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Tuesday
February 7, 1995

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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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 344

RIN 3064–AB55

Recordkeeping Requirements for Securities Transactions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending its regulation which establishes recordkeeping and confirmation requirements for securities transactions undertaken by an insured state nonmember bank for its customers. The amendment provides the FDIC the express authority to waive the requirements of the regulation for good cause. The purpose of the amendment is to afford the FDIC more flexibility in applying its regulations.

EFFECTIVE DATE: The amendment is effective February 7, 1995.

FOR FURTHER INFORMATION CONTACT: Gerald J. Gervino, Senior Attorney, (202) 898–3723, or Cristeena Naser, Attorney, (202) 898–3687, Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429 or Curtis L. Vaughn, Examination Specialist, (202) 898–6759, Division of Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Part 344 generally sets forth the recordkeeping requirements for insured state nonmember banks effecting customer securities transactions whether conducted as discount or full-service brokerage or through the bank's trust department. Part 344 specifies the content and timing of the bank's internal records as well as customer statements and disclosures. An insured state nonmember bank involved in an arrangement with a third party selling securities on bank premises is generally considered subject to Part 344 if the bank receives transaction-based compensation. Part 344 also requires that banks effecting securities transactions for customers establish written policies and procedures for supervising securities personnel generally and for avoiding conflicts of interest both between the bank and its customers and between customers. The Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (Board of Governors) have securities recordkeeping regulations that are virtually identical to Part 344 except that the OCC's regulations have specific waiver authority (12 CFR Part 12 and 12 CFR 208.8(k) respectively).

Recently it has come to the FDIC's attention that some banks are having practical difficulty complying with Part 344 and in particular with § 344.4 which sets forth requirements for the content of confirmations of customers' securities transactions effected by the bank. We understand that this difficulty results from developments in the industry. The practical difficulty in complying with § 344.4 illustrates how developments in the industry as well as changes in industry practice can cause a regulation to be burdensome or make compliance difficult.

The FDIC is generally concerned that to the fullest extent possible its regulations should not impose any undue or unnecessary burden or expense (competitive or otherwise) on insured banks. Having the flexibility to readily tailor the application of a regulation to particular circumstances if warranted furthers that objective. In keeping with that goal the FDIC has therefore determined that it is appropriate to add express waiver authority to Part 344. The addition of the waiver allows an insured state nonmember bank to obtain a waiver of all or any part of Part 344 if the FDIC determines that there is good cause for a waiver to be granted. The adoption of the amendment will enable the FDIC to more readily adapt the application of its regulation to developments in the industry and changes in industry wide practice as well as to unique problems faced by particular institutions. It is the FDIC's intent to provide relief as appropriate taking due care not to undermine the purposes of Part 344.

The amendment is being adopted in final form without opportunity for public comment pursuant to the authority of section 553(b)(A) of the Administrative Procedure Act (5 U.S.C. 553(b)(A)) which authorizes the waiver of notice and public comment in the case of procedural rules. The amendment will be effective immediately upon publication in the **Federal Register**. This action is taken pursuant to the authority of section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)) which permits waiver of the 30 day delayed effective date requirement if a rule grants an exemption or relieves a restriction. The amendment is not required by section 302(b) of the Reigle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325) to be made effective on the first day of a calendar quarter after the date of publication of the amendment as the amendment does not impose additional reporting, disclosure or other new requirements on insured depository institutions.

Paperwork Reduction Act

The final amendment does not create any new recordkeeping, reporting or collection of information requirements within the meaning of the Paperwork Reduction Act (44 U.S.C. 3500 et seq.).

List of Subjects in 12 CFR Part 344

Insured banks, Banking, Securities transactions, Recordkeeping, Confirmations.

For the reasons set forth in the preamble, Part 344 of Chapter III of Title 12 is amended as set forth below:

PART 344—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

1. The authority citation for Part 344 continues to read as follows:

Authority: 12 U.S.C. 1817, 1818, 1819.

2. Section 344.8 is added to read as follows:

§ 344.8 Waiver.

The Board of Directors of the FDIC, in its discretion, may waive for good cause all or any part of this part 344.

By Order of the Board of Directors.

Dated at Washington, DC, this 31st day of January 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–2858 Filed 2–6–95; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 94–ANE–18; Special Conditions No. SC–33–ANE–08]

Special Conditions; General Electric (GE) Aircraft Engines Model(s) GE90–75B/–85B/–76B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the General Electric (GE) Aircraft Engines Model(s) GE90–75B/–85B/–76B turbofan engines. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 33 of the Federal Aviation Regulations (FAR).

EFFECTIVE DATE: March 6, 1995.

FOR FURTHER INFORMATION CONTACT: Tim Mouzakis at (617) 238–7114 or Karen Grant at (617) 238–7133, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1991, General Electric Aircraft Engines applied for type certification of Model(s) GE90–75B/–85B/–76B turbofan engines. These engines incorporate a first stage fan blade manufactured using carbon graphite composite material. This unusual design feature results in the GE90 fan blade having significant differences in material property characteristics when compared to conventionally designed fan blades using non-composite materials. For example, the probability that a composite fan blade will fail below the inner annulus flowpath line may be highly improbable, questioning the appropriateness of the requirement contained in § 33.94(a)(1) to show blade containment after a failure of the blade at the outermost retention feature.

The current requirements of § 33.94 are based on metallic blade characteristics and service history, and are not appropriate for the unusual design features of the composite fan blade found on the GE90 series turbofan engines. The FAA has determined that a more realistic blade out test will be achieved with a fan blade failure at the inner annulus flowpath line (only the airfoil) instead of the outermost retention feature as is currently required by § 33.94(a)(1).

The FAA has also determined that the composite fan blades construction presents other factors that must be considered. Tests and analyses must account for the effects of in-service deterioration of, manufacturing and materials variations in, and environmental effects on the composite material. Further, tests and analyses must show that a lightning strike on the composite fan blade will not result in a hazardous condition to the aircraft, and that the engine will meet the requirements of § 33.75. Therefore, these special conditions are additional requirements which the Administrator considers necessary to establish a level of safety equivalent to that established by the Airworthiness Standards of part 33.

Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR), General Electric Aircraft Engines must show that the Model(s) GE90–75B/–85B/–76B turbofan engines meet the requirements of the applicable regulations in effect on the date of the application. Those Federal Aviation Regulations are § 21.21, as amended through Amendment 21–68, August 10, 1990, and part 33, as amended 33–14, August 10, 1990.

The Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the General Electric Aircraft Engines Model(s) GE90–75B/–85B/–76B turbofan engines because of unique design criteria. Therefore, the Administrator prescribes special conditions under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice and opportunity for comment, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion of Comments

Interested persons have been afforded the opportunity to participate in the making of these special conditions. Due consideration has been given to comments received.

Two commenters express no objection to the adoption of these special conditions as proposed.

Two commenters cite the apparent departure by the FAA from its general practice of involving industry prior to effecting significant changes to certification requirements, and recommend that the FAA evaluate the proposed changes in harmony with industry through the Aviation Rulemaking Advisory Committee (ARAC).

The FAA has not determined that these special conditions will form the basis to a rulemaking change to amend 14 CFR part 33. These special conditions prescribe for a specific design, the testing and analyses necessary to achieve an equivalent level of safety. The FAA may consider whether it is necessary to revise § 33.94 to include the requirements of these special conditions. The ARAC may be used to gather industry and public participation in that rulemaking project. For this specific application for type certification, however, the FAA has followed the rulemaking procedures provided by 14 CFR part 11 that allow for industry and public comment.

Two commenters state that applying the maximum load criteria used for propellers to a fan blade, with significantly different mechanical arrangement and dynamic behavior, is technically unjustified.

The FAA disagrees. The two times maximum load criteria test is designed to show the capability of the fan blade retention system to withstand without separation centrifugal loads significantly greater than will be seen in service. A safety factor of two is a reasonable safety factor as demonstrated by its success in propeller applications. The blade and its retention system must be capable of retaining the blade under this load condition.

Two commenters state that the additional requirements, in conjunction with any available analyses, cannot guarantee that the failure probability will be extremely improbable. Inherent characteristics of complex composite hardware design, latent defects and susceptibility to manufacturing variations, and nonconformance are identified as reasons for the statement.

The FAA agrees in part. The FAA has reviewed its position and concurs with the commenters that a failure

probability of extremely improbable can not be guaranteed. However, the FAA believes that the applicant has constructed a test program that demonstrates the blade retention features have sufficiently improved reliability to provide an equivalent level of safety to that provided by § 33.94. While extensive testing is required for material certification in accordance with § 33.15 to determine material characteristics and the effects of defects on blade life, additional test requirements were established within the compliance plan to determine the effect of defects and manufacturing variations on material capability.

One commenter suggests adding an additional paragraph to these special conditions as follows:

''(a)(3) By appropriate test and analysis it must be shown that the most adverse blade vibratory stresses, as determined per § 33.83, will not result in failure of the fan blade retention system when consideration is given to the most limiting manufacturing defect which could go undetected.''

The FAA disagrees with the commenter that the suggested paragraph be added, as these considerations are well within the interpretation of § 33.83 and no additional safety standards are deemed necessary.

One commenter suggests adding an additional paragraph to the special condition to minimize the risk of hazard which would result from potential failure of the fan blade retention system as follows:

''(a)(4) Although the above test requires release of the fan blade at the inner flowpath, additional testing and/or analysis shall be performed to define the engine behavior for the case of a fan blade release at the outermost retention groove. The data obtained shall be used when establishing:

(i) Any installation limitations to be included on the Type Certificate Data Sheet; and,

(ii) Load requirements of § 33.23.''

The FAA disagrees. As stated in § 33.75, Safety Analysis, the applicant must consider all probable malfunctions which will cause the engine to catch fire, burst, generate loads greater than those ultimate loads specified in § 33.23(a), or lose the capability of being shut down. These special conditions also require such analyses and tests to show that the failure of the fan blade retention system is not a probable malfunction. Establishment of the maximum stop-start stress cycles for the blade retention system is also required to assure the structural integrity of the blade attachment system.

One commenter states that the requirements should show that the failure rate of the fan blade retention system, for any cause, during the service life of the engine, be extremely improbable and can not be established at the time of type design approval for a new technology composite.

The FAA agrees in part. While the FAA agrees that a failure probability of extremely improbable can not be guaranteed, the FAA remains receptive to advances in technology, approaches, and new test methods which adequately simulate those effects typically verified by in-service experience. Further, the FAA believes that these same principles have been successfully used by engine manufacturers to ensure the airworthiness of rotor structural parts. It should be recognized that failure to demonstrate acceptable reliability of the blade retention features, results in non-compliance with these special conditions and that would require testing to occur at the outer most retention groove.

Two commenters suggest the energy levels and trajectories of any particles that would penetrate the engine cases by conducting an engine test in accordance with the test conditions of current §§ 33.94(a) and 33.94(b) be defined in the Engine Installation Manual or on the Engine Type Certificate Data Sheet. The definition of results should also include determination of the loads that would be transmitted through the engine to airframe interface. One commenter states that the energy levels, trajectories and loads must be included in each airplane type's design precautions taken to minimize the hazards in the event of an engine rotor failure, as required by current FAR 25.903 and JAR 25.903.

The FAA agrees that the requirements for defining energy levels, trajectories of particles, and a resultant loads already exist in §§ 33.19(a) and 33.23. The FAA also agrees that if such energy levels, trajectories, and resultant loads are defined, the appropriate data should be included in the Engine Installation Manual. The FAA does not agree with the commenters suggestion relative to complying with §§ 33.94(a) and 33.94(b) in addition to these special conditions. These special conditions provide safety standards which apply to the composite blade design as an alternative to the requirements of § 33.94. The applicant must demonstrate reliability of the blade root and the blade retention system.

One commenter criticizes the explanations and logic presented for justification of these proposed special conditions. The commenter cites that there was insufficient information in the notice by which to test the validity of the FAA's determination.

The FAA disagrees. The notice of proposed special condition identifies two bases on which the FAA determined that the current requirements of part 33 do not provide adequate or appropriate safety standards because of the novel or unusual design of the GE90 engine. The FAA also determined that additional safety standards were needed to ensure that the GE composite fan blades met an equivalent level of safety established by § 33.94. Given the number and the nature of the comments received, the FAA believes that the notice gave an adequate description of the proposed action to allow critical comment on the basis for that action.

One commenter states that they do not believe that use of graphite composite material for a turbofan blade retention system warrants a departure from the current requirements of § 33.94.

The FAA disagrees. The FAA supports the use of composite technology and the necessary methods of testing and analyses to show that the product meets an equivalent safety standard as established by § 33.94.

One commenter states that the demonstration means for showing ''extremely improbable'' should be specifically part of these proposed special conditions. The commenter suggests to establish and define a methodology by which to rigorously assess the probability of fan blade retention system failure as extremely improbable, and by which to assess the associated level of confidence in the assessment, particularly at the time of initial certification.

The FAA agrees in part. The FAA agrees that the assessment of the fan blade retention system should be conducted rigorously, but disagrees with the need to establish and define a methodology in these special conditions. The FAA believes it should not define a specific means to meet a safety standard, or publish an applicant's proprietary methodology. To publish a specific demonstration means would presume the FAA has predetermined the composite blade material property characterization. The methodology for assessing the fan blade retention system will be proposed by the applicant, and will be evaluated by the FAA.

One commenter states that lightning test conditions should be specifically identified in the special condition.

The FAA disagrees. Existing regulatory guidance material and standard industry practices for lightning

tests may be used to develop appropriate test criteria.

One commenter suggests that the term ''inner annulus flowpath line'' be substituted for ''inner flowpath diameter'' to eliminate ambiguity of definition.

The FAA concurs. The inner annulus flowpath line provides a better description of the flowpath contour because flowpath diameter suggests a line of constant radius. These Final Special Conditions will be revised to include this term.

One commenter states it is an issue of unnecessary additional risk that, in the absence of full compliance to § 33.94, these proposed special conditions are insufficient in scope and detrimental to aviation safety.

The FAA disagrees. The FAA has concluded that upon compliance with all of the requirements of these special conditions, together with additional testing beyond that typically employed for metallic blades within the scope of 14 CFR part 33, an equivalence to the safety standard provided in § 33.94 has been achieved and no additional risk has been assumed.

One commenter states that the most significant feature of the notice is the proposed probability of fan blade retention system failure of ''extremely improbable'' is a reduction in severity of the effects of a blade failure.

The FAA agrees. The FAA recognizes that certain loads associated with a blade release at the inner annulus flowpath line may be less than the loads associated with release of a fan blade at the outermost retention. Those loads imparted to the engine mount system based on the inner annulus flowpath line will be identified in the Engine Installation Manual. Since there is potential for a reduction in certain loads, it is imperative that the blade retention system demonstrates sufficiently improved reliability to provide an equivalent level of safety to that provided by § 33.94.

One commenter requested on what basis has it been decided that a failure along the inner flowpath line is the most critical for failures which are not assessed as being extremely improbable.

The FAA selected the inner annulus flowpath line as the critical location for blade release based on design, blade stresses, and demonstrated fatigue and impact testing.

One commenter states that these proposed special conditions make no mention of the design and construction requirements of either § 33.19 relating to containment design and uncontained blade fragments, or § 33.23 relating to mounting attachments and structure.

The FAA concluded that the requirements of §§ 33.19 and 33.23 were adequate and appropriate when applied to this design of the GE90 engine, and no additional special conditions were necessary.

One commenter suggests that these special conditions should also address the effects of possible detachment of those metallic portions of the blade.

The FAA disagrees. These special conditions provide an alternative to the release failure location on the blade. The metal to composite blade bonding capability has been addressed through tests conducted under 14 CFR part 33. There were no additional special conditions that are required.

One commenter suggests that the text of these proposed special conditions paragraph (a), has been mis-compiled.

The FAA concurs. The intent of the paragraph (a) is to identify the location of the release point for the fan blade containment test and to prescribe the additional safety standards to be demonstrated. These special conditions will be modified by reorganizing paragraph (a) to more clearly express this intent.

One commenter states that some re-wording is also necessary to make it clear that the fan blade test must be conducted as a full engine test.

The FAA concurs. These special conditions will be modified to incorporate this change.

One commenter states that these special conditions ought to make more visible how there can be meaningful confidence in ''extremely improbable'' as the assessed probability of fan blade retention system failure if the stress levels are not so conservative as to result in an infinite fatigue life.

The FAA disagrees. The intent is to assure that within the service life of the blade, that the fan blade retention system is not likely to fail due to manufacturing and material variations, in-service deterioration, and environmental effects.

One commenter asks how will it be established that any large bird ingestion is not a possible cause of fan blade retention system failure, a mode of failure that is likely to be much more severe than an airfoil only fan blade containment tests.

The damage effects on the blade retention system will be substantiated by developmental and certification testing. It is incumbent upon the applicant to demonstrate that the blade attachment system is designed to withstand the affects of an eight pound bird impact on the blade airfoil, and is less severe than the effects from fan blade release.

One commenter requests a definition of ''without failure,'' with regard to the two times centrifugal load test.

The FAA definition for ''without failure'' in this context is to demonstrate the blade root is retained within the disk dovetail slot, and that there are no conditions present which would indicate impending release.

One commenter suggests relative to paragraph (a)(2) of the proposed special conditions, that there is a need for explicit reference to consideration of both high cycle and low cycle fatigue during start stop stress cycles.

The FAA concurs. The determination of the life cycle of the composite fan blade must include the effects of combined high cycle and low cycle fatigue with enhanced load factors. These special conditions will be modified to include the requirement for high cycle and low cycle fatigue tests.

One commenter requests clarification of the term ''extremely improbable.''

For the purpose of these special conditions, ''extremely improbable'' refers to the unlikelihood that a failure will occur during the engine's operational life.

One commenter questions why paragraph (d) of these proposed special conditions is applicable only to the tests and analyses required by paragraphs (a)(1) and (a)(2) of the proposed special conditions.

The effects of in-service deterioration, manufacturing and material variations, and environmental effects must be accounted for during the centrifugal load test and in lifting determinations. The intent is to determine the effects on material capability under centrifugal loads significantly greater than will be seen in service. Combined high cycle and low cycle tests will further determine the effects on material capability. The blade releases demonstration, however, may or may not be conducted accounting for these effects.

After careful review of the available data, including the comments noted above, the FAA determined that air safety and the public interest require the adoption of these special conditions as proposed with the changes as noted above.

Conclusion

This action affects only General Electric Aircraft Engines on Model(s) GE90–75B/–85B/–76B turbofan engines. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these engines containing this novel or unusual design feature.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421, 1423; 49 U.S.C. 106(g); and 14 CFR 11.49 and 21.16.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the General Electric Aircraft Engines Model(s) GE–90–75B/–85B/–76B turbofan engines:

(a) In lieu of the fan blade containment test with the fan blade failing at the point specified in § 33.94(a)(1), conduct the following:

(1) An engine fan blade containment test with the fan blade failing at the inner annulus flowpath line.

(2) The following must be shown by test and analyses, or other methods acceptable to the Administrator, that:

(i) The disk and fan blade retention system can withstand without failure a centrifugal load equal to two times the maximum load which the engine could experience within approved operating limitations, and

(ii) By a procedure approved by the Administrator, an operating limitation must be established which specifies the maximum allowable number of start-stop stress cycles for the fan blade retention system. The stress cycle shall include the combined effects of high cycle and low cycle fatigue. The fan blade retention system includes the portion of the fan blade from the inner annulus flowpath line inward to the blade dovetail, the blade retention components and the fan disk and fan blade attachment features.

(b) It must be shown that the probability of fan blade retention system failure, for any cause, during the service life of the engine to be extremely improbable.

(c) It must be shown by test or analysis that a lightning strike to the composite fan blade structure will not result in a hazardous condition, and that the engine will meet the requirements of § 33.75.

(d) The tests and analyses required by (a)(2)(i) and (a)(2)(ii) of these special conditions must account for the effects of in-service deterioration, manufacturing and material variations, and environmental effects.

Issued in Burlington, Massachusetts, on February 1, 1995.

James C. Jones,

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

[FR Doc. 95–2928 Filed 2–2–95; 9:32 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AAL–4]

Realignment of G–8, G–10, G–12, R–99, B–27, B–37, V–308, and V–328; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will extend Colored Federal Airways G–10 and R–99 and realign Colored Federal Airway B–37 as a result of the decommissioning of the Cape Spencer Marine Nondirectional Beacon (NDB); revise the descriptions of Colored Federal Airways G–8, G–12, and B–27; and, as a result of the decommissioning of the Quinhagak, AK, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME), realign Federal Airway V–328 and remove a segment of V–308. In addition, this action will remove ''via INT Campbell Lake NDB 032° and Skwentna, AK, NDB 111° bearings'' from Colored Federal Airway G–8. These actions will enhance navigation and reduce both pilot and air traffic controller workload.

EFFECTIVE DATE: 0901 UTC, March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On September 27, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to extend Colored Federal Airways G–10 and R–99 and realign Colored Federal Airway B–37 as a result the decommissioning of the Quinhagak, AK, VOR/DME, realign Federal Airway V–328 and remove a segment of V–308 in Alaska (59 FR 49220).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and the removal of ''via INT Campbell Lake NDB 032° and Skwentna, AK, NDB 111° bearings'' from Colored Federal Airway G–8, and a change to Federal Airway V–328 from ''Dillingham, AK, to Kipnuk'' to ''INT Dillingham 295° and Kipnuk, AK 099° radials, to Kipnuk,'' this amendment is the same as that proposed in the notice. Colored Federal Airways are published in paragraphs 6009(a), 6009(b) and 6009(d), respectively, and Alaskan VOR Federal airways are published in paragraph 6010(b), of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Colored Federal airways and the Alaskan VOR Federal airways listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations extends Colored Federal Airways G–10, R–99, and realigns Colored Federal Airway B–37 as a result of the decommissioning of the Cape Spencer Marine NDB. Colored Federal Airways G–10 and R–99 will be extended and will include an extension of G–10 from Woody Island to Kachemak. King Salmon, AK, NDB was inadvertently used in the descriptions of Colored Federal Airways G–8 and G–12, and as a result of this rule, Saldo, AK, NDB will replace King Salmon, AK, NDB. King Salmon, AK, Locator Outer Marker in the description of B–27 will replace Saldo, AK, NDB. Finally, as a result of the Quinhagak, AK, VOR/DME being decommissioned, this action will remove that segment of V–308 between Quinhagak, AK, and Bethel, AK, and will realign V–328 between Dillingham, AK, and Kipnuk, AK.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6009(a)—Green Federal Airways

* * * * *

G–8 [Revised]

From Shemya, AK, NDB, 20 AGL Adak, AK, NDB; 20 AGL Dutch Harbor, AK, NDB; 20 AGL INT Dutch Harbor NDB 041° and Elfee, AK, NDB 253° bearings; 20 AGL Elfee NDB; 20 AGL Saldo, AK, NDB; INT Saldo NDB 054° and Kachemak, AK, NDB 269° bearings, to Kachemak NDB. From Campbell Lake, AK, NDB; Glenallen, AK, NDB; INT Glenallen NDB 052° and Nabesna, AK, NDB 252° bearings; Nabesna NDB.

* * * * *

G–10 [Revised]

From Cape Newnham, AK, NDB; St. Paul Island, AK, NDB; Elfee, AK, NDB, 20 AGL INT Elfee NDB 041° and Port Heiden, AK, NDB 248° bearings; 20 AGL Port Heiden NDB; 67 miles 12 AGL, 77 miles 85 MSL, 67 miles 12 AGL, Woody Island, AK, NDB; to Kachemak, NDB.

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G–12 [Revised]

From Saldo, AK, NDB; Port Heiden, AK, NDB; Borland, AK, NDB; to Elfee, AK, NDB.

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Paragraph 6009(b)—Red Federal Airways

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R–99 [Revised]

From St. Paul Island, AK, NDB; Dutch Harbor, AK, NDB; Saldo, AK, NDB; Iliamna, AK, NDB; INT Iliamna NDB 124° and Kachemak, AK, NDB 269° bearings; to Kachemak.

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Paragraph 6009(d)—Blue Federal Airways

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B–27 [Revised]

From Woody Island, AK, NDB, 50 miles 12 AGL, 50 miles 95 MSL, 53 miles 12 AGL, Saldo, AK, NDB; 51 miles 12 AGL, 84 miles 70 MSL, 63 miles 12 AGL, Oscarville, AK, NDB; St. Marys, AK, NDB; Fort Davis, AK, NDB; 35 miles 12 AGL, 71 miles 55 MSL, 54 miles 12 AGL, Hotham, AK, NDB.

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B–37 [Revised]

From Summer Strait, AK, NDB; Elephant, AK, NDB; INT Elephant NDB 272° and Ocean Cape, AK, NDB 139° bearings.

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Paragraph 6010(b)—Alaskan VOR Federal Airways

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V–308 [Revised]

From Bethel, AK; INT Bethel 066° and Sparrevohn, AK, 279° radials; to Sparrevohn.

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V–328 [Revised]

From Dillingham, AK; INT Dillingham 295° and Kipnuk, AK, 099° radials; to Kipnuk.

* * * * *

Issued in Washington, DC, on January 24, 1995.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–2735 Filed 2–6–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 94–ASO–17]

Establishment and Alteration of Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes new jet routes and modifies existing jet routes in the Miami, FL, area. This action is necessary because of the commissioning of the Virginia Key, FL, Very High Frequency Omnidirectional Range and Distance Measuring Equipment (VOR/DME).

EFFECTIVE DATE: 0901 UTC, March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On October 26, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Jet Routes J–81 and J–113, and to modify several existing jet routes in the Miami, FL, area (59 FR 53764).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in paragraph 2004 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Jet Routes J–81 and J–113 and modifies existing jet routes in the Miami, FL, area. This action is necessary because of the commissioning of the new Virginia Key, FL, VOR/DME. Commissioning of the Virginia Key, FL, VOR/DME necessitated the realignment of existing routes. Two new jet routes are established to provide additional support for air traffic operations in the Miami area.

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

The original airspace docket was submitted to the Department of Defense and the Department of State in accordance with Executive Order 10854. The application of International Civil Aviation Organization (ICAO) International Standards and Recommended Practices will not be affected by this action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–20 (Revised)

From Seattle, WA, via Yakima, WA; Pendleton, OR; Donnelly, ID; Pocatello, ID; Rock Springs, WY; Denver, CO; Kiowa, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Will Rogers, OK, 284° radials; Will Rogers; Belcher, LA; Jackson, MS; Montgomery, AL; Meridian, MS; Tallahassee, FL; INT Tallahassee 129° and Orlando, FL, 306° radials; Orlando; INT Orlando 140° and Virginia Key, FL, 344° radials; Virginia Key.

