Essex	35.10	33.34	37.72	Floyd	35.10	33.34	26.24
Franklin	35.10	33.34	27.88	Frederick	36.49	34.67	42.64
Giles	35.10	33.34	28.13	Grayson	35.10	33.34	24.68
Greensville	35.10	33.34	32.88	Halifax	35.10	33.34	26.49
Henry	35.26	33.50	30.67	Highland	35.18	33.42	26.49
King and Queen	35.10	33.34	36.65	King William	35.10	33.34	34.85
Lancaster	35.10	33.34	35.92	Lee	35.10	33.34	26.49
Louisa	36.74	34.90	36.41	Lunenburg	35.10	33.34	26.32
Madison	37.31	35.44	38.05	Mecklenburg	35.10	33.34	29.52
Middlesex	35.10	33.34	32.23	Montgomery	42.64	40.51	36.00
Nelson	35.10	33.34	31.82	Northampton	35.10	33.34	29.68
Northumberland	35.10	33.34	29.44	Nottoway	35.10	33.34	29.77
Orange	38.02	36.12	45.76	Page	35.26	33.50	33.37
Patrick	35.10	33.34	22.88	Prince Edward	35.10	33.34	32.23
Pulaski	35.10	33.34	29.77	Rappahannock	38.02	36.12	41.74
Richmond	35.10	33.34	33.95	Rockbridge	35.18	33.42	32.31
Rockingham	36.41	34.59	39.69	Russell	35.10	33.34	26.98
Shenandoah	36.49	34.67	37.80	Smyth	35.10	33.34	24.44
Southampton	35.10	33.34	31.49	Surry	35.10	33.34	29.77
Sussex	35.10	33.34	29.85	Tazewell	35.10	33.34	26.73

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

V I R G I N I A continued

NONMETROPOLITAN COUNTIES	A	B	C
Westmoreland	35.10	33.34	40.84
Wythe	35.10	33.34	30.01
Wise	35.10	33.34	31.49

W A S H I N G T O N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bellingham, WA MSA	50.76	48.22	52.56	Whatcom
Bremerton, WA PMSA	47.23	44.87	47.07	Kitsap
Olympia, WA PMSA	48.79	46.35	46.33	Thurston
Portland-Vancouver, OR-WA PMSA	43.38	41.21	44.94	Clark
Richland-Kennewick-Pasco, WA MSA	41.25	39.18	51.00	Benton, Franklin
Seattle-Bellevue-Everett, WA PMSA	53.47	50.79	54.78	Island, King, Snohomish
Spokane, WA MSA	41.08	39.03	41.82	Spokane
Tacoma, WA PMSA	45.41	43.14	46.58	Pierce
Yakima, WA MSA	42.89	40.74	42.80	Yakima

NONMETROPOLITAN COUNTIES	A	B	C
Adams	35.10	33.34	28.37
Chelan	42.23	40.12	34.52
Columbia	45.26	43.00	27.06
Douglas	42.23	40.12	36.90
Garfield	45.26	43.00	27.06
Grays Harbor	45.51	43.23	38.54
Kittitas	38.46	36.54	31.73
Lewis	42.23	40.12	34.19
Mason	45.51	43.23	35.18
Pacific	45.51	43.23	32.06
San Juan	48.04	45.63	55.10
Skamania	42.23	40.12	29.85
Wahkiakum	42.23	40.12	29.93
Whitman	45.26	43.00	36.33
Asotin	45.26	43.00	30.34
Clallam	45.51	43.23	39.44
Cowlitz	36.41	34.59	39.28
Ferry	35.10	33.34	32.06
Grant	35.10	33.34	34.11
Jefferson	45.51	43.23	38.95
Klickitat	42.23	40.12	32.39
Lincoln	35.10	33.34	27.06
Okanogan	38.46	36.54	28.86
Pend Oreille	35.10	33.34	32.06
Skagit	46.41	44.09	47.48
Stevens	35.10	33.34	31.82
Walla Walla	45.26	43.00	36.74

W E S T V I R G I N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Berkeley County, WV	38.13	36.22	37.06	Berkeley
Charleston, WV MSA	45.76	43.47	34.03	Kanawha, Putnam
Cumberland, MD-WV MSA	35.10	33.34	31.24	Mineral
Huntington-Ashland, WV-KY-OH MSA	37.72	35.83	31.32	Cabell, Wayne
Jefferson County, WV	38.28	36.36	39.61	Jefferson

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

W E S T V I R G I N I A continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Parkersburg-Marietta, WV-OH MSA	35.10	33.34	31.82	Wood
Steubenville-Weirton, OH-WV MSA	35.92	34.12	30.09	Brooke, Hancock
Wheeling, WV-OH MSA	35.51	33.73	32.47	Marshall, Ohio

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Barbour	35.10	33.34	27.06	Boone	35.10	33.34	26.49
Braxton	35.10	33.34	23.78	Calhoun	35.83	34.04	23.78
Clay	35.10	33.34	24.68	Doddridge	35.10	33.34	26.32
Fayette	35.10	33.34	24.44	Gilmer	35.42	33.65	28.04
Grant	35.10	33.34	26.40	Greenbrier	35.10	33.34	29.60
Hampshire	35.10	33.34	28.70	Hardy	35.10	33.34	26.40
Harrison	35.83	34.04	31.32	Jackson	35.83	34.04	28.13
Lewis	35.10	33.34	24.76	Lincoln	35.10	33.34	23.78
Logan	35.10	33.34	26.57	Mcdowell	35.10	33.34	23.12
Marion	38.54	36.61	31.24	Mason	35.10	33.34	27.39
Mercer	35.10	33.34	27.72	Mingo	35.10	33.34	26.32
Monongalia	38.54	36.61	34.19	Monroe	35.10	33.34	25.58
Morgan	35.10	33.34	31.32	Nicholas	35.10	33.34	27.72
Pendleton	35.10	33.34	24.68	Pleasants	35.10	33.34	28.04
Pocahontas	35.10	33.34	25.34	Preston	38.54	36.61	27.96
Raleigh	35.10	33.34	26.24	Randolph	35.10	33.34	27.39
Ritchie	35.10	33.34	23.78	Roane	35.83	34.04	23.78
Summers	35.10	33.34	23.78	Taylor	35.10	33.34	28.95
Tucker	35.10	33.34	23.78	Tyler	35.10	33.34	30.01
Upshur	35.10	33.34	28.70	Webster	35.10	33.34	23.86
Wetzel	35.10	33.34	30.75	Wirt	35.10	33.34	25.50
Wyoming	35.10	33.34	25.58				

W I S C O N S I N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Appleton-Oshkosh-Neenah, WI MSA	36.66	34.83	38.05	Calumet, Outagamie, Winnebago
Duluth-Superior, MN-WI MSA	38.21	36.30	35.59	Douglas
Eau Claire, WI MSA	35.18	33.42	34.19	Chippewa, Eau Claire
Green Bay, WI MSA	36.49	34.67	37.56	Brown
Janesville-Beloit, WI MSA	40.40	38.38	41.82	Rock
Kenosha, WI PMSA	45.02	42.77	42.48	Kenosha
La Crosse, WI-MN MSA	41.66	39.57	35.75	La Crosse
Madison, WI MSA	48.46	46.04	49.94	Dane

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

W I S C O N S I N continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Milwaukee-Waukesha, WI PMSA	43.54	41.36	46.41	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul, MN-WI MSA	51.66	49.08	50.43	Pierce, St. Croix
Racine, WI PMSA	39.77	37.78	40.75	Racine
Sheboygan, WI MSA	36.08	34.28	36.57	Sheboygan
Wausau, WI MSA	35.83	34.04	36.90	Marathon