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J–43 (Revised)

From Miami, FL, INT Miami 313° and LaBelle, FL, 137° radials; LaBelle; St. Petersburg, FL; Tallahassee, FL; Atlanta, GA; Volunteer, TN; Falmouth, KY; Rosewood, OH; Carleton, MI; to Sault Ste. Marie, MI.

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J–45 (Revised)

From Virginia Key, FL, INT 014° and Vero Beach, FL, 143° radial; Vero Beach; INT Vero Beach 330° and Ormond Beach, FL, 183° radials; Ormond Beach; Craig, FL; Alma, GA; Macon, GA; Atlanta, GA; Nashville, TN; St Louis, MO; Des Moines, IA; Sioux Falls, SD; to Aberdeen, SD.

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J–53 (Revised)

From Miami, FL; INT Miami 020° and Pahokee, FL, 157° radials; Pahokee; INT Pahokee 342° and Orlando, FL, 162° radials; Orlando; Craig, FL; INT Craig 347° and Colliers, SC, 174° radials; Colliers; Spartanburg, SC; Pulaski, VA; INT of Pulaski 015° and Ellwood City, PA, 177° radials; to Ellwood City.

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J–55 (Revised)

From Miami, FL; INT Miami 332° and Gainesville, FL, 157°, radials; INT Gainesville 157° and Craig, FL, 192°, radials; Craig; INT Craig 004° and Savannah, GA, 197° radials; Savannah; Charleston, SC; Florence, SC; INT Florence 003° and Raleigh-Durham, NC, 224° radials; Raleigh-Durham; INT Raleigh-Durham 035° and Hopewell, VA, 234° radials; Hopewell; to INT Hopewell 030° and Nottingham, MD, 174° radials. From Sea Isle, NJ; INT Sea Isle 050° and Hampton, NY, 223° radials; Hampton; Providence, RI; Boston, MA; Kennebunk, ME; Presque Isle, ME; to Mont Joli, PQ, Canada, excluding the portion within Canada.

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J–73 (Revised)

From Miami, FL, INT Miami 313° and LaBelle, FL, 137° radials; LaBelle; Lakeland, FL; Tallahassee, FL; La Grange, GA; Nashville, TN; Pocket City, IN; to Northbrook, IL.

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J–81 (New)

From Miami, FL; INT Miami 020° and Pahokee, FL, 157° radials; Pahokee; INT Pahokee 342° and Orlando, FL, 162° radials; Orlando; Cecil; INT Cecil 007° and Craig, FL, 347° radials; INT Craig 347° and Colliers, SC, 174°, radials; Colliers.

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J–85 (Revised)

From Miami, FL; INT Miami 332° and Gainesville, FL, 157° radials; Gainesville; Taylor, FL; Alma, GA; Colliers, SC; Spartanburg, SC; Charleston, WV; INT of the Charleston 357° and the DRYER, OH, 172° radials; DRYER. The portion within Canada is excluded.

J–86 (Revised)

From Boulder City, NV, via Peach Springs, AZ; Winslow, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; Austin, TX; Humble, TX; Leeville, LA; INT of Leeville 104° and Sarasota, FL, 286° radials; Sarasota; INT of Sarasota 103° and La Belle, FL, 313° radials; La Belle; INT La Belle 137° and Miami, FL, 313° radials; to Miami.

* * * * *

J–113 (New)

From Virginia Key, FL, INT Virginia Key 344° and Craig, FL, 168° radials; Craig.

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Issued in Washington, DC, on January 26, 1995.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–2737 Filed 2–6–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 422

RIN 0960–AD45

Organization and Procedures; Procedures of the Office of Hearings and Appeals; Authority of Appeals Officers To Deny a Request for Appeals Council Review

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule amends our regulations on the organization and procedures of the Appeals Council to authorize Appeals Officers, as well as members of the Appeals Council, to deny a request for review of a decision by an Administrative Law Judge (ALJ) in cases in which denying the request for review gives the parties to the ALJ decision a right to seek judicial review of that decision.

EFFECTIVE DATE: This final rule is effective February 7, 1995.

FOR FURTHER INFORMATION CONTACT: Lois Berg, Paralegal Specialist, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (410) 965–1713. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION:

Background

We are amending § 422.205 of our regulations to authorize Appeals Officers, as well as members of the Appeals Council, to decide whether to deny a request for review of an ALJ decision and thereby make the decision subject to judicial review under section 205(g) of the Social Security Act (the Act).

Part 422 of 20 CFR provides information regarding the organization and procedures of the Social Security Administration (SSA). Subpart C of Part 422 describes the procedures of the Office of Hearings and Appeals (OHA). Section 422.205 describes the organization and functions of the Appeals Council, a part of OHA.

By direct delegation of authority from the Secretary of Health and Human Services (the Secretary), the Appeals Council is authorized to review hearing decisions and orders of dismissal issued by SSA's ALJs. Through the exercise of this authority, the Appeals Council is responsible for ensuring that the final

decisions of the Secretary involving benefits under Titles II, XI, XVI and XVIII of the Act and Part B of title IV of the Federal Mine Safety and Health Act of 1977, as amended, are proper and in accordance with the law, regulations, and binding agency policy established in Social Security Rulings and Acquiescence Rulings.

Currently, 22 Appeals Council members, hereinafter referred to as either ''Administrative Appeals Judges (AAJs)'' or ''members,'' comprise the membership of the Appeals Council. The Associate Commissioner for OHA is the Chair of the Appeals Council and is the administrative officer directly responsible to the Commissioner of Social Security for carrying out OHA's mission of holding ALJ hearings and deciding appeals. Each AAJ, other than the Chair, is assisted by an Appeals Officer who presently serves as a legal clerk. Organizationally, Appeals Officers are a part of the Appeals Council.

The Appeals Council considers appeals under titles II, XI, XVI, and XVIII of the Act, and under Part B of title IV of the Federal Mine Safety and Health Act of 1977, as amended. The regulations setting forth the responsibilities of the Appeals Council appear in 20 CFR Part 404 (Subpart J, §§ 404.967 *et seq.*), Part 410 (Subpart F, §§ 410.657 *et seq.*), Part 416 (Subpart N, §§ 416.1467 *et seq.*), and 42 CFR Part 405 (Subpart G, §§ 405.701(c) and 405.724, and Subpart H, § 405.815), Part 417 (Subpart Q, § 417.634), and Part 473 (Subpart B, §§ 473.46 and 473.48(b)). These regulations provide that after an ALJ has issued a decision or dismissed a request for a hearing, the Appeals Council may review a case on its own motion or at the request of a party to the hearing decision or dismissal. The Council may deny or dismiss a party's request for review, or it may grant the request and either issue a decision or remand the case to an ALJ. If the Appeals Council denies a request for review of a decision by an ALJ, the ALJ's decision becomes a final decision of the Secretary subject to judicial review under the provisions of section 205(g) of the Act except when judicial review is precluded in certain Medicare cases. If the Appeals Council grants a request for review and issues a decision, that decision also becomes a final decision of the Secretary subject to judicial review under section 205(g) of the Act except in certain Medicare cases.

Sections 404.970 and 416.1470 of 20 CFR describe cases involving Social Security and supplemental security income benefits payable under title II and title XVI of the Act that the Appeals Council will review. Those sections provide that the Appeals Council will review a case if the action, findings or conclusions of the ALJ are not supported by substantial evidence; there is an error of law; or there appears to be an abuse of discretion by the ALJ. Those sections also provide that the Appeals Council will review a case that presents a broad policy or procedural issue that may affect the general public interest. The same standards apply to determine if the Appeals Council will review a case under titles XI and XVIII of the Act and under Part B of title IV of the Federal Mine Safety and Health Act of 1977, as amended.

Over the years, there have been questions about the functions and operations of the Appeals Council. Some commenters have questioned the usefulness of review by the Appeals Council. Several studies have addressed the role of the Appeals Council, resulting in many recommendations for improving the Council's structure and operations.

In its Recommendation 87–7: A New Role for the Social Security Appeals Council (adopted December 18, 1987), the Administrative Conference of the United States (ACUS) concluded that the high volume of work of the Council (up to 500 cases per member per month) precluded it from detecting emerging problems, identifying new issues to be resolved, and identifying and developing needed policies. ACUS recommended that the Secretary and SSA restructure the Appeals Council in ''a fashion that redirects the institution's goals and operations from an exclusive focus on processing the stream of individual cases and toward an emphasis on improved organizational effectiveness'' (1 CFR 305.87–7). To this end, ACUS recommended that ''the Appeals Council should be provided the authority to reduce significantly its caseload and also be given, as its principal mandate, the responsibility to recommend and, where appropriate, develop and implement adjudicatory principles and decisional standards for the disability determination process.'' ACUS also recommended that the agency enhance the status of the Appeals Council and provide law clerks to its members.

To address the workload problems ACUS discussed in its recommendation, SSA decided, in 1988, to add Appeals Officers to the Council to enable the members to focus their attention on the more complex and significant cases, including those cases presenting important policy or procedural issues.

Appeals Officers presently assist AAJs in considering recommendations made by the Council's support staff in OHA's Office of Appellate Operations. Appeals Officers, who are attorneys, also act as the AAJs' staff attorneys, researching and providing legal memoranda on issues arising from cases that come to the attention of the Appeals Council. However, because the Appeals Officers do not have authority under our existing regulations to carry out any of the decisionmaking responsibilities of the AAJs, one or more AAJs must make these decisions.

Research we have supported since we established the Appeals Officer position has persuaded us that if the Appeals Officers are authorized to assume some of the responsibilities of the AAJs, the AAJs will be able to focus more of their attention on cases that present broad policy or procedural issues. In a report commissioned by ACUS in 1989 (Report and Recommendations on the Social Security Administration's Administrative Appeals Process), Professor Frank S. Bloch discussed the Appeals Council's workload and stated that the Council could not be expected to assume a meaningful review function for all claims that might be presented to it. One of the recommendations in the report was that the Appeals Council be authorized ''to use staff or lower level Council members to deny a request for review, and limit the review of cases by the Appeals Council to those raising significant policy issues.'' See Recommendation No. 12.

To complete the changes we contemplated when we established the Appeals Officer position, we are amending § 422.205 to authorize Appeals Officers, as well as AAJs, to deny a request for Appeals Council review of a hearing decision by an ALJ in any case in which the Act would provide an opportunity for judicial review of such hearing decision following a denial of a request for Appeals Council review. Because an ALJ's dismissal of a request for a hearing is not subject to judicial review, AAJs alone will continue to decide whether to grant or deny a request for review of a hearing dismissal. For the same reason, only AAJs will be empowered to exercise the Council's authority to dismiss a request for review or refuse a request to reopen a decision of an ALJ or the Appeals Council. The AAJs also retain exclusive authority to grant a request for review of a hearing decision or a dismissal, to decide to review a case on the Appeals Council's own motion, to remand a case to an ALJ, or to issue a final decision.

In exercising the authority provided to them under the final rule, the Appeals Officers will be required to apply the same criteria as the AAJs in determining whether to deny a request for review. The Appeals Officers will apply the standards set forth in §§ 404.970 and 416.1470, which specify when the Appeals Council will review a case, in deciding the appropriate action. The Appeals Officers will continue to receive guidance, direction and supervision from the AAJs, including instructions as to specific issues or kinds of cases requiring the attention of the AAJ.

While an Appeals Officer will have authority to deny a request for review of an ALJ decision, he or she also may refer a case to an AAJ with a recommendation if the case involves complex factual issues or complicated interpretative issues of law and/or regulation. In addition, the analysts in OHA's Office of Appellate Operations will submit all recommendations to grant review directly to the AAJs for disposition.

We believe that the amendment of § 422.205, which will provide Appeals Officers a specific and limited authority, will allow the Appeals Council to give the public a more timely response to their requests for review, increase the ability of the AAJs to carry out their important function of providing review of many ALJ decisions, and improve the quality and efficiency of the service the Appeals Council is able to provide. The revised process will expedite bringing the ''close cases,'' which are normally more complex, to the attention of the AAJs and also allow the AAJs to focus on cases raising significant issues.

Public Comments on the Proposed Rule

We published a proposed rule to amend § 422.205 with a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on January 10, 1994, 59 FR 1363. We provided interested persons and organizations 60 days to comment. A correction to the preamble to the proposed rule was subsequently published on March 16, 1994, 59 FR 12211. We received two comments on the proposed rule from a single commenter, a legal services organization that represents Medicare beneficiaries. We have carefully considered the comments and the changes proposed by the commenter. As discussed below, we have adopted one of the changes recommended by the commenter in the final rule.

Comment: The commenter believed that the proposed rule would result in some cases being processed more quickly, but also thought that it would add a step to the process in instances in which the Appeals Officer decides not to deny a request for review and an AAJ must then decide whether to deny or grant review. The commenter perceived this as an additional step that could actually add more time to the process and suggested that if the proposed rule were adopted, there should be time limits within which Appeals Officers must make their decisions.

Response: We are not making this suggested change. We believe the modified process involves no additional step, even in the situation of concern to the commenter, and that the process will expedite disposition of the Appeals Council's workload.

Under the regulations as amended by this final rule, AAJs will receive cases to consider for possible review in two ways. As in the past, where an analyst believes a case should be reviewed under the applicable standards, the analyst will submit a recommendation for review directly to an AAJ for disposition. In addition, where an analyst recommends denial of review and the Appeals Officer believes that the Council should review the case, or that an AAJ should consider the case for possible review, the Appeals Officer will submit the case to an AAJ with a recommendation.

Under the regulation in effect prior to the publication of this final rule, AAJs were required to consider all the cases in which analysts recommended denial of review in an effort to identify those in which review might be appropriate notwithstanding the analyst's recommendation to the contrary. Under the final rule, the AAJs will focus their attention on cases in which analysts recommend review and those additional cases that Appeals Officers decide should be brought to their attention. Where the Appeals Officer refers a case, the issues in it will be focused for the AAJ by virtue of the recommendations of the analyst and the Appeals Officer. Thus, as we stated earlier in this preamble and in the preamble to the NPRM, we believe that the revised process will expedite the bringing of ''close cases'' to the attention of the AAJs and increase their ability to carry out the important function of reviewing many ALJ decisions, while also allowing the Appeals Council to deny or grant the public's requests for review more promptly.

Comment: The commenter also thought that the number of cases denied review could increase because the only action the Appeals Officers could take would be to deny requests for review, and because the goal of increasing the Appeals Council's ''organizational effectiveness'' seems to imply that the desired outcome is more denials of review. The commenter believed this change would occur in the context of a situation in which the number of Medicare cases the Council can consider is already limited by standards concerning the monetary amounts at issue.

The commenter was concerned that if the Appeals Council reviews fewer cases, the proposed rule would have a significant, adverse impact on low-and-moderate income Medicare beneficiaries, limiting some to seeking relief through court actions they cannot afford and denying others any further opportunity to pursue relief (because the access of Medicare beneficiaries to district court review is restricted by monetary minimums on the amount in controversy). The commenter recommended requiring that an AAJ consider all cases in which judicial review would not be possible because of the amount at issue, noting that this change would not address the concern about court costs prohibiting additional appeals.

Response: As discussed in our response to the prior comment, we believe the modified process will increase the capacity of the Appeals Council to identify and review ALJ decisions that should be reviewed pursuant to the applicable regulatory standards. The intent of the revised process provided for in the final rule is to increase the Appeals Council's organizational effectiveness by increasing its capacity to identify and review ALJ decisions that should be reviewed, including, but not limited to, those that present important policy or procedural issues. The revised process should reduce the number of individuals who must file civil actions to obtain relief.

An individual's right to an ALJ hearing in a Medicare case is contingent, in part, on whether or not the claim or claims at issue meet the amount in controversy requirements set forth in the Act. There are, however, no monetary thresholds that limit the Appeals Council's authority to consider reviewing a decision or dismissal issued by an ALJ on a Medicare claim. For example, if an ALJ dismisses a request for hearing because the amount in controversy requirement has not been met, a party may request the Appeals Council to review and vacate the dismissal action. If the request for hearing should not have been dismissed under the applicable standards, the Council will grant the request for review and vacate the hearing dismissal.

We are adopting in the final rule the commenter's recommendation to require AAJs to consider all requests for Appeals Council review in cases in which judicial review would be precluded by the monetary amount at issue. This change from the proposed rule is consistent with our overall intent, which is to empower Appeals Officers to deny requests for review of hearing decisions when such action results in a final decision on which the claimant has a right to seek judicial review under section 205(g) of the Act. To adopt this recommendation, we are making a change in the final rule to specify an additional category of cases in which the authority to deny a request for review will remain exclusively with the AAJ.

The change we are making in the final rule, see below, reserves to the AAJs exclusive authority to deny a request for review of an ALJ hearing decision in any case in which the Secretary's final decision after an ALJ hearing is not subject to judicial review. Such cases are identified in § 422.210(a) and include cases under title XI as well as cases under title XVIII.

There is no right to judicial review under section 205(g) of the Act where the Appeals Council denies a party's request that the Council review and vacate an ALJ's dismissal of a request for a hearing (because there is no final decision of the Secretary after an ALJ hearing in these instances). Where a request for a hearing is dismissed based on application of a monetary minimum and the Council denies a request for review, the monetary minimum effectively precludes judicial review. The final rule, like the proposed rule, addresses the commenter's concerns regarding the exercise of the Council's authority to deny a request for review in such cases since it provides that only AAJs will have authority to deny a request for review of an ALJ dismissal of a request for a hearing.

Change in the Final Rule

After considering the comments on the NPRM, we are publishing a final rule that differs in one respect from the proposed rule. The second sentence of § 422.205(c) as proposed stated: ''The denial of a request for review of a hearing dismissal, the dismissal of a request for review, or the refusal of a request to reopen a hearing or Appeals Council decision concerning a determination under § 422.203(a)(1) shall be by such member or members of the Appeals Council as may be designated in the manner prescribed by the Chair or Deputy Chair.'' For the reasons discussed above, we are revising that sentence in the final regulation to state: ''The denial of a request for review of a hearing dismissal, the dismissal of a request for review, the denial of a request for review of a hearing decision whenever such hearing decision after such denial would not be subject to judicial review as explained in § 422.210(a), or the refusal of a request to reopen a hearing or Appeals Council decision concerning a determination under § 422.203(a)(1) shall be by such member or members of the Appeals Council as may be designated in the manner prescribed by the Chair or Deputy Chair.''

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, the rule is not subject to OMB review.

Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. Individuals are not included in the definition of a small entity. However, for the purposes of the RFA, we consider the majority of Medicare providers, physicians and suppliers to be small entities.

Inasmuch as the final rule does not alter the standards for Appeals Council review, we believe that it will have little, if any, effect on providers, physicians and suppliers which request Appeals Council review of Medicare claims. Accordingly, we have determined, and the Secretary certifies, that this final rule will not result in a significant economic impact on a substantial number of small entities. Therefore, we have not prepared an RFA analysis.

Paperwork Reduction Act

This regulation imposes no new reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.773 Medicare-Hospital Insurance; 93.774 Medicare-Supplementary Medical Insurance; 93.802 Social Security-Disability Insurance; 93.803 Social Security-Retirement Insurance; 93.804 Social Security-Special Benefits for Persons Age 72 and Over; 93.805 Social Security-Survivors Insurance; 93.806 Special Benefits for Disabled Coal Miners; and 93.807 Supplemental Security Income.)

List of Subjects in 20 CFR Part 422

Administrative Practice and Procedure, Freedom of Information, Organization and Functions (government agencies), Social Security, Reporting and recordkeeping requirements.

Dated: November 10, 1994.

Shirley Chater,

Commissioner of Social Security.

Approved: January 31, 1995.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, we are amending Part 422 of Chapter III of Title 20 of the Code of Federal Regulations as follows:

PART 422—ORGANIZATION AND PROCEDURES

1. The authority citation for Subpart C continues to read as follows:

Authority: Secs. 205, 221, 1102, 1869, and 1871 of the Social Security Act; 42 U.S.C. 405, 421, 1302, 1395ff, and 1395hh; sec. 413(b) of the Federal Mine Safety and Health Act of 1977; 30 U.S.C. 923(b).

2. Section 422.205 is amended by revising paragraph (c) to read as follows:

§ 422.205 Review by Appeals Council.

* * * * *

(c) The denial of a request for review of a hearing decision concerning a determination under § 422.203(a)(1) shall be by such appeals officer or appeals officers or by such member or members of the Appeals Council as may be designated in the manner prescribed by the Chair or Deputy Chair. The denial of a request for review of a hearing dismissal, the dismissal of a request for review, the denial of a request for review of a hearing decision whenever such hearing decision after such denial would not be subject to judicial review as explained in § 422.210(a), or the refusal of a request to reopen a hearing or Appeals Council decision concerning a determination under § 422.203(a)(1) shall be by such member or members of the Appeals Council as may be designated in the manner prescribed by the Chair or Deputy Chair.

* * * * *

[FR Doc. 95–2946 Filed 2–6–95; 8:45 am]

BILLING CODE 4190–29–P

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for Bioproducts, Inc.

EFFECTIVE DATE: February 7, 1995.

FOR FURTHER INFORMATION CONTACT: Judith M. O'Haro, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1737.

SUPPLEMENTARY INFORMATION: Bioproducts, Inc., has informed FDA of a change of address from 8221 Brecksville Rd., Cleveland, OH 44141, to 320 Springside Dr., suite 300, Fairlawn, OH 44333–2435. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the new address.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for ''Bioproducts, Inc.,'' and in the table in paragraph (c)(2) in the entry for ''051359'' by removing ''8221 Brecksville Rd., Cleveland, OH 44141'' and adding in its place ''320 Springside Dr., suite 300, Fairlawn, OH 44333–2435''.

Dated: January 31, 1995.

George A. Mitchell,

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

[FR Doc. 95–2992 Filed 2–6–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Premiere Agri Technologies, Inc., providing for making a 20-gram-per-pound (g/lb) tylosin Type A medicated article in addition to existing approvals for 40- and 100-g/lb Type A medicated articles.

EFFECTIVE DATE: February 7, 1995

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1700.

SUPPLEMENTARY INFORMATION: Premiere Agri Technologies, Inc. (Premiere), P.O. Box 2508, Fort Wayne, IN 46801–2508, filed a supplement to NADA 91–582 (formerly sponsored by Central Soya Co., Inc.) that provides for making a new 20-g/lb tylosin Type A medicated article used to make Type C medicated feeds for cattle, chickens, and swine for use as in § 558.625(f)(1)(i) through (f)(1)(vi) (21 CFR 558.625(f)(1)(i) through (f)(1)(vi)). Premiere currently has approval for 40- and 100-g/lb Type A medicated articles. The supplemental NADA is approved and the regulations are amended in § 558.625(b)(10) to reflect the approval.

Approval of this supplemental NADA is an administrative action that did not require the generation of new safety or effectiveness data. Therefore, a freedom of information summary is not required for this action.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.625 is amended by revising paragraph (b)(10) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(10) To 012286: 0.4, 0.8, and 1.6 grams per pound, paragraph (f)(1)(vi)(*a*) of this section; 20, 40, and 100 grams per pound, paragraphs (f)(1)(i) through (f)(1)(vi) of this section.

* * * * *

Dated: January 11, 1995.

Andrew J. Beaulieau,

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

[FR Doc. 95–2990 Filed 2–6–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD02–94–016]

RIN 2115–AE47

Drawbridge Operation Regulation; Red River, AR

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is separating the regulations governing drawbridges on the Red River into two sections, one for Louisiana and one for Arkansas. Currently, the entire length of the Red River in both Arkansas and Louisiana in regulated in one CFR Section. The completion of U.S. Army Corps of Engineer projects at locks and dams 4 and 5 in December 1994 is expected to result in an increase of commercial traffic on the Red River in Louisiana, necessitating a change in drawbridge openings only for the portion of the river flowing in Louisiana. This amendment allows the drawbridge on the Red River in Louisiana and Arkansas to be regulated under separate CFR sections but makes no substantive changes to the regulations for

drawbridges over the Red River in Arkansas.

EFFECTIVE DATE: This rule is effective on February 7, 1995.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, (314) 539–3724.

SUPPLEMENTARY INFORMATION: This rulemaking is procedural in that it changes the location in the CFR of existing regulations, but does not substantively change the requirements of these regulations. Therefore, under the provisions of 5 U.S.C. 553(b)(3), notice and an opportunity to comment is not required and this rule may be made effective upon publication.

Drafting Information

The principal persons involved in drafting this document are Roger K. Wiebusch, Project Officer, Bridge Branch, and LT S. Moody, Project Attorney, Second Coast Guard District Legal Office.

Discussion of Change

The Red River flows through both the states of Louisiana and Arkansas. The drawbridges over the Red River in both states have been regulated in one CFR section, § 117.35, which was cross referenced in § 117.491. This rule, together with a separate rule revising § 117.491 (CGD08–94–026), concerning the drawbridges over the Red River in Louisiana separates the regulation of the drawbridges over the Red River by state.

As a result of the completion of locks and dams 4 and 5 in December 1994 by the U.S. Army Corps of Engineers, the Red River will open for commercial navigation in late January 1995. The completion of these projects is expected to cause an increase in the commercial vessel traffic on the Louisiana section of the Red River. No changes in traffic are anticipated on the Arkansas portion. However, the anticipated increase in vessel traffic on the Louisiana portion of the Red River has necessitated a change in drawbridge openings over the Red River in Louisiana. The changes for bridges over the Red River in Louisiana are published elsewhere in today's issue of the **Federal Register**, docket number CGD08–94–26. Section 117.491 now regulates only the drawbridges over the Red River in Louisiana. The rule revises § 117.135 to now regulate only those drawbridges over the Red River in Arkansas. This final rule makes no substantive changes to the operating requirements of the Arkansas drawbridges.

Regulatory Evaluation

This rule is not significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under 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

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

Environment

The Coast Guard has reviewed the environmental impact of this rule and concluded that under section 2.B.2 of the NEPA Implementing Procedures, COMDTINST M16475.1B, this proposal is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the human environment. A Categorical Exclusion Determination is available in the docket for inspection or copying in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

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); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.135 is revised to read as follows:

§ 117.125 Red River.

The draws of the bridges above Mile 276.0 at the Arkansas Louisiana border, need not be open for the passage of vessels.

Dated: January 23, 1995.