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Adams	35.67	33.89	28.54	Ashland	35.10	33.34	30.91
Barron	35.10	33.34	30.42	Bayfield	35.10	33.34	27.96
Buffalo	35.10	33.34	28.62	Burnett	35.10	33.34	30.09
Clark	35.10	33.34	25.17	Columbia	35.10	33.34	34.03
Crawford	35.10	33.34	27.39	Dodge	35.10	33.34	36.74
Door	35.10	33.34	33.62	Dunn	35.10	33.34	33.37
Florence	35.10	33.34	28.95	Fond du Lac	36.82	34.98	35.34
Forest	35.10	33.34	26.40	Grant	35.10	33.34	29.03
Green	35.10	33.34	31.24	Green Lake	35.18	33.42	29.85
Iowa	35.10	33.34	31.41	Iron	35.10	33.34	25.17
Jackson	35.10	33.34	26.90	Jefferson	37.23	35.37	37.47
Juneau	35.67	33.89	28.29	Kewaunee	35.10	33.34	26.98
Lafayette	35.10	33.34	30.01	Langlade	35.10	33.34	27.96
Lincoln	35.10	33.34	28.70	Manitowoc	35.10	33.34	27.88
Marinette	35.10	33.34	28.54	Marquette	35.10	33.34	27.88
Menominee	35.10	33.34	25.75	Monroe	35.10	33.34	31.41
Oconto	35.10	33.34	26.40	Oneida	35.10	33.34	32.23
Pepin	35.10	33.34	26.24	Polk	35.10	33.34	32.96
Portage	35.75	33.96	36.24	Price	35.10	33.34	28.21
Richland	35.10	33.34	28.13	Rusk	35.10	33.34	26.90
Sauk	35.67	33.89	35.10	Sawyer	35.10	33.34	29.11
Shawano	35.10	33.34	30.42	Taylor	35.10	33.34	27.72
Trempealeau	35.10	33.34	27.72	Vernon	35.10	33.34	25.91
Vilas	35.10	33.34	30.75	Walworth	38.53	36.60	41.49
Washburn	35.10	33.34	29.11	Waupaca	35.10	33.34	31.65
Waushara	35.10	33.34	28.54	Wood	35.67	33.89	33.70

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ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

W Y O M I N G

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Casper, WY MSA	53.05	50.40	32.88	Natrona
Cheyenne, WY MSA	44.03	41.83	41.74	Laramie

NONMETROPOLITAN COUNTIES	A	B	C
Albany	35.73	33.94	39.36
Campbell	35.10	33.34	31.57
Converse	35.10	33.34	27.22
Fremont	35.10	33.34	28.70
Hot Springs	35.10	33.34	30.01
Lincoln	35.10	33.34	31.49
Park	35.10	33.34	31.00
Sheridan	47.48	45.10	31.00
Sweetwater	35.10	33.34	31.57
Uinta	35.10	33.34	32.14
Weston	35.10	33.34	28.54

NONMETROPOLITAN COUNTIES	A	B	C
Big Horn	35.10	33.34	27.31
Carbon	35.10	33.34	28.29
Crook	35.10	33.34	28.29
Goshen	35.10	33.34	28.29
Johnson	35.10	33.34	28.29
Niobrara	35.10	33.34	28.13
Platte	35.10	33.34	28.29
Sublette	35.10	33.34	31.49
Teton	52.32	49.70	50.59
Washakie	35.10	33.34	30.09

P A C I F I C I S L A N D S

NONMETROPOLITAN COUNTIES	A	B	C
Pacific Islands	66.50	63.18	76.67

NONMETROPOLITAN COUNTIES	A	B	C

P U E R T O R I C O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Aguadilla, PR MSA	35.10	33.34	26.65	Aguada Municipio, Aguadilla Municipio, Moca Municipio
Arecibo, PR PMSA	38.54	36.61	38.54	Arecibo Municipio, Camuy Municipio, Hatillo Municipio
Caguas, PR PMSA	35.10	33.34	31.98	Caguas Municipio, Cayey Municipio, Cidra Municipio Gurabo Municipio, San Lorenzo Municipio
Mayaguez, PR MSA	35.10	33.34	26.65	Anasco Municipio, Cabo Rojo Municipio Hormigueros Municipio, Mayaguez Municipio Sabana Grande Municipio, San German Municipio
Ponce, PR MSA	37.72	35.83	37.72	Guayanilla Municipio, Juana Diaz Municipio Penuelas Municipio, Ponce Municipio, Villalba Municipio Yauco Municipio
San Juan-Bayamon, PR PMSA	37.72	35.83	37.72	Aguas Buenas Municipio, Barceloneta Municipio Bayamon Municipio, Canovanas Municipio Carolina Municipio, Catano Municipio, Ceiba Municipio Comerio Municipio, Corozal Municipio, Dorado Municipio Fajardo Municipio, Florida Municipio, Guaynabo Municipio Humacao Municipio, Juncos Municipio Las Piedras Municipio, Loiza Municipio Luquillo Municipio, Manati Municipio, Morovis Municipio

Note: A = First 600 of pre 89 units; B = Remainder of pre 89 units; C = Post 88 units.

120694

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

P U E R T O R I C O continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
				Naguabo Municipio, Naranjito Municipio Rio Grande Municipio, San Juan Municipio Toa Alta Municipio, Toa Baja Municipio Trujillo Alto Municipio, Vega Alta Municipio Vega Baja Municipio, Yabucoa Municipio

NONMETROPOLITAN COUNTIES	A	B	C
Adjuntas Municipio.....	35.10	33.34	25.42
Arroyo Municipio.....	35.10	33.34	25.42
Ciales Municipio.....	35.10	33.34	25.42
Culebra Municipio.....	35.10	33.34	25.42
Guayama Municipio.....	35.10	33.34	25.42
Jayuya Municipio.....	35.10	33.34	25.42
Lares Municipio.....	35.10	33.34	25.42
Maricao Municipio.....	35.10	33.34	25.42
Orocovis Municipio.....	35.10	33.34	25.42
Quebradillas Municipio..	38.54	36.61	38.54
Salinas Municipio.....	35.10	33.34	25.42
Santa Isabel Municipio..	35.10	33.34	25.42
Vieques Municipio.....	35.10	33.34	25.42

NONMETROPOLITAN COUNTIES	A	B	C
Aibonito Municipio.....	35.10	33.34	25.42
Barranquitas Municipio..	35.10	33.34	25.42
Coamo Municipio.....	35.10	33.34	25.42
Guanica Municipio.....	35.10	33.34	25.42
Isabela Municipio.....	35.10	33.34	26.65
Lajas Municipio.....	35.10	33.34	25.42
Las Marias Municipio....	35.10	33.34	25.42
Maunabo Municipio.....	35.10	33.34	25.42
Patillas Municipio.....	35.10	33.34	25.42
Rincon Municipio.....	35.10	33.34	25.42
San Sebastian Municipio.	35.10	33.34	25.42
Utuado Municipio.....	35.10	33.34	25.42

V I R G I N I S L A N D S

NONMETROPOLITAN COUNTIES	A	B	C
Virgin Islands.....	52.53	49.91	57.73

NONMETROPOLITAN COUNTIES	A	B	C

Note: A = First 600 of pre 89 units; B = Remainder of pre 89 units; C = Post 88 units.

120694

[FR Doc. 95–1718 Filed 1–23–95; 8:45 am]
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federal register

Tuesday
January 24, 1995

Part VIII

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 58

Grading and Inspection, General Specifications for Approved Plants; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA–93–18]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service (General Specifications), by revising the requirements for anhydrous milkfat to allow butter to be used as an ingredient and by revising the requirements for butteroil to allow the addition of safe and suitable antioxidants. The action to allow the use of butter was initiated at the request of the American Butter Institute.