Paul M. Blayney,

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

[FR Doc. 95–2995 Filed 2–6–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD08–94–026]

RIN 2115–AE47

Drawbridge Operation Regulation; Red River, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: With the completion of locks and dams 4 and 5 in December 1994 by the U.S. Army Corps of Engineers, the Red River will be open for commercial navigation in late January 1995. At present, all bridges up to mile 177.9 must open on signal with at least 48-hours advance notice. The continuation of such a rule would severely restrict the movement of prospective commercial navigation on the waterway and would create a burden on the bridge owners. This final rule changes the regulation governing the operation of six drawbridges across the Red River located between mile 59.5 and mile 105.8. Bridges located between mile 105.8 and mile 234.4 will remain on 48-hours advance notice. Bridges located above mile 234.4 need not be opened for the passage of vessels. This rule will accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: February 7, 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, New Orleans, Louisiana 70130–3396, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration

Branch, at the address given above, telephone (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 November 8, 1994, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulation; Red River, LA in the **Federal Register** (59 FR 55599). The Coast Guard received two letters commenting favorably on the proposal. No public hearing was requested, and none was held. This final rule is being made effective on the date of publication. The Red River will be open to commercial navigation in late January 1995. Maintaining the present regulation for thirty days after publication of the final rule in the **Federal Register** will be a burden on commercial navigation and the bridge owners. There were no comments objecting to the change in the regulation from 48-hours to 8-hours notice. For these reasons, the Coast Guard for good cause finds, under 5 U.S.C. 553(b)(B) and (d)(3), that delaying the effective date of this rule is contrary to the public interest and that this rule should be made effective in less than 30 days after publication.

Background and Purpose

With the completion of locks and dams 4 and 5 in December 1994, by the U.S. Army Corps of Engineers, the Red River will be open for commercial navigation in late January 1995. As a result of that project, the mileage of the Red River has changed. All mileages referred to in this regulation are post-project mileages. The entire stretch of the Red River flowing through Louisiana is presently regulated by Section 117.135, which is cross referenced in § 117.491. The Red River in Louisiana will now be governed by § 117.491. Section 117.135 is being revised by a separate rule (CGD02–94–016, published elsewhere in today's **Federal Register**) to regulate only the drawbridges on the Red River in the state of Arkansas. The present regulation requiring all bridges up to mile 177.9 to open on signal with at least 48-hours advance notice would severely restrict the movement of prospective commercial navigation on the waterway. Thus, the reason for the final rule. The anticipated vessel count for calendar year 1995 is approximately 370, but is expected to increase significantly in year 1996. Existing operating regulations for bridges from mile 105.8 to the Arkansas border at approximately mile 276 remain unchanged.

Discussion of Comments and Changes

Two comments were received. The National Marine Fisheries Service offered no objection to the proposed rule change. The other comment endorsed the proposed rule change.

Assessment

This rule 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 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Small Entities

A full regulatory evaluation of this rule is unnecessary. This rule will be less restrictive on commercial navigation. This rule will require bridge owners to open the draws of the bridges listed on fewer hours notice, however, each bridge owner will still have 8-hours notice. Therefore, the Coast Guard certifies under 5 U.S.C. 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 proposal 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 proposed 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 has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, 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)(3); Section 117.255, also issued under the authority of Pub. L. 102–587, 102 Stat. 5039.

2. Section 117.491 is revised to read as follows:

§ 117.491 Red River.

(a) The draws of the following bridges shall be opened on signal if at least eight hours notice is given:

(1) S107 bridge, mile 59.5, at Moncla
(2) S28 (Fulton Street) bridge, mile 88.1, at Alexandria
(3) Union Pacific Railroad bridge, mile 90.1, at Alexandria
(4) S8 bridge, mile 105.8, at Boyce

(b) The Kansas City Southern Railroad bridge, mile 88.0, at Alexandria shall open on signal if at least eight hours notice is given; except that, for openings on Saturday or Sunday and Monday if it is a federal holiday, notice must be given for an opening of the draw by 4 p.m. on Friday; and in the event a federal holiday falls during a weekday other than Monday, notice must be given by 4 p.m. the day prior to that holiday.

(c) The draw of the US 165 (Jackson St.) bridge, mile 88.6, at Alexandria, shall open on signal if at least eight hours notice is given; except that, from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. the draw need not be opened Monday through Friday except holidays.

(d) The draws of the bridges above mile 105.8 through mile 234.4 shall open on signal if at least 48 hours notice is given.

(e) The draws of the bridges above mile 234.4 to mile 276 need not be opened for passage of vessels.

(f) When a vessel which has given notice fails to arrive at the time specified in the notice, the drawtender shall remain on duty for up to two additional hours to open the draw if that vessel appears. After that time, a new notice of the appropriate length of time is required.

Dated: January 10, 1995.

R.C. North,

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

[FR Doc. 95–2996 Filed 2–6–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

Schedule for Rating Disabilities

CFR Correction

In title 38 of the Code of Federal Regulations, parts 0 to 17, revised as of July 1, 1994, on pages 383 and 384, in § 4.84a, table V, in the heading and in the entries ''15/200 (45/60)'' and ''5/200 (15/60)'' should read ''15/200 (4.5/60)'' and ''5/200 (1.5/60)'' respectively.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[KY–069–2–6785a; FRL 5118–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 13, 1992, the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet (Cabinet), submitted a maintenance plan and a request to redesignate the Lexington, Owensboro, Paducah, and Edmonson County areas from nonattainment to attainment for ozone (O_3). The marginal nonattainment areas include the following counties: Lexington (Fayette and Scott), Owensboro (Daviess and a portion of Hancock), Paducah (Livingston and a portion of Marshall), and Edmonson County. Under the Clean Air Act (CAA), designations can be changed if sufficient data are available to warrant such changes and the redesignation request satisfies the criteria set forth in the CAA. In this action, EPA is approving the redesignation to attainment of the Paducah area and the associated maintenance plan because it meets the maintenance plan and redesignation requirements. EPA has published the approval of the redesignation request to attainment and maintenance plan for the Owensboro and Edmonson County and will act on the request to redesignate to attainment the Lexington area in a future notice. In this action, EPA is also approving the 1990 base year inventory for the Paducah marginal O_3 nonattainment area.

DATES: This final rule will be effective April 10, 1995 unless adverse or critical comments are received by March 9, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE, Atlanta, GA 30365

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality, 803 Schenkel Lane, Frankfort, KY 40601.

FOR FURTHER INFORMATION CONTACT: Scott Southwick of the EPA Region IV Air Programs Branch at (404) 347–3555 extension 4207 and at the above address.

SUPPLEMENTARY INFORMATION: On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1), in conjunction with the Governor of Kentucky, EPA designated the Paducah area as nonattainment because the area violated the O_3 standard during the period from 1987 through 1989 (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.318).

The Paducah marginal O_3 nonattainment area (nonattainment area) more recently has ambient monitoring data that show no violations of the O_3 National Ambient Air Quality Standards (NAAQS), during the period from 1989 through 1991. In addition, there have been no violations reported for the 1992, 1993, or 1994 O_3 seasons. Therefore, in an effort to comply with the amended CAA and to ensure continued attainment of the NAAQS, on November 13, 1992, the Cabinet submitted for parallel processing an O_3 maintenance SIP for the nonattainment area and requested redesignation of the nonattainment area to attainment with respect to the O_3 NAAQS and EPA found the request complete. On November 24, 1992, the Cabinet submitted the Marginal Ozone Nonattainment Areas Projection Inventory 1990–2004 as an amendment to the SIP. On January 15, 1993, the Cabinet submitted revisions addressing public comments on the request to redesignate the nonattainment area to attainment. On July 16, 1993, February 28, 1994, and August 29, 1994, the Cabinet submitted revisions to the redesignation request, maintenance plan, and projection inventory.

On May 7, 1993, Region IV determined that the information received from the Cabinet constituted a complete redesignation request under the general completeness criteria of 40 CFR 51, appendix V, sections 2.1 and 2.2. However, for purposes of determining what requirements are applicable for redesignation purposes, EPA believes it is necessary to identify when the Cabinet first submitted a redesignation request that meets the completeness criteria. EPA noted in a previous policy memorandum that parallel processing requests for submittals under the amended CAA, including redesignation submittals, would not be determined complete. *See* ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni to Air Programs Division Directors, Regions I–X, dated October 28, 1992 (Memorandum). The rationale for this conclusion was that the parallel processing exception to the completeness criteria (40 CFR part 51, appendix V, section 2.3) was not intended to extend statutory due dates for mandatory submittals. (*See* Memorandum at 3–4). However, since requests for redesignation are not mandatory submittals under the CAA, EPA believed it appropriate to change its policy with respect to redesignation submittals to conform to the existing completeness criteria (58 FR 38108 (July 15, 1993)). Therefore, EPA believes, the parallel processing exception to the completeness criteria may be applied to redesignation request submittals, at least until such time as the EPA decides to revise that exception. The Cabinet submitted a redesignation request and a maintenance plan on November 13, 1992. When the maintenance plan became state effective on January 27, 1994, the Commonwealth of Kentucky no longer needed parallel processing for the redesignation request and maintenance plan.

The Kentucky redesignation request for the nonattainment areas meets the five requirements of section 107(d)(3)(E)

for redesignation to attainment. The following is a brief description of how the Commonwealth of Kentucky has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

1. The Area Must Have Attained the O_3 NAAQS

The Cabinet's request is based on an analysis of quality assured ambient air quality monitoring data which is relevant to the maintenance plan and to the redesignation request. Ambient air quality monitoring data for calendar year 1989 through calendar year 1991 show an expected exceedance rate of less than 1.0 per year of the O_3 NAAQS in the marginal nonattainment area. (*See* 40 CFR 50.9 and appendix H.) In addition, there were no violations reported for the 1992, 1993, and 1994 O_3 seasons. Because the nonattainment area has complete quality-assured data showing no violations of the standard over the most recent consecutive three calendar year period, the area has met the first statutory criterion of attainment of the O_3 NAAQS. The Commonwealth of Kentucky has committed to continue monitoring the nonattainment area in accordance with 40 CFR part 58.

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

On January 25, 1980, August 7, 1981, November 24, 1981, November 30, 1981, and March 30, 1983, EPA fully approved Kentucky's SIP as meeting the requirements of section 110(a)(2) and part D of the 1977 CAA (45 FR 6092, 46 FR 40188, 46 FR 57486, 46 FR 58080, and 48 FR 13168). The approved control strategy did not result in attainment of NAAQS for O_3. Additionally, the amended CAA revised section 182(a)(2)(A), 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the CAA, EPA reviewed the Kentucky SIP to ensure that it contains all measures due under the amended CAA prior to or at the time the Commonwealth of Kentucky submitted its redesignation request.

A. Section 110 Requirements

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

B. Part D Requirements

Before the nonattainment areas may be redesignated to attainment, they must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for O_3 nonattainment areas classified under table 1 of section 181(a). The Paducah nonattainment area was classified as marginal (See 56 FR 56694, codified at 40 CFR 81.318). The Commonwealth of Kentucky submitted their request for redesignation of the marginal nonattainment area prior to November 15, 1992. Therefore, in order to be redesignated to attainment, the Commonwealth of Kentucky must meet the applicable requirements of subpart 1 of part D, specifically sections 172(c) and 176, but is not required to meet the applicable requirements of subpart 2 of part D, which became due on or after November 15, 1992.

B1. Subpart 1 of Part D

Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than three years after an area has been designated to nonattainment. EPA has not determined that these requirements were applicable to O_3 nonattainment areas on or before November 13, 1992, the date that the Commonwealth of Kentucky submitted a complete redesignation request for the marginal nonattainment area. Therefore, the Commonwealth of Kentucky was not required to meet these requirements for purposes of redesignation. The Paducah area currently has a fully approvable New Source Review (NSR) program which was last revised on June 23, 1994 (59 FR 32343). Upon redesignation of the area to attainment, the Prevention of Significant Deterioration (PSD) provisions contained in part C of title I are applicable. On January 25, 1978, September 1, 1989, November 6, 1989, November 13, 1989, November 28, 1989, February 7, 1990, and June 23, 1994, the EPA approved revisions to the Commonwealth of Kentucky's PSD program (43 FR 3360, 54 FR 36307, 54 FR 46613, 54 FR 47211, 54 FR 48887, 55 FR 4169 and 59 FR 32343).

Section 176(c) of the CAA requires states to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable state SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act (''transportation conformity''), as well as to all other Federal actions (''general conformity''). Section 176 further provides that the conformity revisions to be submitted by states must be consistent with Federal conformity regulations that the CAA required EPA to promulgate. Congress provided for the state revisions to be submitted by November 15, 1992, one year after the date for promulgation of final EPA conformity regulations which were due November 15, 1991. When that date passed without such promulgation, EPA's General Preamble for the Implementation of Title I informed states that its conformity regulations would establish a submittal date [see 57 FR 13498, 13557 (April 16, 1992)].

The EPA promulgated final transportation conformity regulations on November 24, 1993, (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that states adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to § 51.396 of the transportation conformity rule and § 51.851 of the general conformity rule, the Commonwealth of Kentucky is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Kentucky is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the deadline for these submittals has not yet come due, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request.

On February 24, 1994, the Commonwealth of Kentucky revised their maintenance plan to commit to revise the SIP by November 25, 1994, to be consistent with the final Federal regulations on conformity. In addition, the Division for Air Quality and the Kentucky Transportation Cabinet are cooperating in adopting regulations consistent with the final conformity regulation.

B2. Subpart 2 of Part D

The CAA was amended on November 15, 1990, Pubic Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. EPA was required to classify O_3 nonattainment areas according to the severity of their problem. On November 6, 1991 (56 FR 56694), the Paducah metropolitan statistical area (MSA) was designated as marginal O_3 nonattainment. Because this area is marginal, the area must meet section 182(a) of the CAA. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 182. Below is a summary of how the area has met the requirements of these sections.

(1) Emissions Inventory

The CAA required an inventory of all actual emissions from all sources, as described in section 172(c)(3) by November 15, 1992. On November 13, 1992, the Cabinet submitted an emission inventory on the Paducah area.

(2) Reasonably Available Control Technology (RACT)

The CAA also amended section 182(a)(2)(A), in which Congress statutorily adopted the requirement that O_3 nonattainment areas fix their deficient Reasonably Available Control Technology (RACT) rules for O_3. Areas designated nonattainment before amendment of the CAA and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT Fix-ups requirement. The Paducah area was not designated nonattainment prior to 1990 and was classified as marginal O_3 nonattainment pursuant to the 1990 CAA. Therefore, this area is not subject to the RACT fix-up requirement. However, Kentucky chose to apply RACT on all major sources which commenced on or after the effective date of a particular RACT rule. Kentucky submitted VOC RACT SIP revisions through the Cabinet to EPA on February 12, 1992, October 20, 1992, February 17, 1993, and March 4, 1993. Action was taken December 12, 1993, to approve the SIP revision submitted on February 12, 1992. Action was taken June 23, 1994, to approve the SIP revisions submitted on October 20, 1992, February 17, 1993, and March 4, 1993.

(3) Emissions Statements

The CAA required that the SIP be revised by November 15, 1992, to require stationary sources of oxides of nitrogen (NO_X) and VOCs to provide the state with a statement showing actual emission each year. This request to redesignate was submitted prior to the November 15, 1992 emissions statement deadline. Therefore, the emissions statement program is not a requirement for the Paducah area.

(4) New Source Review (NSR)

The CAA required all classified nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions of VOCs compounds will not result from any new or major source modifications and a general offset rule. A SIP revision incorporating these requirements was due November 15, 1992. This request to redesignate was submitted prior to the November 15, 1992, NSR deadline. Therefore, the NSR program is not a requirement for the Paducah area.

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

Based on the approval of provisions under the pre-amended CAA and EPA's prior approval of SIP revisions under the amended CAA, EPA has determined that Kentucky has a fully approved O_3 SIP under section 110(k) for the marginal nonattainment areas, which also meets the applicable requirements of section 110 and part D as discussed above.

4. The Air Quality Improvement Must Be Permanent and Enforceable

Several control measures have come into place since the nonattainment areas violated the O_3 NAAQS. Of these control measures, the reduction of fuel volatility from 11.4 psi to 8.6 psi, as measured by the Reid Vapor Pressure (RVP), and fleet turnover produced the most significant decreases in VOC emissions. The table below summarizes total emissions for VOCs. The difference between 1988 and 1990 are actual permanent and enforceable emission reductions which are responsible for the recent air quality improvement in the areas. The VOC emissions in the base year are not artificially low due to local economic downturn.

REDUCTIONS IN VOC EMISSIONS FROM 1988 TO 1990

MSA	VOCs (tpd)		
	1988	1990	1988–1990
Paducah	105.33	102.77	3.75

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

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

In this notice, EPA is approving the Commonwealth of Kentucky's maintenance plan for the Paducah marginal nonattainment area because EPA finds that the Commonwealth of Kentucky's submittal meets the requirements of section 175A.

A. Emissions Inventory—Base Year Inventory

On November 13, 1992, the Commonwealth of Kentucky submitted comprehensive inventories of VOC, NO_X, and CO emissions for the Paducah marginal nonattainment area. The inventories included biogenic, area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance. The 1990 inventory is considered representative of attainment conditions because the O_3 NAAQS was not violated during 1990.

The Commonwealth of Kentucky submittal contains the detailed inventory data and summaries by county and source category. This comprehensive base year emissions inventory was submitted in the SIP Air Pollutant Inventory Management System (SAMS) format. Finally, this inventory was prepared in accordance

with EPA guidance. A summary of the base year and projected maintenance year inventories for the Paducah area is included in this notice for VOCs and NO_X. The CO and the biogenic VOC values are shown below and are a part of the 1990 base year emission inventory. This notice is approving the base year inventory.

CO EMISSION INVENTORY SUMMARY FOR 1990

[Tons per day]

	Point	Area	Mobile	Non-Road	Total
Paducah	13.49	1.48	21.54	6.73	43.24

BIOGENIC EMISSION INVENTORY SUMMARY FOR 1990

[Tons per day]

	Biogenic
Paducah 1990 emissions	41.15

B. Demonstration of Maintenance—Projected Inventories

Below, totals for VOC and NO_X emissions were projected from the 1990 base year out to 2004. These projected inventories were prepared in accordance with EPA guidance.

PADUCAH VOC EMISSION INVENTORY SUMMARY

[Tons per day]

	1990	1993	1996	1999	2002	2004
Point	96.47	94.03	83.80	84.47	85.13	85.58
Area	1.85	1.87	1.88	1.90	1.91	1.93
Mobile	4.45	4.26	4.36	4.04	4.01	4.01
Total	102.77	100.17	90.05	90.41	91.05	91.52

PADUCAH NO_X EMISSION INVENTORY SUMMARY

[Tons per day]

	1990	1993	1996	1999	2002	2004
Point	5.88	5.93	5.97	6.02	6.07	6.10
Area	0.11	0.11	0.11	0.11	0.11	0.11
Mobile	4.41	4.33	4.40	4.22	4.16	4.16
Total	90.54	89.54	88.88	88.45	87.99	87.78

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

VOC AND NO_X PROJECTED EMISSIONS CHANGES

	VOCs	NO_X
Paducah	−10.95%	−3.05%

C. Verification of Continued Attainment

Continued attainment of the O_3 NAAQS in the marginal nonattainment areas depends, in part, on the Commonwealth of Kentucky's efforts toward tracking indicators of continued attainment during the maintenance period. The Commonwealth of Kentucky's contingency plan is triggered by two indicators, the emissions inventory for interim years exceeding the baseline emission inventory by more than 10% or an air quality violation. As stated in the maintenance plan, the Cabinet will be developing these emissions inventories every three years beginning in 1996. These periodic inventories will help to verify continued attainment.

D. Contingency Plan

The level of VOC and NO_X emissions in the nonattainment area will largely determine its ability to stay in compliance with the O_3 NAAQS in the future. Despite the Commonwealth's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS.

Therefore, the Commonwealth of Kentucky has provided contingency measures with a schedule for implementation in the event of a future O_3 air quality problem. The plan contains a contingency to implement RACT on existing major sources in the area where the violation occurred within ninety (90) days. RACT was not required for this nonattainment area because it was designated as a marginal nonattainment area pursuant to the CAA. EPA finds that the contingency measures provided in the Commonwealth of Kentucky's submittal meet the requirements of section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the Commonwealth of Kentucky has agreed to submit a revised maintenance SIP eight years after the marginal nonattainment areas redesignate to attainment. Such revised

SIP will provide for maintenance for an additional ten years.

Final Action

In this final action, EPA is approving the nonattainment area's O_3 maintenance plan because it meets the requirements of section 175A. The EPA is redesignating the Paducah nonattainment area to attainment for O_3 because the Commonwealth of Kentucky has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. In addition EPA is approving the 1990 base year emission inventory for the Paducah nonattainment area. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The O_3 SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the O_3 NAAQS. This final redesignation should not be interpreted as authorizing the Commonwealth of Kentucky to delete, alter, or rescind any of the VOC or NO_X emission limitations and restrictions contained in the approved O_3 SIP. Changes to O_3 SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the CAA) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 10, 1995 unless, by March 9, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 10, 1995.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

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

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

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

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, Hydrocarbons, Carbon monoxide, Nitrogen oxides, National parks, Wilderness areas.

Dated: November 28, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *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 S—Kentucky

2. Section 52.920 is amended by adding paragraph (c)(73) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(73) The maintenance plan for the Paducah area which include Livingston and Marshall Counties submitted by the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet on November 13, 1992, November 24, 1992, March 10, 1993, July 16, 1993, March 3, 1994, and August 29, 1994, as part of the Kentucky SIP. The 1990 Baseline Emission Inventory for the Paducah area which include Livingston and Marshall Counties.

(i) Incorporation by reference.

(A) Commonwealth of Kentucky Attainment Demonstration and Ten Year Maintenance Plan for all areas designated Marginal Nonattainment for Ozone. The effective date is January 15, 1993.

(B) Table 6–13 Biogenic Emissions, Livingston County, Kentucky. The effective date is January 15, 1993.

(C) Table 6–14 Biogenic Emissions, Marshall County, Kentucky. The effective date is January 15, 1993.

(ii) Other material.

(A) January 15, 1993, letter from Phillip J. Shepherd, Secretary, Natural Resources and Environmental Protection Cabinet to Patrick Tobin, Acting Regional Administrator, U.S. EPA Region IV.

(B) February 28, 1994, letter from John E. Hornback, Director, Division for Air Quality to Mr. Doug Neeley, Chief, Air Programs Branch.

(C) October 4, 1994, letter from Phillip J. Shepherd, Secretary, Natural Resources and Environmental Protection Cabinet to John H. Hankinson, Regional Administrator, U.S. EPA Region IV.

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.318, the ozone table is amended by removing the Paducah area and its entries in the first alphabetical list and the entry for Livingston County in the second alphabetical list and by adding in alphabetical order to the second listing of counties the following entries to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* *	* *	* *		
Livingston County	April 10, 1995	Unclassifiable/Attainment.		
* *	* *	* *		
Marshall County	April 10, 1995	Unclassifiable/Attainment.		
* *	* *	* *		

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

* * * * *

[FR Doc. 95–2775 Filed 2–6–95; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–40

[FPMR Temp. Reg. G–54, Rev. 1, Supp. 1]

RIN 3090–AF20

Use of Contractor for Express Small Package Transportation

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: FPMR Temp. Reg. G–54, Rev. 1 mandates the use of the GSA's contractor by Federal civilian executive agencies when next day express small package transportation is required. The regulation contains a description of the services provided, an attachment listing the rates and accessorial charges, and information concerning the provisions of the contract. This supplement extends the expiration date of FPMR Temp. Reg. G–54, Rev. 1 from November 15, 1994 to November 15, 1995.

DATES: *Effective date:* February 7, 1995.

FOR FURTHER INFORMATION CONTACT: Brenda Pollock, Transportation Management Division (FBX), Washington, DC 20406, 703–305–5671.

SUPPLEMENTARY INFORMATION: The current contract, awarded in 1990, is for mandatory use by civilian agencies. However, GSA will resolicit for express small package transportation in 1995, and agencies will elect whether to be a mandatory user or not, before solicitation issuance. If they choose to be non-mandatory, they will be able to obtain contract service and prices at a later date if the contractor agrees to do so.

GSA has determined that this rule is not a significant rule for the purposes of Executive Order 12866.

Regulatory Flexibility Act

This rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 101–40

Freight, Government property management, Moving of household goods, Office relocations, Transportation.

PART 101–40—[AMENDED]

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following supplement to FPMR Temp. Reg. G–54, Rev. 1 is added to the appendix at the end of Subchapter G to read as follows:

Appendix to Subchapter G—Temporary Regulations

* * * * *

General Services Administration,
Washington, DC 20405

Federal Property Management Regulations, Temporary Regulation G–54, Revision 1, Supplement 1

To: Heads of Federal agencies

Subject: Use of contractor for express small package transportation

Date: December 28, 1994.

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation G–54, Revision 1.

2. *Effective date.* This supplement is effective February 7, 1995.

3. *Expiration date.* This supplement expires November 15, 1995, unless sooner canceled, revised, or extended.

4. *Background.*

a. Under subsection 201(a) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(a)), the General Services Administration (GSA) is responsible for prescribing policies and procedures that are advantageous to the Government in terms of economy, efficiency, or service, regarding program activities in the area of transportation and traffic management. GSA has entered into a contract with Federal Express Corporation (FedEx) for the transportation of express small packages from, to, and between specified locations in the United States (including Alaska and Hawaii) and Puerto Rico, where the contractor or its agent presently provides or will provide next day service. In consideration of the contract rates and to the extent provided in the contract, the Government has agreed to place transportation requirements for express small package service with FedEx. Agencies covered by the scope of the contract must use this contract at the rates specified for their express small package delivery requirements.

b. GSA's express small package contract with FedEx provides that, where possible, express small package shipments within the contiguous United States, Alaska, Hawaii, and Puerto Rico, must be delivered by noon the next business day. The contract also requires FedEx to satisfy the Private Express Statutes and is consistent with these statutes. These statutes require shipments consisting of ''letters'' as defined in 39 CFR part 310 to be delivered by noon the next business day; delivery after noon to these points where noon delivery is possible would not satisfy the contract and would violate the Private Express Statutes. A determination must be made that the letter is urgent in accordance with the Private Express Statutes.

5. *Explanation of change.* The expiration date in paragraph 3 of FPMR Temporary

Regulation G–54, Revision 1 is extended to November 15, 1995.

Julia M. Stasch,

Acting Administrator of General Services.

[FR Doc. 95–2889 Filed 2–6–95; 8:45 am]

BILLING CODE 6820–24–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC28

Individual and Family Grant Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule.

SUMMARY: This interim final rule changes flood insurance regulations for recipients of Federal disaster assistance from the Individual and Family Grant Program.

DATES: This interim final rule is retroactive to September 23, 1994. We invite comments on this interim final rule, which should be received by April 10, 1995.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Laurence W. Zensinger, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4262, (facsimile) (202) 646–2730.

SUPPLEMENTARY INFORMATION: On September 23, 1994, the President signed Public Law 103–325, the National Flood Insurance Reform Act of 1994 (NFIRA). Section 582(c) of the NFIRA amends section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(a)): ''(1) By striking '* * * during the anticipated economic or useful life of the project,'; and (2) by adding at the end the following: The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.''

FEMA interprets this section as a requirement that all Individual and Family Grant (IFG) applicants who receive Federal disaster assistance for flood damage to real or personal property, or to both, must purchase and maintain flood insurance on the property until the time they move to another address. If not, then no IFG grant under section 411(a) for real or personal property damage or loss may be awarded in any subsequent flood disasters. This maintenance provision also applies to individuals who bought, or otherwise had transferred to them, any real estate for which the flood insurance maintenance requirement was previously (after September 23, 1994) levied.

The minimum amount of coverage required will be equivalent to the maximum IFG grant amount each fiscal year. This amount is $12,600 in Fiscal Year 1995 and is adjusted annually based on the Consumer Price Index for All Urban Consumers. Renters must be covered for at least $12,600 for personal property only, whereas homeowners must be covered for at least $7,000 for real property and $5,600 for personal property.

Section 582 and amendments made by that section apply to disasters declared after September 23, 1994, which include the following flood disasters:

1. FEMA–1041–DR, Texas—declared October 18, 1994;

2. FEMA–1042–DR, Georgia—declared October 19, 1994;

3. FEMA–1043–DR, Florida—declared November 28, 1994; and

4. FEMA–1044–DR, California—declared January 10, 1995; and any subsequent flood disasters declared by the President.

FEMA is publishing this interim final rule in order to implement the mandate of the National Flood Insurance Reform Act of 1994 that the flood insurance purchase requirement be in effect as of the date of enactment, September 23, 1994. While the interim final rule is retroactively effective from September 23, 1994, FEMA invites your written comments on the rule and asks that you send them to the Rules Docket Clerk at the **ADDRESSES** caption set out above.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Executive Order 12866, Regulatory Planning and Review

This interim rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, and has not been reviewed by the Office of Management and Budget. Nevertheless, this interim rule adheres to the regulatory principles set forth in E.O. 12866.

Paperwork Reduction Act

This rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of E.O. 12778.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance, Grant programs—housing and community development, Insurance. Accordingly, 44 CFR part 206 is amended as follows:

PART 206—[AMENDED]

Subpart E—Individual and Family Grant Programs

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.; Reorganization Plan No. 3 of 1978, 5 U.S.C. App. 1; E.O. 12148, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 3 CFR, 1989 Comp., p. 214.

2. Section 206.131(d)(1)(iii), paragraphs (C)(*1*) and (D), is revised to read as follows:

§ 206.131 Individual and Family Grant Programs.

* * * * *

(d) * * *

(l) * * *

(iii) * * *

(C) (*1*) The State may not make a grant for acquisition or construction purposes in a designated special flood hazard area in which the sale of flood insurance is available under the NFIP unless the individual or family agrees to purchase adequate flood insurance and to maintain such insurance for as long as they live at that property address. The coverage shall be for a full $12,600 (to be adjusted annually based on the Consumer Price Index for all Urban Consumers). If the grantee is a homeowner, flood insurance coverage must be maintained on the residence at the flood-damaged property address for as long as the structure exists if the grantee, or any subsequent owner of that real estate, ever wishes to be assisted by the Federal government with any subsequent flood losses to real or

personal property, or both. If the grantee is a renter, flood insurance coverage must be maintained on the contents for as long as the renter resides at the flood-damaged property address. The restriction is lifted once the renter moves from the rental unit.

* * * * *

(D) A State may not make a grant to any individual or family who received Federal disaster assistance for flood damage occurring after September 23, 1994, if the individual or family received flood disaster assistance and was required, but failed, to purchase and maintain flood insurance as a condition of receiving that Federal flood disaster assistance.

* * * * *

Dated: January 31, 1995.

Richard W. Krimm,

Associate Director, Response and Recovery.

[FR Doc. 95–2960 Filed 2–6–95; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 25 and 160

[CGD 78–174]

RIN 2116–AA29

Hybrid PFDs; Establishment of Approval Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is correcting errors to a final rule published on January 9, 1995, in the **Federal Register** (60 FR 2482) entitled ''Hybrid PFDs; Establishment of Approval Requirements.'' The final rule amends the structural and performance standards and procedures for approval of hybrid inflatable personal flotation devices.

EFFECTIVE DATE: February 8, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel E. Wehr, Office of Marine Safety, Security, and Environmental Protection (G–MVI–3/14), 2100 Second St. SW., Washington, DC 20593–0001, (202) 267–1444.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction amends 46 CFR parts 25 and 160 regarding structural and performance standards and procedures for approval of hybrid inflatable personal flotation devices (hybrid PFDs). Hybrid PFDs are designed to have a minimum amount of inherent flotation to ensure that a wearer will surface after falling in the water and to have a mechanism to inflate the PFD to provide additional buoyancy, and thereby greater clearance from the water, while a wearer awaits rescue. The rule also allows for approval of hybrid PFDs for youths and small children.

Need for Correction

As published, the final rule contains typographical errors in table 160.077–2(j) and in citations contained in § 160.077–21. Also, the final rule contains formatting errors and an incorrectly designated paragraph in § 160.077–31.

Correction of Publication

The publication on January 9, 1995 of the final rule [CGD 78–174], which was the subject of FR Doc. 95–433, is corrected as follows:

§ 160.077–2(j) [Corrected]

1. On page 2486, in table 160.077–2(j), in the first column under the heading ''Reference PFD Type'', first line, the words ''Devices for adults, weight over 40 kg (90 lbs):'' are corrected to read, ''Devices for adults, weighing over 40 kg (90 lb):''

§ 160.077–21 [Corrected]

2. On page 2488, in the first column, in § 160.077–21, paragraph (c)(4)(i), line 10, the citation ''S.7.1.B'' is corrected to read ''S7.1.B''.

3. On page 2488, in the first column, in § 160.077–21, paragraph (c)(5)(i), line 3, the citation ''S7 1.A'' is corrected to read ''S7.1.A''.

§ 160.077–31 [Corrected]

4. On page 2591, in the first column, the amendatory instructions for § 160.077–31 are revised to read as follows:

''19. In § 160.077–31, paragraphs (c), (d), (g), (h), (j), introductory text, (j)(1) and (k) are revised, paragraphs (j) (2) and (3) are redesignated as (j) (3) and (4) respectively and revised, new paragraph (j)(2) is added, and paragraph (e)(5) is removed and paragraph (e)(6) is redesignated as paragraph (e)(5) to read as follows:''

5. On page 2491, in the first column, in § 160.077–31, paragraph (c), line 6 is corrected by indenting the line two spaces.

6. On page 2491, in the second column, in § 160.077–31, paragraph (d), line 8 is corrected by indenting that line two spaces, and line 9 is corrected by aligning that line against the left hand margin of the column.

7. On page 2491, in the third column, in § 160.077–31, paragraph (l), the paragraph designation of ''(l)'' is corrected to read ''(k)''.

Dated: January 31, 1995.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–2993 Filed 2–6–95; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[DA 95–36]

Bell Operating Companies' Joint Petition for Waiver of Computer II Rules

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order.

SUMMARY: On October 18, 1994, the United States Court of Appeals for the Ninth Circuit remanded in part the Commission's BOC Safeguards Order (57 FR 4373 (February 5, 1992)), which had established procedures for the Bell Operating Companies (BOCs) to offer enhanced services on a structurally integrated basis. This Memorandum Opinion and Order concluded that, because the Ninth Circuit decision generally returned the regulation of BOC enhanced services to a Comparably Efficient Interconnection (CEI) plan framework, waivers would only be necessary for new enhanced services or market trials, and for those existing services and market trials that were not covered by previously-approved CEI plans. In order to avoid possible service disruptions and customer confusion, the Common Carrier Bureau clarified the requirements for BOC provision of enhanced services, and granted the BOCs any necessary interim waivers to: Provide existing enhanced services pursuant to CEI plans approved prior to the lifting of structural separation; continue providing other existing enhanced services, pending FCC review of CEI plans for those services; file CEI plans for any new enhanced services; continue to perform research and planning activities and technical trials for enhanced services; continue existing market trials, conditioned on their filing the market trial notification required under the CEI plan regime; and begin market trials of new enhanced services pursuant to the market trial requirements of the CEI plan regime.

EFFECTIVE DATE: January 13, 1995.

FOR FURTHER INFORMATION CONTACT:

Rose Crellin at (202) 418–1571 or Kevin Werbach at (202) 418–1597, Policy and Program Planning Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Common Carrier Bureau's Memorandum Opinion and Order, DA 95–36, adopted January 11, 1995 and released January 11, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. In the Computer III proceeding, beginning with the Phase I Order (51 FR 24350 (July 3, 1986)), the Commission reversed its earlier decision to require the Bell Operating Companies (BOCs) to establish structurally separate subsidiaries for the provision of enhanced services. Enhanced services use the existing telephone network to deliver services—such as voice mail, E-Mail, and gateways to on-line databases—beyond a basic transmission offering. The commission established a two-step process in Computer III for the removal of structural separation restrictions. Initially, BOCs were permitted to offer individual enhanced services on a structurally integrated basis once they had received FCC approval of service-specific Comparably Efficient Interconnection (CEI) plans. Those plans were required to detail how the BOCs would make the underlying network services used by their own enhanced service offerings available to competing enhanced service providers (ESPs) on an equal access basis.

2. In the second stage of Computer III, BOCs were required to develop Open Network Architecture (ONA) plans detailing how they would unbundle and make available basic network services, and describing how they would comply with other nonstructural safeguards. Upon FCC approval of the initial BOC ONA plans, the remaining structural separation requirements were to be lifted. Following a remand from the Court of Appeals for the Ninth Circuit, the Commission strengthened and reaffirmed its regime of nonstructural safeguards in the 1991 BOC Safeguards Order (57 FR 4373 (February 5, 1992)). Between 1992 and 1993, the Common Carrier Bureau granted full structural relief to the BOCs upon a showing that they had complied with the requirements of the BOC Safeguards Order, and those decisions were subsequently ratified by the Commission.

3. In October 1994, the Ninth Circuit partially remanded the BOC Safeguards Order. The court concluded that the Commission had scaled back its conception of ONA, and had not explained how the more limited version of ONA represented in the approved BOC ONA plans provided sufficient protection to justify fully lifting structural separation. In light of this decision, on November 14, 1994, the BOCs jointly filed a petition for an interim waiver (BOC Petition). The BOC Petition requested permission to continue offering existing enhanced services on a structurally integrated basis; to continue integrated research, development, and market trials; and to offer new integrated enhanced services associated with video dialtone service offerings.

4. In this Memorandum Opinion and Order, the Common Carrier Bureau (Bureau) clarified the requirements that will govern BOCs' enhanced service offerings, pending further Commission action on remand, and issued an interim waiver. Specifically, the Bureau concluded that, after the partial remand of the BOC Safeguards Order, the BOCs may generally provide enhanced services that comply with the CEI plan regime in effect before the Commission completely lifted structural separation requirements. The Bureau granted the BOCs a limited waiver to continue providing those enhanced services that they first offered after the CEI plan approval requirement had expired, conditioned on their filing CEI plans for those services within sixty days after the release of the waiver order. The Memorandum Opinion and Order also granted the BOCs a limited waiver to continue existing market trials initiated after the expiration of the CEI plan approval requirement, conditioned on the BOCs' filing market trial notifications within sixty days after the release of the waiver order. To the extent that the decision remanding the BOC Safeguards Order might be regarded as returning regulation to the Computer II framework of full structural separation, the Memorandum Opinion and Order granted the BOCs limited waivers of the Computer II structural separation requirements.

5. The Bureau concluded that the safeguards provided by the CEI plan regime would protect against potential anticompetitive conduct by the BOCs during the pendency of remand proceedings. The Memorandum Opinion and Order noted that the BOCs currently offer enhanced services on an integrated basis to approximately five million customers, and determined that service disruptions and customer confusion were possible in the absence of a waiver. The Bureau observed that it had granted a similar waiver following the first remand of Computer III in 1990, and that waiver was not subsequently challenged before the Commission or in court. Given these considerations, the Bureau determined that it would be in the public interest to provide the BOCs with a limited waiver to allow them to offer integrated enhanced services subject to defined safeguards until the Commission acted on remand.

6. Accordingly, the Bureau granted any necessary waivers to enable the BOCs to: (1) Provide existing enhanced services pursuant to CEI plans approval prior to the lifting of structural separation; (2) continue providing other existing enhanced services, pending Commission consideration of CEI plans for those services; (3) file CEI plans for any new enhanced services; (4) continue to perform research and planning activities and technical trials for enhanced services; (5) continue existing market trials, conditioned on their filing the market trial notifications required under the CEI plan regime; and (6) begin market trials of new enhanced services pursuant to the market trial requirements of the CEI plan regime. The Bureau declined to treat video-dialtone-related enhanced services differently from other new enhanced services.

Ordering Clauses

1. Accordingly, IT IS ORDERED that pursuant to §§ 0.91, 0.291, and 1.3 of the Commission's Rules, 47 CFR §§ 0.91, 0.291, and 1.3, the BOC Joint Contingency Petition for Interim Waiver of the Computer II Rules, IS GRANTED to the extent described herein and otherwise Denied.

2. *It is further ordered* that this order *is effective* upon issuance of the Ninth Circuit's mandate in California III.

List of Subjects in 47 CFR Part 64

Communications common carriers; Computer technology.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–2948 Filed 2–6–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 90–25; FAR Case 94–750]

Federal Acquisition Regulation; Technical Correction

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical correction.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing a correction to Federal Acquisition Circular 90–25. Text was omitted from 31.205–13(b)(4) which appeared in FAR case 94–750—Entertainment, Gift, and Recreation Costs for Contractor Employees. At 60 FR 3315, January 13, 1995, third column, paragraph 4, in the sixth line from the bottom of the paragraph insert ''or prices or rates higher than those charged by Commercial'' following ''prices,''.

DATES: *Effective Date:* January 13, 1995.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 14, 1995, to be considered in the formulation of a final rule.

ADDRESSES: All interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Sts. NW., Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90–25, FAR case 94–750 in all correspondence related to this interim rule.

FOR FURTHER INFORMATION CONTACT: Mr. Clarence M. Belton, Team Leader, Cost Principles Team, at (703) 602–2357, in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–25, FAR case 94–750.

Correction

The corrected third sentence of paragraph (b)(4) of section 31.205–13 should read as follows:

31.205–13 Employee morale, health, welfare, food service, and dormitory costs and credits.

* * * * *

(b) * * *

(4) * * * A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (e.g., (i) where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available, or (ii) where charged but unproductive labor costs would be excessive but for the services provided or where cessation or reduction of food or dormitory operations will not otherwise yield net cost savings) such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas.

* * *

Dated: February 1, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1974.

[FR Doc. 95–2875 Filed 2–6–95; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–126; Notice 3]

RIN 2137–AB71

Passage of Instrumented Internal Inspection Devices; Limited Suspension of Compliance Dates

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Limited Suspension of Enforcement for compliance with final rule.

SUMMARY: By final rule published April 12, 1994, RSPA required that new and replaced pipeline facilities be constructed to accommodate inspection by instrumented internal inspection devices commonly known as ''smart pigs.'' Two petitioners requested reconsideration of that rule as it applies to gas pipelines and a stay of the compliance date. In response to these petitions, RSPA issued a Notice of Proposed Rulemaking (NPRM) proposing to modify the rule and extend the compliance dates with respect to certain gas transmission lines. Because of the need to evaluate the numerous comments to proposals in the NPRM, RSPA is unable to complete rulemaking action on that notice by the proposed compliance date with respect to gas transmission lines in less populated areas. This document announces a suspension of enforcement for compliance with the final rule requirements for certain gas transmission lines.

EFFECTIVE DATE: January 30, 1995.

FOR FURTHER INFORMATION CONTACT: Albert C. Garnett, (202) 366–2036, Office of Pipeline Safety, regarding the subject matter of this notice, or Dockets Unit, (202) 366–5046 for copies of this notice or other materials in the docket.

SUPPLEMENTARY INFORMATION: On April 12, 1994, RSPA published a Final Rule ''Passage of Internal Inspection Devices'' (59 FR 17275) that required certain new and existing pipelines on which replacements are made to accommodate the passage of smart pigs. On May 4, 1994, the Interstate Natural Gas Association of America (INGAA) filed a ''Request for a Stay of the Effective Date [May 12, 1994] of the Final Rule; Passage of Instrumented Internal Inspection Devices.'' Also, on May 10, 1994, INGAA filed a ''Petition of Reconsideration of the Final Rule; Passage of Instrumented Internal Inspection Devices.'' Additionally, on May 10, 1994, the American Gas Association (AGA) filed a ''Request for Administrative Stay of the May 12, 1994 effective date and Petition for Reconsideration of RSPA's Final Rule on Passage of Instrumented Internal Inspection Devices.''

On May 12, 1994, RSPA advised INGAA, AGA and the American Petroleum Institute that, until further notice, it would not enforce the requirement that gas and liquid operators remove all obstructions in the ''line section'' that prevent the passage of smart pigs whenever, the line pipe, valve, fitting or other line component is replaced. However, RSPA stated that the suspension did not effect the requirement, effective on May 12, 1994, that operators design and construct certain new onshore and offshore pipelines or the actual line pipe, valve, fitting or other component replaced to accommodate smart pigs.

On September 30, 1994, RSPA published an NPRM (Notice 2) ''Passage of Instrumented Internal Inspection Devices'' (59 FR 49896) that responded to the requests and petitions from the two gas pipeline associations. In Notice 2, RSPA: (1) Stated that its May 12, 1994, suspension (above) of enforcement with respect to hazardous liquid and carbon dioxide pipelines was lifted effective September 30, 1994, and

compliance would be enforced; (2) proposed exceptions to the line section modification requirement with respect to certain gas transmission lines in Class 1 and 2 locations; (3) proposed exceptions with respect to all but certain new offshore gas transmission lines; and (4) proposed that an operator replacing line pipe, valve, fitting, or other line component in a gas transmission line in a Class 1 or 2 location would not need to comply with the requirement to modify the line section until February 2, 1995.

There has been extensive comment as well as a formal recommendation by the Technical Pipeline Safety Standards Committee to reconsider the proposals in Notice 2 (above). However, commenters did not object to delaying enforcement of the requirement to modify line sections in gas transmission lines; instead several commenters urged continuation of the stay of enforcement until after completion of the rulemaking proceedings. Thus, in order to evaluate fully these comments, RSPA has decided to continue a limited stay of enforcement for compliance with the final rule with respect to modification of line sections in onshore gas transmission lines; and with respect to new and existing offshore gas transmission lines. This suspension of enforcement will remain in effect until RSPA completes the evaluation of the comments to Notice 2 and sets out the determination with respect to those comments and establishes new compliance dates in a subsequent rulemaking.

Pipeline operators are cautioned that the requirements of the April 12, 1994, final rule for design and construction to accommodate the passage of smart pigs will be enforced for: Hazardous liquid and carbon dioxide pipelines; new onshore gas transmission lines; and the actual replaced line pipe, valve, fitting, or other line component in onshore gas transmission lines.

(49 U.S.C. 60102 et seq.; 49 CFR 1.53)

Issued in Washington, DC on January 30, 1995.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 95–2955 Filed 2–6–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 950201032–5032–01; I.D. 011095C]

RIN 0648–AH25

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Additional King Mackerel Quota

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

ACTION: Emergency interim rule.

SUMMARY: NMFS publishes this emergency interim rule to add to the commercial quota for the hook-and-line fishery in the Florida west coast sub-zone of the Gulf migratory group of king mackerel, reopen that fishery under the additional quota, and implement a vessel possession limit of 125 king mackerel per trip during the period that the fishery remains open. This rule responds to an economic and social emergency in the commercial fishery for Gulf group king mackerel off the southwest coast of Florida caused by the unforeseen harvest of most of the quota by the fishery off Florida's northwest coast.

EFFECTIVE DATE: February 1, 1995 through May 8, 1995.

ADDRESSES: Copies of documents supporting this action, including an environmental assessment, may be obtained from Mark F. Godcharles, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Copies of a minority report from the Gulf of Mexico Fishery Management Council are also available from this address.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic resources (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and is implemented through regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The 1994–95 fishing year quota for the commercial hook-and-line fishery for Gulf group king mackerel in the Florida west coast sub-zone was reached and the fishery was closed on December 20, 1994 (59 FR 66276, December 23, 1994). Landings estimates for the west coast sub-zone show disproportionate catches between Florida's northwest and southwest coast fisheries. Most of the 432,500-lb (196,179-kg) west coast sub-zone quota was taken off northwest Florida before the traditional and principal fishery in southwest Florida could take its usual catch. The unusually high northwest Florida king mackerel landings this fishing year represent an almost fourfold increase in production over last year (about 400,000 lbs (181,437 kg) compared to last year's 100,000-lb (45,359 kg) catch), and are attributable to increased fishing effort. Fleet size of major harvesters doubled from 21 to 51 vessels since last fishing year, and uncommon fall weather provided favorable fishing conditions in the northeastern Gulf of Mexico through mid-December 1994. Prolonged warm fall weather also was responsible for a delay in the timing of the usual migration of king mackerel from the northeastern Gulf to overwintering grounds off southwest Florida.

The significantly reduced catch caused by the unforeseen harvest of most of the quota by the fishery off Florida's northwest coast has created a social and economic emergency. Accordingly, the Gulf of Mexico Fishery Management Council (Council) requested that NMFS implement an emergency interim rule to add 300,000 lbs (136,078 kg) to the commercial quota and reopen the commercial hook-and-line king mackerel fishery in the Florida west coast sub-zone, which encompasses that part of the exclusive economic zone (EEZ) from the Alabama/Florida boundary (87°31′06″ W. long.) to the Dade/Monroe County, FL, boundary (25°20.4′ N. lat.). The commercial hook-and-line fishery will remain open during the period of this emergency or until the date NMFS determines that the revised quota of 732,500 lb (332,256 kg) has been reached or is projected to be reached, whichever comes first. Harvests of king mackerel from the open area are limited to 125 fish per vessel per trip.

The Council and NMFS have concluded that the present fishery situation constitutes a social and economic emergency that is properly addressed by this emergency interim rule. The emergency situation: (1) Results from recent, unforeseen events;

(2) is causing serious economic and social problems in the fishery; and (3) justifies an emergency interim rule that would have immediate benefits outweighing the value of prior notice and an opportunity for public comment and deliberative consideration provided under the normal FMP amendment and rulemaking process. The basis for these conclusions is summarized in the following paragraphs.

Fishermen in the hook-and-line commercial fishery for Gulf group king mackerel fishery off the southwest coast of Florida will suffer undue social and economic hardships unless timely action is taken to allow additional king mackerel catches during the 1994–95 fishing year. A substantial portion of these fishermen's annual income is earned during the winter season (November to March) fishing for king mackerel. Record low catches this fishing year have provided insufficient revenues to meet usual living and business expenses.

Opportunities to offset lost income by prosecuting other fisheries are limited and not readily available to these fishermen. Other fisheries in which presently owned gear could be used or converted for use are mostly overcapitalized, unavailable, or most of the seasonal catch already has been harvested.

Events and circumstances that caused the disproportionately low catches of king mackerel off Florida's southwest coast this winter to date were essentially unforeseen and uncontrollable. The unprecedented large catches of king mackerel taken off northwest Florida this fishing year resulted significantly from an increased fishing effort in that area (i.e., a doubling of the northwest Florida king mackerel fishing fleet) that could not be restrained under current FMP measures and implementing regulations. The fourfold increase in fishery production and the taking of most of the 432,500-lb (196,179-kg) hook-and-line west coast sub-zone quota off northwest Florida also resulted from a prolonged fall fishing season, the absence of vessel trip/possession limits and regional quotas, and delayed migration of king mackerel to traditional overwintering grounds off southwest Florida.

The disproportionately large king mackerel catch this fishing year in Florida's northwest fishery is substantially different from recent years. During previous fishing years, both before and after the institution of quota management under the FMP, the major portion of the annual harvest of the Gulf group king mackerel west coast sub-zone quota was taken off southwest Florida. This distribution of harvest, evident since the early 1900s, has been dependent on a seasonal abundance of king mackerel on overwintering grounds off southwest Florida. As a result of this historic pattern, the southwest Florida fishing industry has developed a significant seasonal dependence on this resource.

The immediate social and economic benefits of adding to the commercial quota for the hook-and-line fishery in the Florida west coast sub-zone and reopening that fishery during this winter season outweigh the value of providing opportunity for advance public review and comment.

NMFS has concluded that this emergency action will not adversely affect the current status of the Gulf group king mackerel stock nor its rebuilding under the program established by the FMP. The additional 300,000-lb commercial quota for king mackerel for the Florida west coast sub-zone does not significantly increase the level of risk of exceeding the acceptable biological catch (ABC) for the 1994–95 fishing year. In addition, estimates indicate that recreational catches did not exceed, but rather were 20 percent (about 700,000 lb (317,515 kg)) below, the 1994–95 recreational allocation of 5.3 million lb (2.4 million kg). As a result, NMFS believes that the additional quota allocation should not measurably affect the stock rebuilding program, which requires the overfished stock to be rebuilt within about one generation time (i.e., within 12 years or by the end of 1996–97 fishing year).

If future changes in total allowable catch (TAC) for Gulf group king mackerel are necessary, as may be determined based on subsequent NMFS scientific stock assessments, the Council will make the necessary adjustments in TAC for the appropriate fishing year to ensure maintenance of the stock rebuilding schedule. Any future changes in TAC will be based not only on any measurable effects of this emergency action, but on the Council's continuing assessment of the levels of biological risk associated with the TAC of 7.8 million lb (3.5 million kg) implemented for the past 3 fishing years. The Council will also consider the impact of persistent quota overruns, which have occurred since the beginning of quota management. Finally, to avoid future emergency situations of this nature, the Council is initiating action that will ensure an equitable distribution of the catch between the regional fisheries within the Florida west coast sub-zone that share the hook-and-line commercial quota for Gulf group king mackerel.