EFFECTIVE DATE: January 24, 1995.

FOR FURTHER INFORMATION CONTACT: Duane R. Spomer, Chief, Dairy Standardization Branch, USDA/AMS/Dairy Division, Room 2750–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7473.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The final rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Administrator, Agricultural Marketing Service, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because participation in the USDA-approved plant program is voluntary and the amendments will not increase the costs to those utilizing the program.

The Department is issuing this final rule in conformance with Executive Order 12866.

The General Specifications, established in 1975, do not provide for butter to be used as an ingredient in anhydrous milkfat. This is inconsistent with international standards. The General Specifications also do not provide for the addition of antioxidants to butteroil, which also is permitted in international standards. These restrictions place the domestic manufacturer at a disadvantage when competing in the world market.

In order to enable domestic manufacturers of anhydrous milkfat and butteroil to compete on equal terms with manufacturers from other exporting countries and to amend the General Specifications to more closely align U.S. requirements with international standards, USDA is amending part 58, subpart B, of the grading and inspection regulations concerning dairy products, as follows:

1. *Provide that butter may be used as an ingredient in anhydrous milkfat.* Currently, the General Specifications permit only cream to be used as an ingredient in anhydrous milkfat. This is inconsistent with internationally recognized standards published by the International Dairy Federation and the Codex Alimentarius Commission that allow the use of butter in anhydrous milkfat. These amendments more closely align USDA requirements with internationally recognized standards and allow butter to be used as an ingredient in anhydrous milkfat.

2. *Provide that antioxidants may be added to butteroil.* Currently, the General Specifications do not allow the addition of antioxidants to butteroil. Internationally recognized dairy standards permit this addition to assist in preserving the flavor characteristics of this product. These amendments more closely align USDA requirements with international standards and allow the addition of antioxidants to butteroil, provided the antioxidant used is permitted by standards developed by the Codex Alimentarius Commission and authorized for use by the Food and Drug Administration (FDA). The Standards developed by the Commission may be found in the ''Standard A–2 for Milkfat Products [1].'' Antioxidants which are permitted by the Commission and which may be added to butteroil and the maximum levels allowed are as follows:

Antioxidant	Maximum level
Propyl gallate	100 mg/kg.
Butylated hydroxytoluene (BHT)*.	75 mg/kg.
Butylated hydroxyanisole (BHA).	200 mg/kg.
Any combination of propyl gallate, BHA, or BHT*.	200 mg/kg, but individual limits above not to be exceeded.
Natural and synthetic tocopherols.	500 mg/kg.
Ascorbyl palmitate; Ascorbyl stearate.	500 mg/kg individually or in combination.
Dilauryl thiodipropionate.	200 mg/kg.
Antioxidant synergists	
Citric acid	Limit by Good Manufacturing Practice (GMP).
Sodium citrate	Limit by GMP.
Isopropyl citrate mixture; Phosphoric acid; Monoglyceride citrate.	100 mg/kg individually or in combination.

*Temporarily endorsed by the Codex Alimentarius Commission.

FDA provisions relevant to those antioxidants permitted by the Commission are found in 21 CFR parts 172, 182 or 184. The antioxidants permitted by FDA are those contained in these regulations. The antioxidants and levels permitted by FDA are as follows:

Antioxidant	Maximum level
Propyl gallate	0.02% of fat.
Butylated hydroxytoluene (BHT).	0.02% of fat.
Butylated hydroxyanisole (BHA).	0.02% of fat.
Tocopherols	Limit by GMP.
Ascorbyl palmitate	Limit by GMP.
Dilauryl thiodipropionate	0.02% of fat.
Antioxidant synergists	
Citric acid	Limit by GMP.
Sodium citrate	Limit by GMP.
Isopropyl citrate	0.02% of food.
Phosphoric acid	Limit by GMP.
Monoglyceride citrate	200 ppm of fat.