The Gulf group king mackerel stock has been considered overfished according to the FMP's definition of overfishing. The FMP defines overfishing as harvesting at a rate not consistent with the stock rebuilding schedule and its target level for stock size. The FMP also requires the Council to develop annual ABC ranges based on a fishing mortality rate that will achieve and maintain at least a minimum specified spawning potential ratio (SPR) of 30 percent. Under this management approach, the adult spawning stock biomass and the annual ABCs for Gulf group king mackerel have continued to increase during the last nine years of FMP quota management. In addition, a recent workshop of stock assessment biologists concluded that the SPR of 30 percent may be too high a threshold, and that a SPR of 20 percent is more appropriate. Due to this new scientific finding, and to the overall improved condition of the resource, the Council's mackerel stock assessment panel is expected to consider a reduction in the SPR level in 1995. Under a SPR of 20 percent, the Gulf group king mackerel arguably should no longer be considered overfished.

One Gulf Council member submitted a minority report objecting to the request for emergency action. A copy of this report is available upon request (see **ADDRESSES**).

The Council believes that emergency action is an appropriate means to provide expedient relief from the current social and economic problems in the fishery. NMFS concurs. Accordingly, NMFS publishes this emergency interim rule, effective February 1, 1995, through May 8, 1995, as authorized by section 305(c) of the Magnuson Act. By agreement of NMFS and the Council, this emergency interim rule may be extended for an additional period of 90 days.

Classification

The Assistant Administrator for Fisheries, NOAA, (AA) has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This emergency interim rule has been determined to be not significant for purposes of Executive Order 12866.

The AA finds for good cause under 5 U.S.C. 553(b)(B) that the need to relieve social and economic hardships in the Gulf of Mexico mackerel fishery makes it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule. Because this rule relieves a restriction, under 5 U.S.C. 553(d)(1) it is

not subject to a 30-day delay in effective date and is being made effective immediately.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 1, 1995.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

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

2. In § 642.7, new paragraph (y) is added to read as follows:

§ 642.7 Prohibitions.

* * * * *

(y) In the Florida west coast subzone—

(1) Exceed the trip/possession limit for king mackerel, as specified in § 642.32(b)(1); or

(2) Transfer king mackerel at sea, as specified in § 642.32(b)(4).

3. In subpart B, new § 642.32 is added to read as follows:

§ 642.32 Opening of the commercial king mackerel fishery for Gulf group king mackerel.

(a) Other provisions of this part 642 notwithstanding, the commercial fishery for king mackerel for vessels fishing under an annual vessel permit specified in § 642.4(a)(1) with hook-and-line gear in the Florida west coast subzone is opened under a revised quota of 732,500 lb (332,256 kg) for the 1994–95 fishing year.

(b) During the opening of the commercial fishery for Gulf group king mackerel specified in paragraph (a) of this section—

(1) King mackerel in or from the EEZ in the Florida west coast subzone may not be possessed aboard or landed from a vessel in a day in quantities exceeding 125 fish. A person who fishes in the EEZ may not combine this trip/possession limit with any trip or possession limit applicable to state waters;

(2) The provisions of § 642.24(a)(4) regarding sale of fish after a closure do not apply to king mackerel harvested by vessels fishing under an annual vessel permit specified in § 642.4(a)(1) with hook-and-line gear in the Florida west coast subzone.

(3) The provisions of § 642.26(b) regarding fishing for, retention of, and sale of fish after a closure do not apply to king mackerel harvested by vessels fishing under an annual vessel permit specified in § 642.4(a)(1) with hook-and-line gear in the Florida west coast subzone; and

(4) A person for whom the trip/possession limit specified in paragraph (b)(1) of this section applies may not transfer at sea from one vessel to another a king mackerel—

(i) Taken in the EEZ, regardless of where such transfer takes place; or

(ii) In the EEZ, regardless of where such king mackerel was taken.

(c) The Assistant Administrator will close the commercial fishery for king mackerel for vessels fishing with hook-and-line gear in the Florida west coast subzone when he determines that the revised quota specified in paragraph (a) of this section has been reached or is projected to be reached. The Assistant Administrator will file a notification of that date with the Office of the **Federal Register**.

(d) For the purposes of this section, the Florida west coast subzone extends from the Alabama/Florida boundary (87°31′06″ W. long.) to the Dade/Monroe County, FL, boundary (25°20.4′ N. lat.).

[FR Doc. 95–2893 Filed 2–1–95; 4:58 pm]

BILLING CODE 3510–22–P

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50 CFR Part 672

[Docket No. 941249–4349; I.D. 020295A]

Groundfish of the Gulf of Alaska; Pollock in Statistical Area 61

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 61 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim specification for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 2, 1995, until 12 noon A.l.t., April 1, 1995, unless superseded by the final 1995 specifications in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The interim specification of pollock total allowable catch in Statistical Area 61 was established by interim specifications (59 FR 65990, December 22, 1994) as 7,595 metric tons (mt), determined in accordance with § 672.20(c)(1)(ii)(A).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1995 interim specification of pollock in Statistical Area 61 soon will be reached. The Regional Director established a directed fishing allowance of 6,095 mt, and has set aside the remaining 1,500 mt as bycatch to support other anticipated groundfish fisheries. Because of the low directed fishing allowance and high interest in the fishery, there will be insufficient time to collect and analyze catch data and take appropriate action to ensure the directed fishing allowance is not reached. Therefore, based on the best available information, the Regional Director has determined that the directed fishing allowance will be reached by 12 noon A.l.t., February 2, 1995. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 61.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

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

Dated: February 2, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–2979 Filed 2–2–95; 3:12 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 25
Tuesday, February 7, 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

Animal and Plant Health Inspection Service

9 CFR Parts 92 and 98

[Docket No. 94–110–1]

Limited Ports; Denver, CO

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning importation of animals and animal germ plasm by removing Denver, CO, from the list of limited ports of entry for animals and animal products that do not require restraint or holding facilities. The port has handled few importations and no longer has the personnel required to effectively provide inspection services for this location.

DATES: Consideration will be given only to comments received on or before April 10, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–110–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–110–1. Comments received 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 comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import-Export, 4700 River Road Unit 38, Riverdale, Maryland 20737–1231; (301) 734–8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 92 and 98 (referred to below as the regulations) restrict the importation of specified animals, animal products, and animal germ plasm into the United States to prevent the introduction of various animal diseases. The regulations designate limited ports of entry for germ plasm and certain animals and animal products, such as test specimens, that do not require restraint or holding facilities. Sections 92.102(d), 92.203(d), 92.303(d), 92.403(e), 92.503(e), and 98.33(d) of the regulations list the limited ports having inspection facilities for the importation of certain birds, poultry and poultry products, horses and horse products, ruminants and ruminant products, swine and swine products, and germ plasm, respectively.

Denver, CO, is currently listed in these sections as a limited port. However, due to staffing shortages in Denver, CO, the Animal and Plant Health Inspection Service (APHIS) cannot guarantee that personnel will be available on a regular basis to perform inspections required by the regulations. Further, within the past year, there have been few shipments of animals, animal products, or germ plasm arriving at the port in Denver, CO, for inspection. For these reasons, APHIS proposes to amend §§ 92.102(d), 92.203(d), 92.303(d), 92.403(e), 92.503(e), and 98.33(d) of the regulations by removing Denver, CO, as a limited port.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Only certain animals and animal products from Canada and germ plasm have been imported into Denver, CO, during the past several years. Therefore, we believe that the primary impact of this proposal will be on importers of those animals and animal products from Canada and importers of animal germ plasm. These importers will no longer be able to import these articles through the Stapleton International Airport, which is located in Denver, CO. However, there have been few shipments of animals, animal products, or germ plasm imported through Denver, CO, during the past year. After removing Denver, CO, as a limited port of entry, there are still many ports throughout the United States that will remain available as alternate ports, including over 20 limited ports. Because of the reasons provided above, we believe that removing Denver, CO, from the lists of limited ports will have little if any economic impact on importers or other entities, large or small. We do not anticipate any change in the volume or number of shipments of animals, animal products, or germ plasm entering the United States, or in the number of persons importing them, due to removing Denver, CO, as a limited port.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases, Imports.

Accordingly, 9 CFR parts 92 and 98 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.102 [Amended]

2. In § 92.102, paragraph (d) would be amended by removing ''Denver, CO;''.

§§ 92.203, 92.303, 92.403, and 92.503 [Amended]

3. Sections 92.203, 92.303, 92.403, and 92.503 would be amended by removing the words ''Denver, Colorado;'' in the following places:

(a) In § 92.203, paragraph (d);
(b) In § 92.303, paragraph (d);
(c) In § 92.403, paragraph (e); and
(d) In § 92.503, paragraph (e).

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

4. The authority citation for part 98 would be revised to read as follows:

Authority: 7 U.S.C. 1622; 21 U.S.C. 103, 104, 105, 111, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 98.33 [Amended]

5. In § 98.33, paragraph (d) would be amended by removing the words ''Denver, Colorado;''.

Done in Washington, DC, this 1st day of February 1995.

George O. Winegar,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–2899 Filed 2–6–95; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 94

[Docket No. 94–137–1]

Change in Disease Status of Spain Because of Swine Vesicular Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to declare Spain free of swine vesicular disease. As part of this proposed action, we would add Spain to the list of countries that, although declared free of swine vesicular disease, are subject to restrictions on pork and pork products offered for importation into the United States. Declaring Spain free of swine vesicular disease appears to be appropriate because there have been no outbreaks of swine vesicular disease in Spain since April 1993. This proposed rule would relieve certain prohibitions and restrictions on the importation into the United States, from Spain, of swine and fresh, chilled, and frozen meat of swine. However, because African swine fever continues to exist in Spain, certain pork and pork products would continue to be prohibited.

DATES: Consideration will be given only to comments received on or before April 10, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–137–1, USDA, APHIS, PPD, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Comments received 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 comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Blackwell, Senior Staff Veterinarian, USDA, APHIS, Veterinary Services, National Center for Import-Export, Import-Export Animals Staff, 4700 River Road Unit 38, Riverdale, MD 20737–1231, (301) 734–7834.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease (SVD). These are dangerous and destructive communicable diseases of ruminants and swine.

Section 94.12(a) of the regulations provides that SVD is considered to exist in all countries of the world except those listed in § 94.12(a), which have been declared to be free of SVD. We will consider declaring a country to be free of SVD if there have been no reported cases of the disease in that country for at least the previous 1-year period. There have been no outbreaks of SVD in Spain since April 1993. Based on this, the Government of Spain has requested that the U.S. Department of Agriculture (USDA) declare Spain to be free of SVD.

The Animal and Plant Health Inspection Service (APHIS) reviewed the documentation submitted by the Government of Spain in support of its request. A team of APHIS officials travelled to Spain to conduct an on-site evaluation of the country's animal health program with regard to the SVD situation in Spain. The evaluation consisted of a review of Spain's veterinary services, laboratory and diagnostic procedures, vaccination practices, and administration of laws and regulations intended to prevent the introduction of SVD into Spain through the importation of animals, meat, or animal products. (Details concerning the on-site evaluation are available, upon written request, from the person listed under **FOR FURTHER INFORMATION CONTACT**.)

Based on the information discussed above, we are proposing to amend § 94.12(a) by adding Spain to the list of countries declared free of SVD. This action would relieve certain restrictions and prohibitions on the importation, from Spain, of swine and fresh, chilled, and frozen meat of swine.

However, we are also proposing to amend § 94.13(a) by adding Spain to the list of countries that have been declared free of SVD but from which the importation of pork and pork products is restricted. The countries listed in § 94.13(a) are subject to these restrictions because they: (1) Supplement their national pork supply by importing fresh, chilled, or frozen pork from countries where SVD is considered to exist; (2) have a common land border with countries where SVD is considered to exist; or (3) have certain trade practices that are less restrictive than are acceptable to the United States.

Spain supplements its national pork supply by importing fresh, chilled, and frozen pork from countries where SVD is considered to exist. In addition, Spain has common land borders with Portugal and France. These countries are designated in § 94.12(a) as countries where SVD exists. As a result, even though Spain appears to qualify for designation as a country free of SVD, there is potential for pork and pork products produced in Spain to be commingled with the fresh, chilled, or frozen meat of animals from a country where SVD exists. This potential for commingling constitutes an undue risk of introducing SVD into the United States.

Therefore, we are proposing that pork and pork products, as well as any ship's stores, airplane meals, and baggage containing such pork, offered for

importation into the United States from Spain be subject to the restrictions specified in § 94.13 of the regulations and to the applicable requirements contained in the regulations of the USDA's Food Safety and Inspection Service at 9 CFR chapter III. Section 94.13 generally requires that pork and pork products be: (1) Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and (2) accompanied by an additional certification from a full-time salaried veterinary official of the national government of the exporting country, stating that the pork or pork product has not been commingled with or exposed to meat or other animal products originating in, imported from, or transported through a country in which SVD is considered to exist.

Because African swine fever exists in Spain, the importation of pork and pork products from Spain would continue to be subject to the restrictions in § 94.8 for pork and pork products from countries where African swine fever exists or is reasonably believed to exist. Pork and pork products could be imported into the United States from Spain only if processed in accordance with the regulations in § 94.8. Live swine importations from Spain would also continue to be restricted.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This proposed rule would amend the regulations in part 94 by adding Spain to the list of countries that have been declared free of SVD. This action would relieve certain restrictions and prohibitions on the importation into the United States, from Spain, of swine and fresh, chilled, and frozen meat of swine. However, other requirements would continue to restrict the importation of live swine and pork and pork products.

Even without considering the export-constraining affects of the restrictions that would remain in effect, it is unlikely that the proposed change in Spain's disease status would noticeably affect U.S. markets for swine and fresh, chilled, and frozen meat of swine. Due to current restrictions, the United States does not import any uncooked pork or pork products from Spain. In 1991, The United States did not import any pork or pork products from Spain. In 1992, the United States imported only 21 metric tons of prepared and preserved pork products from Spain, valued at approximately $69,000, and representing only 0.008 percent of total U.S. pork imports for that year.

Further, Spain has historically imported significantly larger amounts of pork and pork products than it exports. During 1991 and 1992, Spain imported 66,300 metric tons of pork while exporting only 13,000 metric tons (''FAO, Production Yearbook, 1992,'' 1992, and ''FAO, Trade Yearbook,'' 1992). Given Spain's negative trade balance for pork and pork products, and since it is unlikely that Spain would export a significant portion of its pork exports exclusively to the United States, the effect of this proposed rule on U.S. domestic prices or supplies or on U.S. businesses, including small entities, is expected to be negligible.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required 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 proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

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

Accordingly, 9 CFR part 94 would be amended as follows:

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

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

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, and 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.12 [Amended]

2. In § 94.12, paragraph (a), the first sentence would be amended by adding ''Spain,'' immediately after ''Rumania,''.

§ 94.13 [Amended]

3. In § 94.13, the introductory text, the first sentence would be amended by adding ''Spain,'' immediately after ''Republic of Ireland,''.

Done in Washington, DC, this 1st day of February 1995.

George O. Winegar,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–2898 Filed 2–6–95; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 348

RIN 3064–AB30

Management Official Interlocks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: The FDIC is withdrawing a proposed amendment to its regulations that implement the Depository Institution Management Interlocks Act. The proposal would have created limited exemptions to the prohibition on management official interlocks for depository institutions that control only a small percentage of the total deposits in the community or relevant metropolitan statistical area in which the institutions are located. Recent statutory changes have limited the FDIC's authority to create such exemptions by regulation.

DATES: This withdrawal of the proposed rule is made on February 7, 1995.

FOR FURTHER INFORMATION CONTACT: Curtis Vaughn, Examination Specialist, Division of Supervision, (202) 898–6759; or Mark Mellon, Senior Attorney, Regulation and Legislation Section, Legal Division, (202) 898–3854, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On February 22, 1994, the Board of Directors of the FDIC approved for

public comment a proposed rule to amend Part 348 of FDIC regulations, Management Official Interlocks, which implements the Depository Institution Management Interlocks Act (the Interlocks Act). The Interlocks Act generally prohibits certain management official interlocks between unaffiliated depository institutions, depository holding companies, and their affiliates. The proposed amendment, undertaken as part of a joint initiative by the FDIC, the Board of Governors of Federal Reserve Board and the Office of the Comptroller of the Currency, would have created an exception to the bar on management interlocks for depository institutions that control only a small percentage of the total deposits in the community or relevant metropolitan statistical area where the institutions are located (the small market share exemption). The proposed rule was published in the **Federal Register** on April 20, 1994 and the comment period expired on June 20, 1994. 59 FR 18764.

The Riegle Community Development and Regulatory Improvement Act

On September 23, 1994, President Clinton signed the Riegle Community Development and Regulatory Improvement Act of 1994 into law (Pub. L. 103–325, 108 Stat. 2160) (the RCDRI Act).

Section 338 of the RCDRI Act modified the authority of the federal banking agencies to create regulatory exceptions to the bar on management interlocks. It provides that exemptions may be granted on a case-by-case basis for: interlocks to improve the provision of credit to low- and moderate-income areas, increase the competitive position of minority- and women-owned institutions, or strengthen the management of newly chartered institutions that are in an unsafe or unsound condition. Federal banking agencies may establish a program to permit such interlocks on a case-by-case basis for a period of two years, with authorization to grant an additional extension of two more years.[1]

Section 338 also amended the Interlocks Act in such a way as to limit the authority of the federal banking agencies to create other exceptions to the prohibition on management interlocks solely to a case-by-case basis and then, only if a statutorily defined high standard is met, may an exception be granted.[2] Under the Interlocks Act as amended, in order for an exception to be granted, the federal banking agency must determine that (1) the service of the management official is critical to safe and sound operations of the affected depository institution, depository holding company or company; (2) the service will not have an anticompetitive effect; and (3) any additional requirements which the agency may impose have been satisfied. The board of directors of the affected depository institution must also provide a resolution to the appropriate federal banking agency indicating that no other candidate who is willing to serve possesses the necessary expertise.

Effect of Legislation on Proposal

It is the opinion of the Board of Directors of the FDIC that the proposed amendment is not consistent with the limited authority to create exceptions on a bank-specific and case-by-case basis given the FDIC under the Interlocks Act as amended. Accordingly, the Board of Directors of the FDIC hereby withdraws from active consideration the proposed amendment to Part 348 of Title 12 of the Code of Federal Regulations which was published on April 20, 1994 (59 FR 18764).

List of Subjects in 12 CFR Part 348

Antitrust, Banks, banking, Holding companies.

By order of the Board of Directors.

Dated at Washington, D.C., this 31st day of January, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–2857 Filed 2–6–95; 8:45 am]

BILLING CODE 6714–01–P

[1] Although the wording of these exemptions is slightly different, in essence Congress codified the existing regulatory exceptions that are available under Part 348 (with the exception of § 348.4(b)(5): ''Loss of management officials due to change in circumstance'').

[2] Prior to the RCDRI Act amendments, federal banking agencies had the authority under section 209 of the Interlocks Act (12 U.S.C. 3207) to promulgate rules and regulations permitting service by a management official which would otherwise be prohibited by the Interlocks Act.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–252–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with Rolls Royce Model RB211 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies, and correction of discrepancies. This proposal is prompted by the development of a modification of the strut and wing structure that improves the fail-safe capability and durability of the strut-to-wing attachments, and reduces reliance on inspections of those attachments. The actions specified by the proposed AD are intended to prevent failure of the strut and subsequent loss of the engine.

DATES: Comments must be received by March 6, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–252–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–121S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–252–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–252–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received numerous reports of fatigue cracking and/or corrosion in the strut-to-wing attachments on Boeing Model 747 series airplanes. In two cases, cracking resulted in the failure of a strut load path and the subsequent loss of the number 3 engine and strut. In both cases, catastrophic accidents occurred when the number 3 engine and strut separated from the wing of the airplane and struck the number 4 engine, causing it to separate from the airplane. Investigation into the cause of these accidents and other reported incidents has revealed that fatigue cracks and corrosion in the strut-to-wing attachments, if not detected and corrected in a timely manner, can result in failure of the strut and subsequent separation of the engine from the airplane. Investigation also has revealed that the structural fail-safe capability of the strut-to-wing attachment is inadequate on these airplanes.

The FAA has previously issued 9 AD's that address various problems associated with the strut attachment assembly on Boeing Model 747 series airplanes that are equipped with Rolls Royce Model RB211 series engines. These AD's have required, among other things, inspections of the strut, and strut-to-wing attachment structure.

Explanation of Service Information

Boeing recently has developed a modification of the strut-to-wing attachment structure installed on Model 747 series airplanes equipped with Rolls Royce Model RB211 series engines. This modification significantly improves the load-carrying capability and durability of the strut-to-wing attachments. Such improvement also will substantially reduce the possibility of fatigue cracking and corrosion developing in the attachment assembly.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995, which describes procedures for modification of the nacelle strut and wing structure. This modification entails the following:

1. Changing the strut by adding a new titanium dual side load fitting to the strut aft bulkhead, installing new 15–5 stainless steel midspar fittings on the inboard struts, and replacing the aft bulkhead assembly and overhauling the spring beams on the outboard struts;
2. Changing the wing structure by installing a new dual side load underwing fitting and new support fitting, and replacing the end fitting and replacing the tee fitting bolts common to the rib at wing station (WS) 1140 [and for certain airplanes, installing a new stiffener at the wing midspar];
3. Changing the electrical wiring and hydraulics by rerouting the wire bundles around the new dual side load fitting, splicing additional wire to the wire bundles, and installing new hydraulic tubes; and
4. Installing the strut with a new upper link, a new diagonal brace, and new side links.

This alert service bulletin specifies that the modification of the nacelle strut and wing structure is to be accomplished prior to, or concurrently with, the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, ''Prior or Concurrent Service Bulletins,'' on page 5 of this alert service bulletin. These terminating actions include the following:

1. Replacement of the diagonal brace, midspar and upper link fuse pins with new third generation 15–5 corrosion resistant steel fuse pins;
2. Installation of improved bushings in the strut-to-wing attachment fittings;
3. Replacement of certain strut-to-wing attachment fitting fasteners; and
4. Inspection and torque check of certain fasteners of the strut-to-wing attachment fittings.

Paragraph III, NOTES 8, 9, and 13 of the Accomplishment Instructions on pages 109 and 110 of the alert service bulletin also describes procedures for inspections and checks to detect discrepancies of the adjacent structure and correction of any discrepancies.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies in the adjacent structure, and correction of discrepancies. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

The FAA has determined that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification requirement is in consonance with these considerations.

Accomplishment of the modification of the nacelle strut and wing structure would terminate the inspections required by the following AD's:

AD No.	Amendment No.	Federal Register citation	Date of publication
93–17–07	39–8678	58 FR 45827	August 31, 1993.
93–03–14	39–8518	58 FR 14513	March 18, 1993.
92–24–51	39–8439	57 FR 60118	December 18, 1992.
90–20–20	39–6725	55 FR 37859	September 14, 1990.
89–07–15	39–6167	54 FR 11693	March 22, 1989.
87–04–13 R1	39–5836	53 FR 2005	January 26, 1988.
86–05–11 R1	39–5334	51 FR 21900	June 17, 1986.
86–23–01	39–5450	51 FR 37712	October 26, 1986.
79–17–07	39–3533	44 FR 50033	August 27, 1979.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.

Cost Estimate

Currently, there are no Model 747 series airplanes of the affected design, equipped with Rolls Royce Model RB211 series engines, on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 6,545 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. The manufacturer would incur the cost of labor, on a pro-rated basis, with 20 years being the expected life of these airplanes. The median age for the fleet of Model 747 series airplanes equipped with Rolls Royce Model RB211 series engines is estimated to be 6 years. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of this AD would be $117,810 per airplane.

This cost impact figure does not reflect the cost of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, ''Prior or Concurrent Service Bulletins,'' on page 5 of Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995, that are proposed to be accomplished prior to, or concurrently with, the modification of the nacelle strut and wing structure. Since some operators may have accomplished certain modifications on some or all of the airplanes in its fleet, while other operators may not have accomplished any of the modifications on any of the airplanes in its fleet, the FAA is unable to provide a reasonable estimate of the cost of accomplishing the terminating actions described in the service bulletins listed in Table 2 of the Boeing alert service bulletin. As indicated earlier in this preamble, the FAA invites comments specifically on the overall economic aspects of this proposed rule. Any data received via public comments to this notice will aid the FAA in developing an accurate accounting of the cost impact of the rule.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Boeing: Docket 94–NM–252–AD.

Applicability: Model 747 series airplanes having line positions 292 through 1033 inclusive, equipped with Rolls Royce Model RB211 series engines; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the strut and subsequent loss of the engine, accomplish the following:

(a) Accomplish the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. All of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, ''Prior or Concurrent Service Bulletins,'' on page 5 of Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995, must be accomplished in accordance with those service bulletins prior to, or concurrently with, the accomplishment of the modification of the nacelle strut and wing structure required by this paragraph.

(1) For Model 747–400 series airplanes having line positions 705 through 1033 inclusive, equipped with Rolls Royce Model RB211–524G and H engines: Within 80 months after the effective date of this AD.

(2) For all other Model 747 series airplanes equipped with Rolls Royce Model RB211 series engines not subject to the requirements of paragraph (a)(1) of this AD: Within 56 months after the effective date of this AD.

(b) Perform the inspections and checks specified in paragraph III, NOTES 8, 9, and 13 of the Accomplishment Instructions on pages 109 and 110 of Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995, concurrently with the modification of the nacelle strut and wing structure required by paragraph (a) of this AD. Prior to further flight, correct any discrepancies found in accordance with the alert service bulletin.

(c) Accomplishment of the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995, constitutes terminating action for the inspections required by the following AD's:

AD No.	Amendment No.	Federal Register citation	Date of publication
93–17–07	39–8678	58 FR 45827	August 31, 1993.
93–03–14	39–8518	58 FR 14513	March 18, 1993.
92–24–51	39–8439	57 FR 60118	December 18, 1992.
90–20–20	39–6725	55 FR 37859	September 14, 1990.
89–07–15	39–6167	54 FR 11693	March 22, 1989.
87–04–13 R1	39–5836	53 FR 2005	January 26, 1988.
86–05–11 R1	39–5334	51 FR 21900	June 17, 1986.
86–23–01	39–5450	51 FR 37712	October 26, 1986.
79–17–07	39–3533	44 FR 50033	August 27, 1979.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO) FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on February 1, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–2930 Filed 2–6–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–14–AD]

Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 707 and 720 series airplanes, that would have superseded an existing AD to require repetitive inspections to detect cracks in certain areas of the upper forward skin panels of the wing center section, and repair, if necessary. That AD also would have provided an optional terminating modification for the repetitive inspections. That proposal was prompted by reports that the inspections required by the existing AD are not effective in detecting fatigue cracks in a timely manner. This action revises the proposed rule by reducing certain compliance times and by revising the applicability statement of the AD. The actions specified by this proposed AD are intended to prevent fatigue cracking and subsequent failure of the upper forward skin panels of the wing center section.

DATES: Comments must be received by March 6, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–14–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group,

P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Airframe Branch, ANM–121S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2771; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–14–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–14–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 707 and 720 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on July 18, 1994 (59 FR 36376). That NPRM would have superseded an existing AD to require repetitive inspections to detect cracks in certain areas of the upper forward skin panels of the wing center section, and repair, if necessary. That AD also would have provided an optional terminating modification for the repetitive inspections. That NPRM was prompted by reports that the inspections required by the existing AD are not effective in detecting fatigue cracks in a timely manner. That condition, if not corrected, could result in failure of the upper forward skin panels of the wing center section.

One commenter to the NPRM submitted a request that the proposal be revised to eliminate duplicate or conflicting requirements with AD 85–12–01 (50 FR 26690, June 28, 1985) for unmodified airplanes (those having no bulb angle or thicker skin). That AD requires accomplishment of inspections specified in Supplemental Structural Inspection Document (SSID) D6–44860 for Model 707/720 series airplanes. The FAA concurs partially. The SSID provides procedures for accomplishment of dye penetrant or eddy current inspections to detect cracks on the upper forward skin panels of the wing center section. However, the FAA has determined that the dye penetrant inspection techniques contained in the SSID for the affected airplanes have not been effective in detecting cracks in a timely manner. Boeing has advised the FAA that it plans to remove those inspections from the next revision of the SSID; subsequently, the FAA may consider further rulemaking to revise AD 85–12–01 accordingly. For this reason, the FAA finds that inspections using eddy current techniques, as proposed in this supplemental NPRM, are necessary to detect cracks effectively in a timely manner for those airplanes having no bulb angle or thicker skin.

Further, upon reevaluation of certain inspection thresholds and repetitive intervals, the FAA finds that the compliance times specified in paragraphs (a), (a)(2)(i), and (b) of the proposal are less conservative than those recommended in the SSID. In light of this consideration, the FAA finds that, for unmodified airplanes, the compliance times specified in this proposal must be revised to make them more consistent with the more conservative times recommended in the SSID. Therefore, the proposed repetitive interval of 1,000 landings or 18 months, whichever occurs first, specified in paragraphs (a) and (b) of the original NPRM, has been revised to 450 landings in this supplemental NPRM. In addition, the proposed inspection threshold of 7,000 total landings, specified in paragraph (a)(2)(i) of the original NPRM, has been revised to 6,400 total landings in this supplemental NPRM. The FAA has determined that accomplishment of the required actions at these revised compliance times will provide an acceptable level of safety.

The commenter also submitted a request that the applicability statement of the proposal be revised to specify airplanes listed in Boeing Service Bulletin 2590, Revision 11, dated December 12, 1991. Certain Model 707 series airplanes were modified during production and, therefore, need not be inspected in accordance with the requirements of the proposed AD; the service bulletin listing excludes those airplanes. The FAA concurs, and has revised the proposal accordingly.

The FAA also has revised the proposed repetitive inspection interval, specified in paragraph (c) of the original NPRM, to remove the reference to an optional 18-month repetitive inspection interval and to require that these inspections be performed only at intervals not to exceed 1,000 landings. This revised interval corresponds with the recommendation of the Structures Working Group for Model 707/720 series airplanes, and the FAA has determined that it will ensure that cracking is detected in a timely manner.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic

impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

There are approximately 416 Model 707 and 720 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 82 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 32 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $157,440, or $1,920 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that would be provided by this AD action, it would take approximately 1,250 work hours to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $45,000 per airplane. Based on these figures, the total cost impact of the optional terminating action would be $120,000 per airplane.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–2056, and by adding the following new airworthiness directive:

Boeing: Docket 94–NM–14–AD. Supersedes AD 68–18–03, Amendment 39–2056.

Applicability: Model 707 and 720 series airplanes; as listed in Boeing Service Bulletin 2590, Revision 11, dated December 12, 1991; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking and subsequent failure of the upper forward skin panels of the wing center section, accomplish the following:

(a) For Model 707–100, –200, –300, –300B, –300C, and –400 series airplanes on which no bulb angle stiffeners have been installed in accordance with Boeing Service Bulletin 2590: Perform a visual inspection and an eddy current inspection to detect cracks in the areas of the upper forward skin of the wing center section specified in paragraphs b. and f.(1) of Part I of the Accomplishment Instructions of Boeing Service Bulletin 2590, Revision 8, dated June 2, 1972; Revision 9, dated March 14, 1975; Revision 10, dated January 31, 1991; or Revision 11, dated December 12, 1991. Perform the inspections at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with the procedures specified in the service bulletin. Repeat these inspections thereafter at intervals not to exceed 450 landings.

(1) For Model 707–300, –300B, –300C, and –400 series airplanes: Inspect at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 6,000 total landings; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(2) For Model 707–100 and –200 series airplanes: Inspect at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to the accumulation of 6,400 total landings; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(b) For Model 720 and 720B series airplanes on which no bulb angle stiffeners have been installed in accordance with Boeing Service Bulletin 2590: Perform a visual inspection and an eddy current inspection to detect cracks in the area of the upper forward skin of the wing center section specified in paragraph b. of Part I of the Accomplishment Instructions of Boeing Service Bulletin 2590, Revision 8, dated June 2, 1972; Revision 9, dated March 14, 1975; Revision 10, dated January 31, 1991; or Revision 11, dated December 12, 1991. Perform the inspections at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD, in accordance with the procedures specified in the service bulletin. Repeat these inspections thereafter at intervals not to exceed 450 landings.

(1) Prior to the accumulation of 4,000 total landings; or

(2) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(c) For Model 720 and 720B, and 707–100, –200, –300, –300B, –300C, and –400 series airplanes on which bulb angle stiffeners have been installed, but on which the wing skin has not been replaced, in accordance with Boeing Service Bulletin 2590: Accomplish the inspections required by paragraph (c)(1), (c)(2), or (c)(3) of this AD, as applicable, in accordance with Boeing Service Bulletin 2590, Revision 11, dated December 12, 1991. Repeat these inspections thereafter at intervals not to exceed 1,000 landings.

Note 2: Revision 11 of Boeing Service Bulletin 2590 is part of Boeing Master Inspection Service Bulletins 3484 (for Model 707–100 and –200 series airplanes), 3485 (for Model 720 and 720B series airplanes), and 3486 (for Model 707–300, –300B, –300C, and –400 series airplanes), all dated December 12, 1991. Boeing Service Bulletin 2590 references these master inspection service bulletins as additional sources of service information concerning accomplishment of the inspections required by paragraph (c) of this AD.

(1) For Model 720 and 720B series airplanes: Perform a visual and an eddy current inspection to detect cracks in the areas of the upper forward skin of the wing center section specified in Boeing Master Inspection Service Bulletin 3485, dated December 12, 1991, at the later of the times specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Prior to the accumulation of 2,200 landings after installation of the bulb angle stiffeners; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(2) For Model 707–300, –300B, –300C, and –400 series airplanes: Perform a visual and an eddy current inspection to detect cracks in the areas of the upper forward skin of the wing center section specified in Boeing Master Inspection Service Bulletin 3486, dated December 12, 1991, at the later of the times specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Prior to the accumulation of 2,200 landings after installation of the bulb angle stiffeners; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(3) For Model 707–100 and –200 series airplanes: Perform a visual and an eddy current inspection to detect cracks in the areas of the upper forward skin of the wing center section specified in Boeing Master Inspection Service Bulletin 3484, dated December 12, 1991, at the later of the times specified in paragraphs (c)(3)(i) and (c)(3)(ii) of this AD.

(i) Prior to the accumulation of 2,200 landings after installation of the bulb angle stiffeners; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(d) If any crack is found during any inspection required by paragraph (a), (b), or (c) of this AD, prior to further flight, repair in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 2590, Revision 7, dated September 22, 1969; Revision 8, dated June 2, 1972; Revision 9, dated March 14, 1975; Revision 10, dated January 31, 1991; or Revision 11, dated December 12, 1991.

(e) Accomplishment of the ''Reinforcing Stiffener Installation and Skin Panel Replacement'' in accordance with Part III of the Accomplishment Instructions of Boeing Service Bulletin 2590, Revision 6, dated July 8, 1968; Revision 7, dated September 22, 1969; Revision 8, dated June 2, 1972; Revision 9, dated March 14, 1975; Revision 10, dated January 31, 1991; or Revision 11, dated December 12, 1991; constitutes terminating action for the inspections required by paragraphs (a), (b), and (c) of this AD.

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

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

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

Issued in Renton, Washington, on February 1, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–2932 Filed 2–6–95; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 274

[Release Nos. 33–7133; IC–20874; S7–3–95]

RIN 3235–AG29

Registration Fees for Certain Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposal of rule amendments.

SUMMARY: The Commission is proposing amendments to rules 24f–1 and 24f–2 under the Investment Company Act of 1940, the rules that permit certain investment companies to register securities sold in excess of the number of shares included in a registration statement and to register an indefinite number of securities under the Securities Act of 1933. The Commission is also proposing a new form, Form 24F–2, which would serve as the form for annual notices filed under rule 24f–2. The proposed amendments and the new form would clarify the application of certain provisions of rule 24f–2 and would make the rule's filing deadlines more flexible under certain circumstances.

DATES: Comments on the proposed amendments should be received on or before March 24, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. All comment letters should refer to File No. S7–3–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. 20549.

FOR FURTHER INFORMATION CONTACT: Karen J. Garnett, Attorney, Office of Disclosure and Adviser Regulation, (202) 942–0728, or Carolyn A. Miller, Senior Financial Analyst, Office of Financial Analysis, (202) 942–0510, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to rules 24f–1 (17 CFR 270.24f–1) and 24f–2 (17 CFR 270.24f–2) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) and a new Form 24F–2 (17 CFR 274.24).

Executive Summary

The Commission is proposing to amend rule 24f–2 under the Investment Company Act of 1940 (''1940 Act''), the rule that permits certain investment companies to register an indefinite number of securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''Securities Act''). The amendments would clarify that annual notices required by rule 24f–2 will be deemed timely filed if the investment company establishes that it timely transmitted the notice to a company or governmental entity that guaranteed delivery to the Commission no later than the filing date. The amendments would make it easier to compute required filing dates and time periods and clarify the operation of the termination provisions of rule 24f–2 in the case of investment company business combination transactions. The Commission is also proposing Form 24F–2, a standard form for annual notices required by the rule. Form 24F–2 would request the information currently required for annual notices by rule 24f–2 and would also include a work sheet for calculating filing fees. The form would improve the accuracy of information contained in Rule 24f–2 Notices and improve the Commission's ability to process the notices. Finally, the Commission is proposing conforming amendments to rule 24f–1, the rule that permits certain investment companies to register securities sold in excess of the number of shares included in a registration statement.

I. Background

Section 6(b) of the Securities Act (15 U.S.C. 77f(b)) specifies the fees that must be paid in connection with registering securities with the Commission under the Securities Act. Section 24 of the 1940 Act (15 U.S.C. 80a-24) modifies these provisions for certain investment companies

(''funds'').[1] Section 24 was intended to address the problem of inadvertent ''oversales,'' i.e., sales in excess of securities registered, that could easily occur with a fund that continually issues and redeems securities.[2]

Rule 24f–2 under the 1940 Act permits funds to register an indefinite number of securities. A fund that makes a declaration to be governed by that rule (''Rule 24f–2 declaration'') pays an initial election fee of $500. Once a fund makes its Rule 24f–2 declaration, it must file a notice within six months after the close of each fiscal year (''Rule 24f–2 Notice'') and pay a fee based upon the number of shares sold during the fiscal year.[3] If the fund files its Rule 24f–2 Notice within two months after the close of its fiscal year, paragraph (c) of rule 24f–2 permits the fund to deduct the value of shares redeemed from the value of shares sold in calculating the amount of fees due.[4] This netting provision can result in substantial savings to funds and their shareholders.

Since its adoption in 1977, rule 24f–2 has allowed funds to comply with the registration requirements of the Securities Act without the burden of estimating the number of shares they will sell each year or filing post-effective amendments to register shares sold in excess of such estimates. At the same time, certain questions have arisen in connection with the rule. The Commission has reviewed the operation of rule 24f–2 and has concluded that certain changes to the rule may be appropriate.

II. Proposed Amendments to Rule 24f–2

A. Delayed Filings

The Commission is proposing new paragraph (f) to rule 24f–2 to clarify the date on which a Rule 24f–2 Notice will be deemed filed with the Commission. As with other filings under the 1940 Act, a Rule 24f–2 Notice is currently deemed filed with the Commission on the date it is actually received by the Commission.[5] The consequences of missing the rule's filing deadlines can be severe. If a fund's Rule 24f–2 Notice arrives at the Commission more than two months after the end of the fund's fiscal year, the fund cannot use the netting provision of paragraph (c) of the rule. If the fund misses the six month deadline, its Rule 24f–2 declaration terminates.

Recently the Commission has had to address the consequences of late filings by funds that made a good faith effort to file Rule 24f–2 Notices within the two month period but whose filings did not reach the Commission until after the two-month deadline expired. The Commission has issued exemptive orders pursuant to its authority under section 6(c) of the 1940 Act[6] to allow these funds to take advantage of the netting provisions.[7] In four cases, the fund mailed its Rule 24f–2 Notice through the United States Postal Service at least seven days before the expiration of the two month period. Three other funds engaged a same-day courier service to deliver their Rule 24f–2 Notices on the last day of the two-month period. In each case, the Rule 24f–2 Notice was not received by the Commission until after the deadline had passed. The Commission determined in each case that the fund was not at fault for the late filing, and that granting an exemption from the provisions of rule 24f–2 was appropriate in the public interest and consistent with the protection of investors and the purposes of the 1940 Act.

The netting provision of rule 24f–2(c) is intended to encourage early filing of Rule 24f–2 Notices, not to penalize funds that file Rule 24f–2 Notices more than two months after the close of their fiscal year.[8] The Commission's experience with rule 24f–2 demonstrates that the purposes of the rule are best served if funds give prompt attention to their filing requirements.[9] Nevertheless, it may not be appropriate for a fund's filing fees to increase substantially as a result of the failure of a third party that guaranteed timely delivery to the Commission.

Proposed paragraph (f) to rule 24f–2 would permit a fund whose Rule 24f–2 Notice reaches the Commission after the expiration of the two month period to take advantage of the netting provisions of rule 24f–2(c), if the fund establishes that it timely transmitted the notice to a company or governmental entity that guaranteed delivery to the Commission no later than the filing date.[10] This provision would apply to both the six month deadline for filing Rule 24f–2 Notices and the two month deadline for taking advantage of the netting provision.[11] If this provision is adopted, the Commission would not expect to entertain further exemptive applications from late filers. Comment is requested on whether there are other circumstances under which filings that do not reach the Commission on a timely basis should be deemed timely filed.

Funds that file Rule 24f–2 Notices by direct transmission on the Commission's EDGAR system (''electronic filers'') would not be affected by this provision, since the timeliness of their filings does not depend upon the mail or courier services.[12] While an electronic filing may be delayed for technical reasons, the rules governing electronic filings contain adequate procedures to address transmission problems.[13]

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[1] These companies include face amount certificate companies, open-end management investment companies, and unit investment trusts. Rule 24f–2(a)(1) (17 CFR 270.24f–2(a)(1)).

[2] See Investment Company Act Rel. No. 15611 (Mar. 9, 1987) (52 FR 8302 (Mar. 17, 1987)) (proposing to revise the registration requirements under rule 24f–2 for certain unit investment trusts).

[3] Rules 24f–2(a)(1), (a)(3), and (b)(1) (17 CFR 270.24f–2(a)(1),(a)(3), and (b)(1)).

[4] Rule 24f–2(c) [17 CFR 270.24f–2(c)]. A more detailed explanation of the operation of rule 24f–2 is set out in Investment Company Act Rel. No. 15611 (Mar. 9, 1987) (52 FR 8302 (Mar. 17, 1987)).

[5] Rule 0–2 under the 1940 Act (17 CFR 270.02). *Cf.* section 6(c) (15 U.S.C. 77f(c)) of the Securities Act (15 U.S.C. 77a *et seq.*), rule 0–4 (17 CFR 275.04) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*), and rule 0–3 (17 CFR 240.03) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

[6] 15 U.S.C. 80a–6(c).

[7] The Flex Funds, Investment Company Act Rel. Nos. 19008 (Oct. 8, 1992) 57 FR 47361 (Oct. 15, 1992) (Notice of Application) and 19074 (Nov. 3, 1992) 52 SEC Docket 3632 (Order); Invesco Treasurer's Series Trust, Investment Company Act Rel. Nos. 20503 (Aug. 25, 1994) 59 FR 45054 (Aug. 31, 1994) (Notice of Application) and 20564 (Sep. 20, 1994) 57 SEC Docket 1298 (Order); Kidder Peabody Premium Account Fund and Kidder Peabody Government Money Fund, Inc., Investment Company Act Rel. Nos. 20527 (Sep. 2, 1994) 59 FR 46873 (Sep. 12, 1994) (Notice of Application) and 20586 (Sep. 28, 1994) 57 SEC Docket 20986 (Order); ACM Institutional Reserves, Inc., Investment Company Act Rel. Nos. 20574 (Sep. 26, 1994) 59 FR 50312 (Oct. 3, 1994) (Notice of Application) and 20645 (Oct. 21, 1994) 57 SEC Docket 2705 (Order); A.T. Ohio Municipal Money Fund and The Victory Funds, Investment Company Act Rel. Nos. 20811 (Dec. 29, 1994) 60 FR 2166 (Jan. 6, 1995) (Notice of Application) and 20854 (Jan. 24, 1995) (Order).

[8] Investment Company Act Rel. No. 9989 (Nov. 3, 1977) (42 FR 58400 (Nov. 9, 1977) (adopting rule 24f–2).

[9] Investment Company Act Rel. No. 13624 (Nov. 14, 1983) (48 FR 52433 (Nov. 18, 1983) (adopting amendments to rule 24f–2).

[10] This provision would be substantially the same as rule 16a–3(h) under the Securities Exchange Act of 1934 (17 CFR 240.16a–3), which governs filing of periodic reports of beneficial ownership of stock (Forms 3, 4, and 5) by certain corporate ''insiders.'' See Securities Act Rel. No. 6389 (Mar. 8, 1982) (47 FR 1125–01 (Mar. 16, 1982)) (adopting rule 16a–3(h)).

[11] The amendments would change the deadlines for filing Rule 24f–2 Notices from six months and two months to 180 days and 60 days, respectively. *See infra* ''Calculation of Time Periods.''

[12] The term ''direct transmission'' means the transmission of electronic submissions via a telephonic communication session. 17 CFR 232.11(b).

[13] Regulation S–T provides that if an electronic filer in good faith attempts to file a document in a timely manner but the filing is delayed due to technical difficulties beyond the filer's control, the

Continued

B. Dividend Reinvestment Shares

Shares issued in connection with dividend reinvestment plans (''DRIP shares'') generally are not treated as ''sales'' of stock for purposes of registration requirements under the Securities Act,[14] and many funds typically do not include DRIP shares as ''sales'' for purposes of rule 24f–2. Some of these funds, however, include DRIP shares in determining the amount of shares redeemed during the fiscal year for purposes of rule 24f–2's netting provision. This method of counting shares is inconsistent with the purpose of the netting provision, which was intended to recognize that a substantial portion of shares being registered were issued to replace redeemed shares that had previously been registered under the Securities Act.[15]

The Commission proposes to amend rule 24f–2 to require funds taking advantage of the rule's netting provisions to include DRIP shares when determining the amount of shares sold and redeemed during the fiscal year.[16] This amendment would ensure consistent treatment of DRIP shares without imposing the recordkeeping burdens that might accompany a requirement that these shares be excluded from redeemed shares for purposes of rule 24f–2's netting provision. Comment is requested on alternative approaches that would prevent inconsistent treatment of DRIP shares under rule 24f–2's netting provisions. One approach would require funds to determine the ratio of DRIP shares issued during the period to shares sold in transactions registered under the Securities Act and to apply that ratio to determine the amount of redeemed shares that would be available under the rule's netting provision.

C. Mergers and Other Business Combinations

Paragraph (b)(3) of rule 24f–2 (17 CFR 270.24f–2(b)(3)) requires a fund planning to cease operations to file a post-effective amendment terminating the Rule 24f–2 declaration and file a Rule 24f–2 Notice ''before ceasing operations.'' In the case of investment company business combination transactions, especially those involving a liquidation, merger, or sale of assets, the operation of the rule is unclear. While in most cases operations cease upon consummation of the transaction, it may be impractical for the fund to file before the transaction since sales and redemptions may be occurring until the time of the transaction. In addition, paragraph (b)(3) is silent as to the applicability of the netting provisions of paragraph (c) when a fund files a Rule 24f–2 Notice in connection with ceasing operations.

The Commission is proposing to amend rule 24f–2 to delete the requirement that a fund file its final Rule 24f–2 Notice prior to ceasing operations and, in its place, provide that if a fund ceases operations, the date it ceases operations is the end of its fiscal year for purposes of rule 24f–2. As a result, a fund (or its successor) would have to file a final Rule 24f–2 Notice within 180 days after ceasing operations and pay registration fees on all shares sold during the fiscal year. If a fund files the Rule 24f–2 Notice within sixty days after ceasing operations, it would be permitted, under paragraph (c), to net redemptions made during the period after the end of the last fiscal year against sales during that period.[17]

For funds involved in certain business combination transactions, revised paragraph (b)(3) would specify that a fund ceases operations for purposes of rule 24f–2 on the date that the fund's assets are distributed in a liquidation, the effective date of a merger, or, when there has been a sale of all or substantially all of the fund's assets, the date those assets are transferred. The revised paragraph would also clarify that certain other transactions—transactions for the purpose of changing the fund's state of incorporation or form of organization—would not result in the company ceasing operations.[18] Instead, under this type of reorganization the successor company would succeed to all assets and liabilities of the fund, including the registration fee liabilities (net of any redemption credits) under rule 24f–2.[19]

D. Calculation of Time Periods

The Commission is proposing to revise paragraphs (b)(1) and (c) of Rule 24f–2 to replace the ''six month'' and ''two month'' time periods with ''180 day'' and ''60 day'' time periods, respectively. The current rule's references to ''months'' has resulted in different periods depending upon the months involved and is inconsistent with the timing provisions in other Commission rules.[20] This has, on occasion, caused some confusion among funds about determining filing deadlines. To further clarify how to calculate time periods, a new paragraph (e) would be added to the rule specifying that the first day of the time periods is the first calendar day of the fiscal year following the fiscal year for which the Rule 24f–2 Notice is filed. The Commission is proposing similar amendments to rule 24f–1, which permits funds with effective registration statements to file a notification that has the effect of registering shares sold in excess of the number of shares previously registered.[21]

III. Form 24F–2

Rule 24f–2 currently specifies the information which funds must include in a Rule 24f–2 Notice, but generally does not require that the information be presented in any particular format.[22] The Commission believes that a standard form for Rule 24f–2 Notices will facilitate the calculation of fees due under rule 24f–2 and reduce errors in the calculation of filing fees. The Commission's ability to process Rule 24f–2 Notices and detect errors should also be improved by a standard form.

Proposed Form 24F–2 consists of twelve items.[23] The first four items

electronic filer may request an adjustment of the filing date, and the Commission, or the staff acting pursuant to delegated authority, may grant the request if it appears that such adjustment is appropriate. 17 CFR 232.13(b).

[14] Securities Act Rel. No. 33–929 (July 29, 1936) (11 FR 10957).

[15] See Investment Company Act Rel. No. 9819 (June 16, 1977)[42 FR 31781 (June 23, 1977)] (adopting the netting provision of rule 24e–2 under the Investment Company Act).

[16] The proposed requirement would not affect the Commission's policy as stated in Securities Act Rel. No. 33–929 (Jul. 29, 1936); fund DRIP shares would be included as sales only for purposes of the netting provision of rule 24f–2.

[17] This approach is similar to that taken in rule 8f–1 under the 1940 Act (17 CFR 270.8f–1), which requires a registered investment company winding up its affairs or being merged into or consolidated with another investment company to file an application for an order declaring that the company has ceased to be a registered investment company after the transaction has occurred.

[18] These transactions would be limited to those reorganizations under which the successor issuer is permitted to succeed to the registration statement of the fund under rule 414 of Regulation C of the Securities Act (17 CFR 230.414). This provision would codify a longstanding staff interpretation of rule 24f–2(b)(3). *See, e.g.,* Lowry Market Timing Fund, Inc. (pub. avail. Jan. 9, 1985); Frank Russell Investment Company (pub. avail. Dec. 3, 1984).

[19] Rule 414(b) (17 CFR 230.414(b)) requires that the succession result in the successor issuer acquiring all of the assets of and assuming all of the liabilities and obligations of the issuer. In combinations other than this type of reorganization, while the successor company would succeed to the fund's registration fee liabilities (as it would all other liabilities), it may only use the fund's redemption credits against the fund's registration fee liabilities—not those of the successor company.

[20] See, e.g., rule 485 under the Securities Act (17 CFR 230.485).

[21] The six month time periods referred to in paragraphs (a) and (c) of the rule (17 CFR 270.24f–1(a), 270.24f–1(c)) would be changed to 180 days.

[22] Paragraph (b)(1) of the rule currently specifies the information that must appear in a Rule 24f–2 Notice. Most of these items would be deleted from the rule if the form is adopted.

[23] The proposed Form also contains several instructions concerning completion and filing of the Form which incorporate provisions of the rule. For

require basic identifying information: The name and address of the fund; the class of shares or series to which the filing relates;[24] the Securities Act file number of the registration statement on which the shares are registered; and the last day of the fiscal-year for which the Rule 24f–2 Notice is filed.

Items 5 and 6 would be completed only if the fund fails to file its Rule 24f–2 Notice within 180 days after its fiscal year end. In such cases, the fund's declaration to register an indefinite number of shares is terminated on the next business day.[25] As under the current rule, such fund must file a separate Form 24F–2 with respect to sales of securities made pursuant to the declaration during (1) the fiscal year for which the notice was not timely filed, and (2) the period after the close of the fiscal year but before the declaration was terminated. Item 5 would require the fund to indicate whether the form is being filed for purposes of reporting securities sold after the close of the fiscal year but before termination of the fund's Rule 24f–2 declaration. The fund would report the date of termination of its Rule 24f–2 declaration in Item 6.