3. *Reduce the amount of moisture permitted in anhydrous milkfat.* Currently, the General Specifications allow a maximum moisture content of 0.15 percent in anhydrous milkfat. International standards developed by the International Dairy Federation and the Codex Alimentarius Commission allow a maximum moisture content of 0.1 percent. These amendments more closely align USDA requirements with international standards by reducing the maximum allowable moisture content to 0.1 percent.

[1] ''Standards A–2 for Milkfat Products'', Joint FAO/WHO Food Standards Program, Codex Committee on Milk and Milk Products. Copies of the Standard may be obtained from the Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456.

4. *Provide for the pasteurization of oil (highly concentrated milkfat) in the manufacture of anhydrous milkfat.* Pasteurization of dairy products ensures the destruction of pathogenic organisms. Currently the General Specifications require that cream be pasteurized during the production of anhydrous milkfat. In some segments of the dairy industry, this pasteurization step occurs when the milkfat in the cream has been concentrated to a level where it is considered to be ''oil'' rather than cream. These amendments still require pasteurization but allow the manufacturer to pasteurize either cream or oil.

5. *Restrict the amount of other butter constituents in anhydrous milkfat.* When butter is used in anhydrous milkfat, the majority of the non-milkfat constituents normally found in butter are removed during manufacture. The non-milkfat constituents removed include protein, ash, and salt. These amendments limit the amount of non-milkfat constituents that are permitted to remain in anhydrous milkfat.

Anhydrous milkfat specifications established by USDA are voluntary specifications that are developed to facilitate the orderly marketing process. Dairy plants are free to choose whether or not to use the specifications. When manufactured or processed dairy products are graded or inspected, the USDA regulations governing the grading or inspection of dairy products are used.

Public Comments

On July 27, 1994, the Department published a proposed rule (59 FR 38136) to amend the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service. The public comment period closed September 26, 1994. Comments were received from three commenters representing: One dairy processor trade association, one producer of anhydrous milkfat and butteroil, and one exporter of dairy products.

Discussion of Comments

1. One commenter was concerned that certain requirements were inconsistent with international standards. Specifically the USDA requirement for peroxide value was more stringent, the copper requirement was less stringent, and the iron and neutralizer requirements were not specified.

The Department agrees that the Codex Alimentarius requirements for copper and iron content should be included at the levels permitted by Codex Alimentarius standards and has made appropriate changes to the General Specifications.

The peroxide value requirements have been in effect since 1975. Anhydrous milkfat and butteroil produced in the United States has consistently met the more stringent peroxide values. These requirements do not restrict international trade but rather enhance the quality and stability of U.S. product and its desirability in international trade. Therefore, no changes in peroxide value are being made at this time.

While International Dairy Federation standards allow for trace amounts of neutralizer, Codex Alimentarius standards do not. The Codex Alimentarius standards are the most frequently recognized standards in major trade agreements. Therefore, no changes in neutralizer content are being made at this time.

2. One commenter felt that the value of anhydrous milkfat will decrease because pricing will be based on the butter market rather than the value of sweet cream.

The General Specifications establish quality requirements and provide information that facilitates procurement decisions and enhances trade. The General Specifications do not establish the market value of this product. If users feel that anhydrous milkfat produced from cream will better suit their needs, the General Specifications do not inhibit its availability. Therefore, the changes outlined in the proposed rule are being made at this time.

3. One commenter felt that the use of butter in anhydrous milkfat would result in an inferior product and that an increase in related testing costs would occur.

The anhydrous milkfat quality requirements in the General Specifications do not differentiate product produced from cream versus butter. Furthermore, when butter is used to produce anhydrous milkfat, the General Specifications require that the butter be of either Grade AA or Grade A quality. When cream is used, the General Specifications require its flavor to be comparable to the flavor quality specified for Grade AA or Grade A butter. For these reasons, the Department does not anticipate that increased testing will result.