Items 7 through 11 would require funds to identify the shares sold during the fiscal year for which registration fees have previously been paid or which must be accounted for in determining the fee payable with the Rule 24f–2 Notice. This information is substantially the same as that currently required by a Rule 24f–2 Notice.[26] The only significant change would be that the form would require information concerning DRIP shares. This item reflects the proposed amendment to paragraph (c) of Rule 24f–2, which would require funds to include all securities issued pursuant to DRIPs in the fund's aggregate sales for purposes of calculating registration fees under the rule's netting provisions.[27]

Proposed item 12 is a work sheet for calculating the fee payable with the notice. The fee calculation is presented in tabular format to facilitate the Commission staff's review of filing fees for purposes of determining whether a fund has paid the appropriate amount. The work sheet contains seven line items:

(i) The aggregate sale price of securities sold during the fiscal year in reliance on Rule 24f–2;

(ii) The aggregate price of DRIP shares (if not included in (i));

(iii) The aggregate price of shares redeemed or repurchased during the fiscal year;

(iv) The aggregate price of shares redeemed or repurchased and previously applied as a reduction to filing fees pursuant to Rule 24e–2;[28]

(v) The net aggregate sale price of securities sold during the fiscal year in reliance on Rule 24f–2 (line (i), plus line (ii), less line (iii), plus line (iv));

(vi) The multiplier to be used to determine the fee;[29] and

(vii) The fee due (line (i) (if the netting provision is not used) or line (v) (if the netting provision is used) multiplied by line (vi)).[30]

Funds would complete lines (ii), (iii), (iv), and (v) only if the fund is using the rule's netting provision. Thus, the work sheet can be used whether or not the fund is using the rule's netting provision.

The work sheet provided in Item 12 is similar to the method for reporting the calculation of Rule 24f–2 fees on the EDGAR system. Under the EDGAR system, an electronic filer is required to prepare a header for each Rule 24f–2 Notice. The header contains certain filing fee information that is included in the accompanying Rule 24f–2 Notice. The Commission's computer systems are programmed to ''check'' the filer's fee calculation based on the information provided in the header. If the computer cannot verify the fee calculation, Commission staff review the accompanying notice to determine the source of the error. As proposed, Form 24F–2 would not alter the headers for EDGAR filings. The Commission requests comment whether it should modify its systems to permit computer verification of the fee calculation based on information in the notice rather than the header, thus avoiding the need for filers to duplicate information.

IV. General Request for Comments

Any interested persons wishing to submit written comments on the proposed rule changes and the proposed new form that are the subject of this Release, to suggest additional changes (including changes to provisions of the rules that the Commission is not proposing to amend), or to submit comments on other matters that might have an effect on the proposals described above, are requested to do so. Commenters suggesting alternative approaches are encouraged to submit proposed rule text.

V. Cost/Benefit Analysis

The rule amendments and new form proposed today would clarify the operation of rule 24f–2 and would make the rule's filing deadlines more flexible under certain circumstances. The

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example, Instruction A.3 incorporates the proposed amendments to paragraph (b)(3) of rule 24f–2 regarding the filing requirements for companies that cease operations, and Instruction D.3 incorporates proposed paragraph (f) of rule 24f–2, under which a form would be deemed timely filed if the fund establishes that it timely transmitted the form to a third party that guaranteed delivery no later than the required filing date.

[24] The proposed instructions clarify how the rule applies to funds that offer more than one class or series of securities. Instruction A.3 of the form makes it clear that an issuer may file a single Rule 24f–2 Notice for more than one class or series, provided each class or series has the same fiscal year end and is registered on the same Securities Act registration statement. See Letter to Registrant, Feb. 25, 1994, at 3 (hereinafter, 1994 Generic Comment Letter). This instruction would not affect the method of allocating expenses among multiple classes of funds in accordance with existing orders or proposed rule 18f–3 under the 1940 Act; a multiple class fund could net credits for redemptions of shares of one class against sales of shares of another class only if the fund's exemptive order or plan under rule 18f–3 treats federal securities registration fees as a fund expense and does not provide for the allocation of those fees on a class by class basis. See Investment Company Act Rel. No. 19955 (Dec. 15, 1993) (58 FR 68074 (Dec. 23, 1993)) (proposing rule 18f–3).

[25] Rule 24f–2(b)(2) (17 CFR 270.24f–2(b)(2)).

[26] The information to be provided in items 7 and 8 is not required to determine the fee due, although rule 24f–2 currently requires funds to report this information in annual notices. This information assists the Commission staff and fund compliance personnel in determining whether the issuer has complied with the registration requirements of the Securities Act for shares other than those that are covered by the fund's rule 24f–2 declaration.

[27] Instruction B.5 would clarify that this item should be completed only if the issuer is using the netting provision of rule 24f–2(c) to calculate its registration fee. For further discussion of the proposed amendment, *see supra* ''Dividend Reinvestment Shares.''

[28] Section 24(e)(1) of the 1940 Act permits a fund to file a post-effective amendment to its Securities Act registration statement to increase the number of securities registered. Rule 24e–2 provides that the fee to be paid at the time of filing such post-effective amendment will be based on the maximum aggregate offering price at which the additional securities will be offered. This filing fee may be reduced by the amount of securities redeemed or repurchased by the issuer in its previous fiscal year, provided the issuer did not use those redemptions or repurchases under the netting provisions of rule 24f–2. Conversely, the issuer may not count redemptions and repurchases used to reduce the filing fee under rule 24e–2 for purposes of netting under rule 24f–2.

[29] In the act making appropriations for the Commission for fiscal 1994, Congress increased the rate of fees prescribed by section 6(b) of the Securities Act from one fiftieth of one percent to one twenty-ninth of one percent. Pub.L. 103–121 (Oct. 27, 1993). Congress extended the increased fee for fiscal year 1995. Pub.L. 103–352 (Oct. 13, 1994). The current fee rate will be in effect through September 30, 1995, unless further extended by Congress; otherwise, the rate will revert to one fiftieth of one percent. Instruction C.4 to the Form would remind funds to determine the current fee rate prior to filing, since the form may not be accepted for filing if the law requires the fee to be calculated at a rate higher than that used by the filer and an overpayment may result if the statutory rate in effect is lower than the rate on the form.

[30] Instruction C.2 specifies that the $100 minimum fee prescribed by section 6(b) of the Securities Act does not apply to fees payable under rule 24f–2. This provision would also be incorporated into paragraph (c) of the rule.

addition of paragraph (f) to rule 24f–2 would provide a means for companies to avoid late filings, which can result in significant costs to companies. This provision would relieve companies of the cost of preparing applications for exemption from the provisions of the rule and would relieve the Commission of the cost of reviewing such applications. Other proposed revisions to rule 24f–2 are intended to clarify the operation of the rule when an extraordinary business transaction occurs such as a merger or liquidation. The change in use of days rather than months to measure the filing deadlines under rules 24f–1 and 24f–2 would, in most cases, shorten the period to make required filings by a day or two, and thus could be viewed as a ''cost.'' The Commission believes, however, that this ''cost'' is outweighed by the added certainty and uniformity that such a change would bring to the operation of the rule. Proposed Form 24F–2 would ensure that funds provide consistent information in their Rule 24f–2 Notices and would facilitate the staff's review of annual notices. The Commission believes that the standard form and the interpretive guidance will reduce the burden of preparing and reviewing Rule 24f–2 Notices. The Commission invites specific comment on its assessment of the costs and benefits with respect to today's proposals, including estimates of any costs and benefits perceived by commenters.

VI. Summary of Regulatory Flexibility Act Analysis

The Commission has prepared an Initial Regulatory Flexibility Act Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments. The analysis explains that the proposed form and amendments would result in a reduction of reporting and compliance requirements for small entities. The proposed amendments would clarify several issues that have arisen in connection with rule 24f–2, and the proposed from would facilitate preparation of accurate Rule 24f–2 Notices. The analysis states that there are no alternative means to achieve the objectives of the proposed form and amendments. A copy of the Initial Regulatory Flexibility Act Analysis may be obtained by contacting Karen J. Garnett, Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Text of Proposed Rule Amendments

List of Subjects in 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17 Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

Part 270—[AMENDED]

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

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

* * * * *

§§ 270.24f–1 and 270.24f–2 [Amended]

2. The authority citations following §§ 270.24f–1 and 270.24f–2 are removed.

§ 270.24f–1 [Amended]

3. By amending § 270.24f–1, paragraphs (a) and (c), by revising the phrase ''6 months'' to read ''180 days''.

4. By amending § 270.24f–2 by revising paragraphs (b)(1), (b)(3), and (c) and by adding paragraphs (e) and (f) to read as follows:

§ 270.24f–2 Registration under the Securities Act of 1933 of an indefinite number of certain investment company securities.

* * * * *

(b)(1) If an issuer has filed a registration statement or post-effective amendment with a declaration authorized by paragraph (a)(1) of this section, it shall, with respect to such registration statement and within 180 days after the close of any fiscal year during which such declaration was in effect, file five copies of a notice (''Rule 24f–2 Notice'') with the Commission. The Rule 24f–2 Notice shall be filed on Form 24F–2 (17 CFR 274.24) and shall be prepared in accordance with the requirements of the form. The Rule 24f–2 Notice shall be accompanied by an opinion of counsel indicating whether the securities the registration of which the notice makes definite in number were legally issued, fully paid, and non-assessable, and the additional filing fee, if any, specified in paragraph (c) of this section.

* * * * *

(3) For purposes of this section, if a registrant ceases operations, the date the registrant ceases operations shall be deemed to be the close of its fiscal year. In the case of a liquidation, merger, or sale of all or substantially all of the registrant's assets, the registrant shall be deemed to have ceased operations for purposes of this section on the date all or substantially all of the registrant's assets are distributed, the date the merger becomes effective under state law, or the date the assets are transferred; provided, however, that a registrant whose registration statement is succeeded to by another registrant in a transaction described by § 230.414 of this chapter shall not be deemed to have ceased operations.

(c) A Rule 24f–2 Notice shall be accompanied by the payment of a filing fee with respect to the securities sold during the fiscal year in reliance upon registration pursuant to this section and shall be based upon the actual aggregate sale price for which such securities were sold. The filing fee shall be calculated in the manner specified in section 6(b) of the Securities Act of 1933 and the rules and regulations thereunder, except that the minimum filing fee required under section 6(b) shall not apply to fees due under this section. When the Rule 24f–2 Notice is filed not later than 60 days after the close of the fiscal year during which such securities were sold pursuant to this section, the filing fee to be paid as to such securities shall be the fee, if any, calculated in the manner specified in section 6(b) of the Securities Act of 1933 except that, for the purposes of such calculation, such fee shall be based upon the actual aggregate sale price for which securities (including, for this purpose, all securities issued pursuant to a dividend reinvestment plan) were sold during the issuer's previous fiscal year, reduced by the difference between

(1) The actual aggregate redemption or repurchase price of such securities of the issuer redeemed or repurchased by the issuer during such previous fiscal year; and

(2) The actual aggregate redemption or repurchase price of such redeemed or repurchased securities previously applied by the issuer pursuant to § 270.24e–2(a) in filings made pursuant to section 24(e)(1) of the Investment Company Act of 1940.

* * * * *

(e) To determine the date on which a Rule 24f–2 Notice must be filed with the Commission under paragraph (b)(1) of this section or the date that a Rule 24f–2 Notice must be filed in order to permit the issuer to calculate the fee due in accordance with the second sentence of paragraph (c) of this section, the first day of the 180 day or 60 day period, as the case may be, shall be the first calendar day of the fiscal year following the fiscal year for which the Rule 24f–2 Notice is to be filed.

Note to Paragraph (e): For example, a Rule 24f–2 Notice for a fiscal year ending on June

30 must be filed no later than December 28 or, if the issuer calculates the fee due in accordance with the second sentence of paragraph (c), no later than August 29. If the last day of the period falls on a non-business day (a Saturday, Sunday or federal holiday), the period shall end on the first business day thereafter, as provided by § 270.02.

(f) The date of filing of a Rule 24f–2 Notice with the Commission shall be the date on which the Rule 24f–2 Notice is actually received by the Commission; provided, however, that other than in the case of a Rule 24f–2 Notice filed by direct transmission (as such term is defined in rule 11 of Regulation S–T [17 CFR 232.11]) a Rule 24f–2 Notice received by the Commission after the date due under either paragraph (b)(1) or paragraph (c) of this section shall be deemed to have been timely filed if the issuer establishes that the Rule 24f–2 Notice had been transmitted timely to a third party company or governmental entity providing delivery services in the ordinary course of business, which guaranteed delivery of the Notice to the Commission no later than the required filing date.

Part 274—[AMENDED]

5. The authority citation for part 274 continues to read as follows:

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

6. Section 274.24 and Form 24F–2 are added to read as follows:

Note: The text of Form 24F–2 does not appear in the Code of Federal Regulations. A copy of Form 24F–2 is attached as Appendix I to this document.

§ 274.24 Form 24F–2, annual notice of securities sold pursuant to registration of an indefinite number of certain investment company securities.

Form 24F–2 shall be used as the annual report filed by face amount certificate companies, open-end management companies, and unit investment trusts pursuant to § 270.24f–2 for reporting securities sold during the fiscal year.

By the Commission.

Dated: February 1, 1995.

Margaret H. McFarland,

Deputy Secretary.

Appendix I

Form 24F–2—Annual Notice of Securities Sold Pursuant to Rule 24f–2

Read instructions at end of Form before preparing Form. Please print or type.

1. Name and address of issuer:

_____

2. Name of each series or class of funds for which this notice is filed:

_____

3. Investment Company Act File Number:

_____

Securities Act File Number:

_____

4. Last day of fiscal year for which this notice is filed:

_____

5. Check box if this notice is being filed more than 180 days after the close of the issuer's fiscal year for purposes of reporting securities sold after the close of the fiscal year but before termination of the issuer's 24f–2 declaration: [ ]

6. Date of termination of issuer's declaration under rule 24f–2(a)(1), if applicable (see Instruction A.5):

_____

7. Number and aggregate sale price of securities of the same class or series sold during the fiscal year which had been registered under the Securities Act of 1933 other than pursuant to rule 24f–2 in a prior fiscal year, but which remained unsold at the beginning of the fiscal year:

_____

8. Number and aggregate sale price of securities registered during the fiscal year other than pursuant to rule 24f–2:

_____

9. Number and aggregate sale price of securities sold during the fiscal year in reliance upon registration pursuant to rule 24f–2:

_____

10. Number and aggregate sale price of securities issued during the fiscal year in connection with dividend reinvestment plans, if applicable (see Instruction B.5):

_____

11. Number and aggregate sale price of securities sold during the fiscal year:

_____

12. Calculation of registration fee:

(i) Aggregate sale price of securities sold during the fiscal year in reliance on rule 24f–2 (from Item 9):	$____
(ii) Aggregate price of shares issued in connection with dividend reinvestment plans (from Item 10, if applicable):	+____
(iii) Aggregate price of shares redeemed or repurchased during the fiscal year (if applicable): ...	−____
(iv) Aggregate price of shares redeemed or repurchased and applied as a reduction to filing fees pursuant to rule 24e–2 (if applicable):	+____
(v) Net aggregate sale price of securities sold during the fiscal year in reliance on rule 24f–2 [line (i), plus line (ii), less line (iii), plus line (iv)] (if applicable):	_____
(vi) Multiplier prescribed by Section 6(b) under the Securities Act of 1933 or other applicable law or regulation (see Instruction C.5):	×____
(vii) Fee due [line (vi) multiplied by line (vii)]:	_____

Instruction: Issuers should complete lines (ii), (iii), (iv), and (v) only if the form is being filed within 60 days after the close of the issuer's fiscal year. See Instruction C.3.

13. Check box if fees are being remitted to the Commission's lockbox depository as described in section 3a of the Commission's Rules of Informal and Other Procedures (17 CFR 202.3a). [ ]

Date of mailing or wire transfer of filing fees to the Commission's lockbox depository:

_____

Signatures

This report has been signed below by the following persons on behalf of the issuer and in the capacities and on the dates indicated.

By (Signature and Title)* _____

_____

Date _____

* Please print the name and title of the signing officer below the signature.

Form 24F–2—Annual Notice of Securities Sold Pursuant to Rule 24f–2

Instructions

A. Rule as to Use of Form 24F–2

1. This form shall be used for annual notices required by rule 24f–2 under the Investment Company Act of 1940 (''Act'') [17 CFR 270.24f–2]. Annual notices on this form shall be filed within 180 days after the close of any fiscal year during which the issuer has in effect a declaration to register an indefinite number of securities pursuant to rule 24f–2(a)(1) of the Act. If the notice is being filed not later than 60 days after the close of the issuer's fiscal year, the fees due with the notice may be reduced (see Instruction C.3).

2. If the form contains insufficient space for the information required in any item, issuers should attach additional pages as necessary and indicate in the space provided on the form that additional pages are attached.

3. The issuer named in Item 1 of this form is the face amount certificate company, open-end management company, or unit investment trust that has filed a registration statement under the Securities Act of 1933 (''Securities Act'') [15 USC 77a *et seq.*] containing a declaration to register an indefinite number of securities under rule 24f–2(a)(1) of the Act. If the issuer has registered more than one class or series on the same Securities Act registration statement, the issuer may file a single Form 24F–2 for those classes or series, provided each class or series has the same fiscal year end. Issuers electing to calculate filing fees on a class-by-class or series-by-series basis, however, should include in their filings a separate Form 24F–2 for each class or series. All classes and series for which the form is filed should be identified in Item 2.

4. The Investment Company Act file number reported in response to Item 3 should be the number of the issuer's registration statement filed under the Investment Company Act of 1940. The

Securities Act file number in Item 3 refers to the registration statement filed to register an indefinite number of securities (beginning with either ''2–'' or ''33–'').

5. Item 4 requires issuers to report the date of the last day of the fiscal year for which the notice is filed. In the case of an issuer that ceases operations, the date it ceases operations is deemed the last day of its fiscal year for purposes of rule 24f–2.

6. Items 5 and 6 should be completed only if the issuer fails to file its Rule 24f–2 Notice within 180 days after the close of the issuer's fiscal year. In such cases, the issuer's declaration to register an indefinite number of shares will be terminated on the next business day, and the issuer should report the date of termination in Item 6. All such issuers must file a separate Form 24F–2 with respect to sales of securities made pursuant to the declaration during (1) the fiscal year for which the notice was not timely filed, and (2) the period after the close of the fiscal year but before the declaration was terminated. Issuers should check the box in Item 5 only if they are filing the form to report securities sold during the 180-day period after the close of the fiscal year but before the declaration was terminated.

B. Computation of Number of Securities

1. In response to Items 7 through 11, issuers may aggregate sales and redemptions of all classes or series for which the notice is being filed. Issuers must aggregate sales prices within each class or series. If the registration fee paid for securities reported in Items 7 and 8 was based on the offering price of those securities, issuers should report the offering price instead of the sale price.

2. Item 7 requires the issuer to report the number and dollar amount of securities of the same class or series as those for which the notice is being filed, if any, which were registered under the Securities Act other than pursuant to rule 24f–2. Such securities must have been registered prior to the fiscal year for which the notice is being filed and must remain unsold at the beginning of the fiscal year.

3. Item 8 refers to securities registered during the fiscal year other than pursuant to rule 24f–2. This item includes securities registered during the fiscal year by post-effective amendment pursuant to rule 24e–2.

4. Item 9 requires the issuer to report the securities sold during the fiscal year in reliance upon registration under rule 24f–2. This number must exclude securities registered other than under rule 24f–2 which were sold during the fiscal year, as reported in Item 8.

5. Item 10 should be completed only if the issuer is using the netting provision of Item 12. In such cases, the issuer should report the number and dollar amount of securities not registered under the Securities Act that were issued during the fiscal year in connection with dividend reinvestment plans.

6. Item 11 should be the sum of Items 7 through 9, but should not include Item 10. If the response does not equal the sum of those items, the issuer should attach to the form an explanation of the difference.

C. Computation of Registration Fees

1. Item 12 is a work sheet for calculating the filing fee due. Items 12 (i) and (ii) should be the same as the responses provided to Items 9 and 10, respectively.

2. The filing fee due shall be calculated in the manner specified in Section 6(b) of the Securities Act [15 U.S.C. 77f(b)]. Except as provided below, fees shall be based on the actual aggregate sale or redemption price at the date on which the securities were sold or redeemed. The $100 minimum fee prescribed by Section 6(b) does not apply to fees payable under rule 24f–2.

3. Lines (ii), (iii), (iv), and (v) of Item 12 (netting provisions) apply only to issuers that file the form not later than 60 days after the close of the fiscal year during which securities were sold. In such cases, the filing fee shall be based upon the net aggregate sale price for which such securities were sold during the issuer's previous fiscal year. Net aggregate sale price is the actual aggregate sale price, plus the value of shares issued in connection with dividend reinvestment plans, reduced by the difference between (1) the actual aggregate redemption or repurchase price of such securities of the registrant redeemed or repurchased by the issuer during the fiscal year, and (2) the actual aggregate redemption or purchase price of such redeemed or repurchased securities previously applied by the issuer pursuant to rule 24e–2(a) under the Act.

4. If the issuer's total redemptions and repurchases during the fiscal year exceed the issuer's sales during the fiscal year, the issuer may report on line (iii) of Item 12 only the amount of redemptions equal to sales during the fiscal year, as reported on line (i). The net aggregate sales price reported in line (v) of Item 12 cannot be less than zero.

5. The multiplier for calculation of the filing fee required by line (vi) of Item 12 is prescribed by Section 6(b) of the Securities Act. As of October 13, 1994, the multiplier was one twenty-ninth of one percent of the maximum aggregate offering price of the securities being registered. This multiplier is subject to change from time to time, without notice, by act of Congress through appropriations for the Commission or other laws. Issuers should determine the current fee rate prior to the time of filing by reference to Section 6(b) and any law or regulation affecting Section 6(b). Unless otherwise specified by act of Congress, the fee rate in effect at the time of filing applies to all securities sold during the fiscal year, regardless of whether the fee rate changed during the year.

6. Issuers are cautioned that rounding the percentage used to compute the fee may result in payment of an incorrect amount. No part of the filing fee is refundable. Fees must be paid by United States postal money order, certified bank check, or cash. Issuers should refer to rule 0–8 under the Act [17 CFR 270.0–8] and rule 3a under the Commission's Rules of Informal and Other Procedures [17 CFR 202.3a] for instructions on payment of fees to the Commission.

D. Signature and Filing Form; Exhibit

1. The form shall be signed on behalf of the issuer by an authorized officer of the issuer. The issuer shall file five copies of the completed form, at least one of which has been manually signed, with the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Acknowledgement of receipt by the Commission may be obtained by enclosing a self-addressed stamped postcard identifying the issuer and the form filed.

2. This form must be accompanied by the appropriate filing fee and an opinion of counsel indicating whether the securities were legally issued, fully paid, and non-assessable, and payment of the filing fee. (See paragraph (b)(1) of rule 24f–2.) A copy of the opinion of counsel should be attached to each copy of the form filed with the Commission. Electronic filers are reminded that the filing fee must reach the Commission not later than the day the Rule 24f–2 Notice is filed with the Commission.

3. This form will be deemed filed with the Commission on the date on which it is actually received by the Commission. Except in the case of a Rule 24f–2 Notice filed by means of ''direct transmission'' (as such term is defined in rule 11 of Regulation S–T [17 CFR 232.11], this form shall be deemed to have been timely filed if the issuer establishes that it timely transmitted the form and required fees to a third party company or governmental entity providing delivery services in the ordinary course of business, which guaranteed delivery of the form to the Commission no later than the required filing date. The Commission will not accept for filing any form accompanied by insufficient payment for the filing fee. Forms accompanied by insufficient payment shall be returned to the issuer for proper payment and shall not be deemed filed until receipt by the Commission of proper payment.

[FR Doc. 95–2901 Filed 2–6–95; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

RIN 1010–AB57

Notice of Establishment of the Indian Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Establishment of advisory committee.

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App., the Department of the Interior (Department) is giving notice of the establishment of the Indian Gas Valuation Negotiated Rulemaking Committee (Committee) to develop specific recommendations with respect to Indian gas valuation pursuant to its responsibilities imposed by the Federal Oil and Gas Royalty Management Act of

1982, 30 U.S.C. 1701 *et seq.* (FOGRMA). The Department has determined that the establishment of this Committee is in the public interest and will assist the Agency in performing its duties under FOGRMA. Copies of the Committee's charter will be filed with the appropriate committees of Congress and the Library of Congress in accordance with section 9(c) of FACA.

FOR FURTHER INFORMATION CONTACT: Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3900, Denver, Colorado, 80225–0165, telephone number (303) 231–3899, fax number (303) 231–3194.

SUPPLEMENTARY INFORMATION: Through an informal study group, MMS has conducted discussions to receive input on the current gas market and identify the challenges facing royalty valuation of gas produced from Indian leases for royalty purposes. The discussions have gone well and needs for regulatory changes have been identified. The MMS now believes that using a negotiated rulemaking committee to make specific recommendations with respect to Indian gas valuation would help the agency in developing a rulemaking. The Department is, therefore, establishing the Indian Gas Valuation Negotiated Rulemaking Committee.

Background

Since the publication of the March 1, 1988, gas valuation regulations many of MMS's constituents have expressed concern about the valuation basis for Indian gas royalties. Concern has focused upon the scope of the Secretary of the Interior's (Secretary) discretion to determine the values of lease substances for royalty purposes in a manner consistent with the Federal trust responsibility to Indian beneficiaries. Moreover, the implementation of specific valuation methodologies in paragraph 3(c) of standard Indian oil and gas leases, such as, dual accounting, and major portion analysis, has been problematic. Those difficulties include issues of comparability, certainty, and access to information. As part of Vice President Gore's National Performance Review (NPR), the Royalty Management Program recently initiated a Reinvention Laboratory Team to examine ways to streamline the royalty management process. One of the overall recommendations of that team was to improve the gas valuation process on Indian lands.

Statutory Provisions

FOGRMA (30 U.S.C. 1701 *et seq.*), Indian Mineral Development Act of 1982 (25 U.S.C. 2101–2108; and 25 U.S.C. 2 and 9), 30 CFR Part 206 (1993), 25 CFR Part 225 (1994), and Indian oil and gas lease and agreement terms.