4. One commenter opposed the change to allow the pasteurization step to occur in a more highly concentrated milkfat product (oil).

Pasteurization is essential in ensuring dairy product safety. For many years, some manufacturers have chosen to pasteurize after the milkfat has been concentrated to a level considered to be an oil. The Department believes that pasteurization of the oil is essential in ensuring product safety and has revised the General Specifications as outlined in the proposed rule.

5. One commenter requested that the effective date of the changes occur immediately in order to allow manufacturers to take full advantage of available export markets.

The Department agrees that these changes enhance the ability of the U.S. dairy industry to market anhydrous milkfat in the international markets. Therefore, these changes will be made effective upon publication.

Pursuant to 5 U.S.C. 533 it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. U.S. manufacturers are prepared to market anhydrous milkfat in the international markets immediately. Waiting 30 days to make this rule effective would delay this marketing opportunity. Further, considering the comments received, no useful purpose would be served in delaying the effective date. Therefore, this final rule is effective on the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 58, Subpart B, is amended to read as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR Part 58, continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. In § 58.305, paragraphs (b) and (c) are revised to read as follows:

§ 58.305 Meaning of words.

* * * * *

(b) *Butteroil.* The food product resulting from the removal of practically all of the moisture and solids-not-fat from butter. It contains not less than 99.6 percent fat and not more than 0.3 percent moisture and not more than 0.1 percent other butter constituents, of which the salt shall be not more than 0.05 percent. Antioxidants permitted to be used are as follows:

Antioxidant	Maximum level
Propyl gallate	0.02% of fat.
Butylated hydroxytoluene (BHT).	0.02% of fat.
Butylated hydroxyanisole (BHA).	0.02% of fat.
Tocopherols	Limit by GMP.

Antioxidant	Maximum level
Ascorbyl palmitate	Limit by GMP.
Dilauryl thiodipropionate	0.02% of fat.
Antioxidant synergists	
Citric acid	Limit by GMP.
Sodium citrate	Limit by GMP.
Isopropyl citrate	0.02% of food.
Phosphoric acid	Limit by GMP.
Monoglyceride citrate	200 ppm of fat.

An inert gas may be used to flush air-tight containers before, during, and after filling. Carbon dioxide may not be used for this purpose.

(c) *Anhydrous milkfat.* The food product resulting from the removal of practically all of the moisture and solids-not-fat from pasteurized cream or butter. It contains not less than 99.8 percent fat and not more than 0.1 percent moisture and, when produced from butter, not more than 0.1 percent other butter constituents, of which the salt shall be not more than 0.05 percent. An inert gas may be used to flush air-tight containers before, during, and after filling. Carbon dioxide may not be used for this purpose.

* * * * *

3. Section 58.325 is revised to read as follows:

§ 58.325 Anhydrous milkfat.

If cream is used in the production of anhydrous milkfat that is eligible for official certification, the anhydrous milkfat shall be made by a continuous separation process directly from milk or cream. The cream used shall be comparable to the flavor quality specified above for U.S. Grade AA or U.S. Grade A butter. The milkfat from cream may then be further concentrated into oil. The cream or oil shall be pasteurized in accordance with the procedures for cream for buttermaking (§ 58.334a). If butter is used in the production of anhydrous milkfat that is eligible for official certification, the butter used shall conform to the flavor requirements of U.S. Grade AA or U.S. Grade A butter and shall have been manufactured in an approved plant. The appearance of anhydrous milkfat should be fairly smooth and uniform in consistency.

4. Section 58.347 is revised to read as follows:

§ 58.347 Butteroil or anhydrous milkfat.

The flavor shall be bland and free from rancid, oxidized, or other objectionable flavors.

(a) In addition, the finished products shall meet the following specifications when sampled and tested in accordance with §§ 58.336 and 58.337:

	Butteroil	Anhydrous milkfat
Milkfat	Not less than 99.6 percent	Not less than 99.8 percent.
Moisture	Not more than 0.3 percent	Not more than 0.1 percent.
Other butter constituents including salt	Not more than 0.1 percent	Not more than 0.1 percent.
Salt	Not more than 0.05 percent	Not more than 0.05 percent.
Antioxidants	Those permitted by standards of the Codex Alimentarius Commission and authorized for use by the Food and Drug Administration.	Those permitted by standards of the Codex Alimentarius Commission and authorized for use by the Food and Drug Administration.
Free fatty acids	Not more than 0.5 percent (calculated as oleic acid).	Not more than 0.3 percent (calculated as oleic acid).
Peroxide value	Not more than 0.1 milliequivalent per kilogram of fat.	Not more than 0.1 milliequivalent per kilogram of fat.
Iron content	Not more than 0.2 ppm	Not more than 0.2 ppm.
Copper content	Not more than 0.05 ppm	Not more than 0.05 ppm.

Dated: January 18, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–1747 Filed 1–23–95; 8:45 am]

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federal register

Tuesday
January 24, 1995

Part IX

The President

Executive Order 12946—President's Advisory Board on Arms Proliferation Policy

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Presidential Documents

Title 3—

The President

Executive Order 12946 of January 20, 1995

President's Advisory Board on Arms Proliferation Policy

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1601 of the National Defense Authorization Act, Fiscal Year 1994 (Public Law 103–160), and the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2) (''Act''), except that subsections (e) and (f) of section 10 of such Act do not apply, and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Establishment.* There is established within the Department of Defense the ''President's Advisory Board on Arms Proliferation Policy'' (''Board''). The Board shall consist of five members who shall be appointed by the President from among persons in private life who are noted for their stature and expertise regarding the proliferation of strategic and advanced conventional weapons and are from diverse backgrounds. The President shall designate one of the members as Chairperson of the Board.

Sec. 2. *Functions.* The Board shall advise the President on implementation of United States conventional arms transfer policy, other issues related to arms proliferation policy, and on other matters deemed appropriate by the President. The Board shall report to the President through the Assistant to the President for National Security Affairs.

Sec. 3. *Administration.* (a) The heads of executive agencies shall, to the extent permitted by law, provide to the Board such information as it may require for the purpose of carrying out its functions.

(b) Members of the Board shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law, including 5 U.S.C. 5701–5707 and section 7(d) of the Act, for persons serving intermittently in government service.

(c) The Department of Defense or the head of any other Federal department or agency may detail to the Board, upon request of the Chairperson of the Board, any of the personnel of the department or agency to assist the Board in carrying out its duties.

(d) The Secretary of Defense shall designate a federally funded research and development center with expertise in the matters covered by the Board to provide the Board with such support services as the Board may need to carry out its duties.

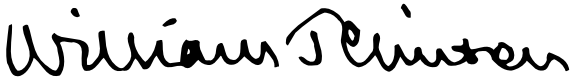
(e) The Department of Defense shall provide the Board with administrative services, facilities, staff, and other support services necessary for the performance of its functions.

Sec. 4. *General.* (a) The Board shall terminate 30 days after the date on which the President submits the final report of the Board to the Congress.

(b) For reasons of national security or for such other reasons as specified in section 552(b) of title 5, United States Code, the Board shall not provide public notice or access to meetings at which national security information will be discussed. Authority to make such determinations shall reside with the Secretary of Defense or his designee who must be an official required to be appointed by and with the advice and consent of the Senate.

(c) Information made available to the Board shall be given all necessary security protection in accordance with applicable laws and regulations.

(d) Each member of the Board and each member of the Board's staff shall execute an agreement not to reveal any classified information obtained by virtue of his or her service with the Board except as authorized by applicable law and regulations.



THE WHITE HOUSE,
January 20, 1995.

[FR Doc. 95–1925
Filed 1–20–95; 5:01pm]
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