The Committee and Its Process

To carry out the Secretary's trust responsibility to Indian mineral lessors, the MMS met during the winter and spring of 1994 with representatives of several tribes and allottee associations to receive input about the current gas market and identify regulatory changes needed to add certainty and simplicity to valuation, for royalty purposes, of gas produced from Indian leases. The purpose of the meetings was to ensure that Indian mineral lessors receive the maximum revenues from mineral resources on their land consistent with the Secretary's trust responsibility and lease terms. An informal study group format was used to obtain and clarify varying viewpoints. The first work product of the study group was publication, on August 4, 1994, of an Advance Notice of Proposed Rulemaking soliciting comments on new methodologies being considered to establish value on production from Indian leases. The materials received to date during the input sessions are available for inspection and copying at the address referenced above for Mr. Donald T. Sant. Members of the study group currently include tribal and allottee representatives involving from time to time the Navajo Nation, the Jicarilla Apache Tribe, the Native American Rights Fund, the Shoshone and Arapaho Tribes of the Wind River Reservation, the Northern Ute Tribe, the Southern Ute Tribe, the Council of Energy Resource Tribes, the Bureau of Indian Affairs (BIA), and MMS. To get specific input from the oil and gas industry, the study group anticipates adding new members representing the interests of large, medium, and small operators. New members will include representatives from Conoco Inc.—a large integrated company with significant production from Indian lands, Meridian Oil Inc.—a large independent company producing gas from Indian lands, Mid-Continent Oil and Gas Association—a trade association with members from both the major and independent oil and gas industry, and a private sector attorney from Holmes, Roberts and Owens—with clients that produce gas from Indian lands in the Rocky Mountain area.

The MMS and the study group participants believe that the input sessions have been mutually beneficial. As a result, MMS now believes it would be appropriate for the study group to transform itself and make specific regulatory recommendations for implementing a rulemaking regarding Indian gas valuation. The Department is therefore establishing the Indian Gas Valuation Negotiated Rulemaking Committee.

The recently enacted Negotiated Rulemaking Act of 1990 (Pub. L. 101–648) contemplates a ''convening'' process which involves identifying the potential parties and issues, publishing a notice of intent to form a committee, waiting 30 days for comments to be submitted responding to the notice, and only then proceeding with the establishment of the committee provided it meets the criteria of the Act. In this case, the study group process has served the same function as the convening—parties that would be significantly affected and the issues in controversy have been identified. The study group's discussions have also enabled the MMS to determine that the criteria for negotiated rules, as spelled out in the Negotiated Rulemaking Act, are met for this rule:

- The rule is needed, since royalty payors have considerable difficulty in complying with the current regulations at the time royalties are due, particularly in the current gas market.
- A limited number of identifiable interests will be significantly affected by the rule. Those parties are oil and gas companies who produce gas and pay royalties on Indian leases and Indian tribes and allottees who receive royalties from gas produced from Indian leases located on their lands.
- Representatives can be selected to adequately represent these interests, as reflected above.
- The interests are willing to negotiate in good faith to attempt to reach a consensus on a proposed rule.
- There is reasonable likelihood that the Committee will reach consensus on a proposed rule within a reasonable time. This determination has been made based on discussions of the study group, and hence is built on the developments to date.
- The use of the negotiation will not delay the development of the rule if time limits are placed on the negotiation. Indeed, its use will expedite it and the ultimate acceptance of the rule.

The Department is not proposing to issue a separate notice of intent to form a negotiated rulemaking committee for this rule. Given the evolution of this committee, the publication of such a notice would only slow down the

rulemaking process and the functions of the notice of intent have either already been met or are provided for in this notice. Moreover, the Negotiated Rulemaking Act specifically provides that its provisions are not mandatory.

The Negotiated Rulemaking Act does anticipate an outreach to ensure that people who were not contacted during the convening process can come forward to explain why they believe they would be significantly affected and yet not represented on the Committee or to argue why they believe the rule should not be negotiated. The MMS believes that the interests who would be significantly affected by this rule will be represented when representatives from Conoco Inc., Meridian Oil Inc., Mid-Continent Oil and Gas Association, and as attorney with clients from the oil and gas industry join the informal study group already in place which includes representatives from the Indian tribes, allottee associations, BIA, and MMS. If anyone believes that their interests will not be adequately represented by these organizations, they must demonstrate and document that assertion through an application submitted no later than 10 calendar days following publication of this notice. You may fax your documentation to (303) 231–3194.

Certification

I hereby certify that the Indian Gas Valuation Negotiated Rulemaking Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 30 U.S.C. 1701 *et. seq.*

Dated: January 31, 1995.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 95–2876 Filed 2–6–95; 8:45 am]

BILLING CODE 4130–MR–M

POSTAL SERVICE

39 CFR Part 111

System Certification Program (SCP)

AGENCY: Postal Service.

ACTION: Proposed program; extension of comment period.

SUMMARY: The Postal Service published in the **Federal Register** (59 FR 60927–60930) on November 29, 1994, a proposal for the System Certification Program. The proposed program would evaluate and recognize the overall ability of mailers to prepare high-quality mailings consistently and to enhance the ability of the Postal Service to verify and accept these mailings efficiently. The Postal Service requested comments by January 30, 1995. Owing to the needs of the mailing public, from whom several requests for additional time were received, the Postal Service is extending the comment period to March 1, 1995.

DATES: Comments must be received on or before March 1, 1995.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Business Mail Acceptance, 475 L'Enfant Plaza SW, room 8430, Washington, DC 20260–6808. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: George T. Hurst, (202) 268–5232.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–2914 Filed 2–6–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–069–2–6785b; FRL–5118–2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revision submitted by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet approving the redesignation to attainment and maintenance plan of the Paducah area because it meets the maintenance plan and redesignation requirements. EPA also proposes to approve the 1990 baseline emissions inventory of the area. In the final rules section of this **Federal Register**, the EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by March 9, 1995.

ADDRESSES: Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE, Atlanta, GA 30365

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality, 803 Schenkel Lane, Frankfort, KY 40601

FOR FURTHER INFORMATION CONTACT: Scott Southwick of the EPA Region IV Air Programs Branch at (404) 347–3555 extension 4207 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: November 28, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–2776 Filed 2–6–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN 1090–AA21

Natural Resource Damage Assessments: Type A Procedure for Great Lakes Environments

AGENCY: Department of the Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On August 8, 1994, the Department of the Interior issued a

notice of proposed rulemaking (59 FR 40319) to revise the natural resource damage assessment regulations. The natural resource damage assessment regulations establish procedures for assessing damages for injury to natural resources resulting from a discharge of oil into navigable waters under the Clean Water Act, or a release of a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act. The August 8, 1994, notice proposed a simplified ''type A'' procedure for assessing damages from relatively minor discharges or releases in the Great Lakes. The Department is extending the period for comment on the proposed rule and making it coextensive with the comment period for a similar proposed type A procedure for coastal and marine environments.

DATES: Comments will be accepted through July 6, 1995.

ADDRESSES: Comments should be sent in duplicate to the Office of Environmental Policy and Compliance, ATTN: NRDA Rule—GLE, Room 2340, Department of the Interior, 1849 C Street, NW, Washington, DC 20240 (regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Stephen F. Specht at (202) 208–3301, or SSPECHT@IOS.DOI.GOV on Internet.

SUPPLEMENTARY INFORMATION: The natural resource damage assessment regulations establish procedures that Federal, State, and Tribal natural resource trustees may use to obtain compensation from liable parties for natural resource injuries under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 et seq.) and the Clean Water Act, as amended (33 U.S.C. 1251 et seq.). The regulations provide an administrative process for conducting assessments as well as two types of technical procedures for the actual determination of injuries and damages. ''Type A'' procedures are standard procedures for simplified assessments requiring minimal field observation in cases of minor discharges or releases in certain environments. ''Type B'' procedures are site-specific procedures for detailed assessments in other cases.

On August 8, 1994, the Department of the Interior published a proposed rule to amend the regulations to include an additional type A procedure for assessing natural resource damages in Great Lakes environments. 59 FR 40319. The proposed procedure incorporates a computer model called the Natural Resource Damage Assessment Model for Great Lakes Environments Version 1.31 (NRDAM/GLE). The comment period on the August 8, 1994, proposed rule was originally set to close on November 7, 1994, but was extended through February 6, 1995. 59 FR 54877 (November 2, 1994).

On December 8, 1994, the Department published a proposed rule to revise an existing type A procedure for coastal and marine environments. 59 FR 63300. The proposed revised type A procedure for coastal and marine environments incorporates a computer model, called the Natural Resource Damage Assessment Model for Coastal and Marine Environments Version 2.2 (NRDAM/CME), that uses the same computer modelling approach as the proposed NRDAM/GLE. The comment period on the December 8, 1994, proposed rule was originally set to close on February 6, 1995.

The Department has received numerous requests for additional time to comment on the proposed type A procedure for coastal and marine environments. In a separate notice appearing elsewhere in today's **Federal Register**, the Department is extending the comment period on the proposed type A procedure for coastal and marine environments through July 6, 1995.

A number of commenters have noted the structural similarities between the proposed NRDAM/CME and the proposed NRDAM/GLE and have requested that they be allowed to review the two type A procedures concurrently. Although the proposed NRDAM/CME and the proposed NRDAM/GLE incorporate distinct geographic databases and information, there are substantial similarities between the two proposed rules and computer models. Therefore, the Department has decided to allow for concurrent public review of the two proposed models and consolidated consideration of the comments received on the proposed rules. The Department is extending the comment period for the proposed type A procedure for Great Lakes through July 6, 1995, to make it coextensive with the extended comment period for the proposed type A procedure for coastal and marine environments. Any comment that is submitted on only one of the proposed rules but that is relevant to both rules will be considered in both rulemakings.

Dated: February 2, 1995.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management, and Budget.

[FR Doc. 95–3023 Filed 2–6–95; 8:45 am]

BILLING CODE 4310–RG–P

43 CFR Part 11

RIN 1090–AA23

Natural Resource Damage Assessments: Type A Procedure for Coastal and Marine Environments

AGENCY: Department of the Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On December 8, 1994, the Department of the Interior issued a notice of proposed rulemaking (59 FR 63300) to revise the natural resource damage assessment regulations. The natural resource damage assessment regulations establish procedures for assessing damages for injury to natural resources resulting from a discharge of oil into navigable waters under the Clean Water Act, or a release of a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act. The December 8, 1994, notice proposed revisions to a simplified ''type A'' procedure for assessing damages from relatively minor discharges or releases in coastal and marine environments. The Department is extending the period for comment on the proposed rule and making it coextensive with the comment period for a similar proposed type A procedure for Great Lakes environments.

DATES: Comments will be accepted through July 6, 1995.

ADDRESSES: Comments should be sent in duplicate to the Office of Environmental Policy and Compliance, ATTN: NRDA Rule—CME, Room 2340, Department of the Interior, 1849 C Street, NW, Washington, DC 20240 (regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Stephen F. Specht at (202) 208–3301, or SSPECHT@IOS.DOI.GOV on Internet.

SUPPLEMENTARY INFORMATION: The natural resource damage assessment regulations establish procedures that Federal, State, and Tribal natural resource trustees may use to obtain compensation from liable parties for natural resource injuries under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 et seq.) and the Clean Water Act, as amended (33 U.S.C. 1251 et seq.). The regulations provide an administrative process for conducting assessments as well as two types of technical procedures for the actual determination of injuries and damages. ''Type A'' procedures are standard procedures for simplified assessments requiring minimal field

observation in cases of minor discharges or releases in certain environments. ''Type B'' procedures are site-specific procedures for detailed assessments in other cases.

On December 8, 1994, the Department published a proposed rule to revise an existing type A procedure for coastal and marine environments. 59 FR 63300. The proposed revised type A procedure for coastal and marine environments incorporates a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments Version 2.2 (NRDAM/CME). The comment period on the December 8, 1994, proposed rule was originally set to close on February 6, 1995.

The Department has received numerous requests for additional time to comment on the proposed type A procedure for coastal and marine environments. The requesters have emphasized the large volume of technical documentation accompanying the NRDAM/CME, all of which is subject to public review and comment. Some requesters are assembling multidisciplinary teams to assist in the review of the model and associated databases. The Department appreciates the level of technical review that is underway and agrees with the requesters that extending the time for public review and comment on the proposed rule is appropriate.

Furthermore, on August 8, 1994, the Department published a proposed rule to amend the natural resource damage assessment regulations to include an additional type A procedure for assessing damages in Great Lakes environments. 59 FR 40319. The proposed type A procedure incorporates a computer model, called the Natural Resource Damage Assessment Model for Great Lakes Environments Version 1.31 (NRDAM/GLE), that uses the same computer modelling approach as the proposed revised NRDAM/CME. The comment period on the August 8, 1994, proposed rule was originally set to close on November 7, 1994, but was extended through February 6, 1995. 59 FR 54877 (November 2, 1994).

A number of commenters have noted the structural similarities between the proposed NRDAM/CME and the proposed NRDAM/GLE and have requested that they be allowed to review the two type A procedures concurrently. Although the proposed NRDAM/CME and the proposed NRDAM/GLE incorporate distinct geographic databases and information, there are substantial similarities between the two proposed rules and computer models. Therefore, the Department has decided to allow for concurrent public review of the two proposed models and consolidated consideration of the comments received on the proposed rules. In a separate notice appearing elsewhere in today's **Federal Register**, the Department is extending the comment period for the proposed type A procedure for Great Lakes through July 6, 1995, to make it coextensive with the extended comment period for the proposed type A procedure for coastal and marine environments. Any comment that is submitted on only one of the proposed rules but that is relevant to both rules will be considered in both rulemakings.

Dated: February 2, 1995.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management, and Budget.

[FR Doc. 95–3024 Filed 2–6–95; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter VI

[I.D. 013195A]

Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands; Public Hearings on the Draft Fishery Management Plan

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

ACTION: Public hearings; request for comments.

SUMMARY: The Caribbean Fishery Management Council will hold public hearings on the Draft Fishery Management Plan for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (FMP). Testimony may be presented at any of the hearings.

DATES: Written comments on the Draft FMP will be accepted on or before March 10, 1995. The hearings will be held in February and March 1995 from 7 p.m. to 10 p.m. See **SUPPLEMENTARY INFORMATION** for specific dates of the hearings.

ADDRESSES: Comments should be sent to, and copies of the Draft FMP are available from, Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918. The hearings will be held in Puerto Rico and the U.S. Virgin Islands. See **SUPPLEMENTARY INFORMATION** for locations of the hearings.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolón, 809–753–6910.

SUPPLEMENTARY INFORMATION: The proposed management measures would: (1) Prohibit the possession of undersized queen conch less than 9 inches (228.6 mm) total length (as measured from the tip of the spire to the distal end of the shell) or less than 3/8–inch (9.5 mm) lip thickness measured at any location along the lip; all species in the fishery management unit must be landed attached to the shell; (2) prohibit the sale of undersized queen conch and queen conch shells; (3) establish a bag limit for personal-use fishers of 3 queen conch per day, not to exceed 12 per boat; licensed commercial fishers may land 75 queen conch per day; (4) require conch harvested under these provisions to conform to the minimum size specifications and be landed attached to the shell; (5) establish an annual closed harvest season from July 1 through September 30 for queen conch; and (6) prohibit the harvest of queen conch in the exclusive economic zone (EEZ) using scuba or hookah gear; any person with queen conch and either scuba or hookah gear aboard a vessel in the EEZ will be presumed in violation of this prohibition.

The hearings are scheduled from 7 p.m. to 10 p.m. as follows:

1. Wednesday, February 15, 1995—Centro de Usos Múltiples, Culebra, PR.
2. Thursday, February 16, 1995—Salón Asamblea Municipal de la Casa Alcaldia, Vieques, PR.
3. Tuesday, February 21, 1995—Antibes Hotel, Cabo Rojo, PR.
4. Wednesday, February 22, 1995—Mesón Criollo Restaurant, Fajardo, PR.
5. Monday, February 27, 1995—Carabelle Hotel, Christiansted, St. Croix, U.S.V.I.
6. Tuesday, February 28, 1995—Point Pleasant Hotel, St. Thomas, U.S.V.I.
7. Wednesday, March 1, 1995—Boulon Center, St. John, U.S.V.I.

Dated: February 1, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 95–2894 Filed 2–1–95; 4:58 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 25

Tuesday, February 7, 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

Forest Service

South Fork Yaak EIS; Kootenai National Forest; Lincoln County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of a Proposed Action in the South Fork Yaak Physiographic Area located about 24 air miles northeast of Troy, Montana. This EIS will tier to the Kootenai National Forest Land and Resource Management Plan and EIS, which provide overall guidance for achieving the desired forest condition of the area.

The Proposed Action was developed in response to the major fire events that burned over 3,000 acres in the Pink Mt. and Fowler Creek areas in August 1994. The proposal is to salvage timber, construct and reconstruct roads, reduce fuel concentrations, improve riparian and wildlife habitat, reforest timber stands, and improve wildlife security. These are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). Part of the proposed project's activities lie within an Inventoried Roadless Area (IRA), Zulu #166.

The Proposed Action was developed using various principles of Ecosystem Management. In doing so, the post-fire conditions were characterized at a broad scale with consideration to natural processes that historically shaped this ecosystem. A Forest Plan exception to certain Management Area standards may be needed to implement this alternative.

DATES: Writen comments should be received on or before March 9, 1995.

ADDRESSES: The Responsible Official is Robert L. Schrenk, Forest Supervisor, Kootenai National Forest. Send written comments and suggestions on the proposed management activities or a request to be placed on the project mailing list to Michael L. Balboni, District Ranger, Three Rivers Ranger District, Kootenai National Forest, 1437 North Highway 2, Troy, Montana, 59935.

FOR FURTHER INFORMATION CONTACT: Jack Zearfoss, South Fork Yaak EIS Team Leader, Three Rivers Ranger District (406) 295–4693.

SUPPLEMENTARY INFORMATION: The timber salvage activities under consideration would occur within the 45,197 acre South Fork Yaak Physiographic Area. The specific areas considered are the Fowler Creek, Zulu Creek, and Clay Mt. areas. Primary salvage activities would occur in two specific fire-affected areas: the Fowler Fire (2,589 acres) and the Pink Mt. Fire (475 acres). Previous planning efforts (Zulu Smoot Environmental Impact Statement) have identified other salvage opportunities outside of the fire-affected areas which are included in this Proposed Action.

The project area lies within all or portions of T35N, R31W, Sections 10, 11, 14, 15, 21, 22, 23, 26, 27, 33, and 34, T34N, R31W, Sections 3 and 4, T35N, R32W, Sections 36, T34N, R32W, Sections 1, and 12 and Sections 6, and 7 T43N, R31W, PMM, Lincoln County, Montana.

The Proposed Action would harvest about 16.2 million board feet. Ninety-seven percent of this would be dead or high-risk trees. Three percent would be live trees. Conventional cable and ground-based logging systems would be utilized for harvest operations. This would occur from 33 harvest units totalling 1156 acres. Fuel reduction accomplished in conjunction with harvest includes grapple piling and prescribed burning. Reforestation is proposed on approximately 1383 acres of which 227 are burned plantations. Approximately 3.51 miles of new road would be constructed and 6.99 miles of existing road would be reconstructed. Road maintenance would occur on about 25.61 miles of existing road. Planting for wildlife forage would occur on 94 acres. Revegetation in riparian areas would occur on 35 acres. Placement of large woody debris would occur along 5.0 miles of stream channel. Existing roads would be rehabilitated through a variety of methods including the removal of approximately 25 in-stream culverts, recontouring of 3.44 miles of road, ripping and seeding of 22.65 miles of road and seeding of 3.12 miles of road.

Approximately 218 acres proposed for harvest lie within the Zulu #166 IRA. Approximately 1.41 miles of road construction would occur within the area.

The primary purposes of the Proposed Action are:

(1) To revegetate the fire-affected areas as quickly as possible

(2) To reduce the potential for future high intensity wildfires

(3) To salvage fire and insect killed trees

(4) To contribute to the supply of timber to local mills

(5) To facilitate watershed recovery

(6) To accelerate the recovery of some wildlife habitat.

The purpose of road construction and reconstruction is to facilitate access to the areas to be harvested and treated.

The decision to be made is, what action (if any) should be taken in the South Fork Yaak Physiographic Area to:

(1) Recover the fire affected areas using Ecosystem Management principles

(2) Provide goods and services to the local economy and U.S. citizens

(3) Reduce the risk for high-intensity wildfire in the future

(4) Develop and manage the road system to facilitate the removal of timber, post harvest treatments, reduce sedimentation, restore stream channel equilibrium, and maintain or improve wildlife habitat.

The Kootenai Forest Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The areas of proposed activities would occur within Management Areas 12, 13, 14, 15, 17 and 19. Timber harvest would occur in all Management Areas. Road construction would occur in Management Areas 12, 13, 14, 15, and 17. Below is a brief description of the applicable management direction.

Management Area 12.—These are areas that contain productive timber

lands which are suitable for timber harvest, provided that big game summer habitat objectives are met.

Management Area 13.—These are areas that contain special habitat characteristics which are allocated as Old-Growth. Local road construction is permitted, providing that they are restricted following use to protect snag characteristics.

Management Area 14.—These are areas that contain productive timber lands which are suitable for timber harvest, provided that grizzly bear habitat objectives are met.

Management Area 15.—These are areas that contain productive timber lands which are suitable for timber harvest while providing for other resource values.

Management Area 17.—These are areas that contain productive timber lands which are suitable for timber harvest while achieving scenery management objectives in major travel routes.

Management Area 19.—These are areas that contain steep slopes requiring only activities which minimize surface disturbance and maintain a health vegetative cover.

The Forest Service will consider a range of alternatives, One of these will be the ''No Action'' alternative, in which none of the proposed activities will be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the desired conditions, as well as to respond to the issues and other resource values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on National Forest Lands will be considered. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis. It will start with the initial scoping process (40 CFR 1501.7) which will begin with the publication of the notice. In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in or affected by the Proposed Action. Public meetings are scheduled for February 28th in Troy, Montana, and March 1st at the Upper Ford Work Center on the Kootenai National Forest. Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues or those which have been covered by a previous environmental analysis, such as the Kootenai Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the Proposed Action and alternatives (i.e. direct, indirect, and cumulative effects).
6. Determine potential cooperating agencies and task assignments.

The principle environmental issues identified to date are related to:

1. Revegetation for wildlife habitat and watershed recovery.
2. Security for Threatened, Endangered, and Sensitive species.
3. Reallocation of designated Old-Growth.
4. Protection of fish habitat and water quality.
5. Sustaining natural processes.
6. Entry into Roadless areas.

Other issues commonly associated with salvage harvesting and road construction include: heritage resources, soils, and scenery management. The list may be verified, expanded, or modified based on public scoping for this proposal.

Consultation with the U.S. Fish and Wildlife Service has been ongoing with regard to listed species. The Montana Department of Health and Welfare-Division of Environmental Quality, Montana Department of Fish and Game, and the Kootensai Salish Indian Tribe will also be consulted.

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft EIS, which is expected to be filed with the EPA and available for public review in June, 1995. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register**. The comments received will be analyzed and considered in preparation of a final EIS, which will be accompanied by a Record of Decision. The final EIS is expected to the filed in September, 1995.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages Inc.* v. *Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 30 day comment period so that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I have the final authority for issuing a decision regarding this proposal. I have delegated the responsibility of preparing the EIS to Three Rivers District Ranger, Michael Balboni. My address is Kootenai National Forest, Supervisor's Office, 506 Hwy 2 West, Libby, MT 59923.

Dated: January 30, 1995.

Robert L. Schrenk

Forest Supervisor.

[FR Doc. 95–2953 Filed 2–6–95; 8:45 am]

BILLING CODE 3410–11–M

Fall Creek Postfire Project, Payette National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: In the summer and fall of 1994, the Blackwell Fire covered 56,000 acres of Payette National Forest northeast of McCall, Idaho. The Forest Service intends to prepare an Environmental Impact Statement for the Fall Creek portion of the wildfire area to assess and disclose the environmental effects of a proposal. The purpose of the Proposed Action is to remove fire-killed and imminently dead timber, recover its economic value and meet socio-economic demands of local communities, reduce fuel loading, reforest the area, and retain and enhance wildlife habitat.

All actions include provisions for snags, dead and down woody debris, visual quality, cultural resources and TES species, and would comply with the Bull Trout Conservation Agreement and PACFISH guidelines for water quality and fisheries.

This project would be accomplished through a salvage sale of burned timber on about 1,000 acres and commercial thinning of about 100 acres of western larch stands, using helicopter logging (no road construction or reconstruction); planting of conifer seedlings; and establishing owl and goshawk nest structures. The salvage sale proceeds would finance the other activities.

The project is approximately three miles northeast of McCall, in the Fall Creek drainage, a tributary to Payette Lake. It lies within the Secesh Roadless Area.

FOR FURTHER INFORMATION CONTACT: Linda Fitch, McCall District Ranger (208 634–0400); or Chris Brunner, Interdisciplinary Team Leader (208 634–0421).

SUPPLEMENTARY INFORMATION: From July to October 1994, wildfires covered a total of about 290,000 acres of Payette National Forest. The Blackwell Fire was ignited in early August by lightning strikes three miles northeast of the city of McCall, and eventually covered about 56,000 acres until stopped by winter weather in mid-October. Within this perimeter, it burned in a mosaic pattern of fire intensities including some unburned areas.

In October, Payette National Forest convened three interdisciplinary groups of Forest resource specialists to assess the landscapes affected by the fires: one each for the Blackwell landscape, the Corral landscape, and the Chicken landscape. Each landscape was composed of two or more watersheds. The Blackwell landscape encompassed over 93,000 acres in the Upper North Fork Payette River and Payette Lake watersheds. The Forest also convened a team to assess the broad-scale area, which encompasses the three landscapes plus the Thunderbolt landscape to the south.

In January 1995, each landscape team produced a landscape assessment encompassing their analysis area. The teams used a ecosystem-based approach to assess the fires' effects and to propose target landscape conditions, based on the Forest Plan and the historic range of variation. Each team identified management opportunities that could be implemented this year and in the future to move their postfire landscape toward the target landscape design. The Forest leadership team selected a package of proposed actions for each landscape to bring forward into the National Environmental Policy Act (NEPA) analysis process.

The Proposed Action for Fall Creek described herein is one product of the Blackwell landscape assessment: it proposes the high-priority short term projects related to timber salvage and other postfire resource opportunities consistent with the target landscape design for the Blackwell landscape.

Burn intensities, as defined by degree of three mortality, in the Blackwell landscape varied from intensely burned to unburned. Within the Blackwell landscape, which includes portions of both the Blackwell and Corral fires, approximately 29,000 acres burned at high intensity (tree mortality greater than 90%), 12,800 acres at moderate intensity (tree mortality greater than 30% and less than 90%), and 6,400 acres at low intensity (tree mortality less than 30%). The remainder of the landscape did not burn.

An estimated 28,100 acres of the Secesh Roadless Area lie within the Blackwell landscape.

Simultaneous with this Notice of Intent, Payette National Forest is also publishing two Notices of Intent for other postfire proposals. The ''Lower South Fork Salmon River Postfire Project'' EIS will cover the Chicken landscape, and the ''Main Salmon River Postfire Projects'' EIS will cover the Corral landscape. The Forest Service will analyze the two projects concurrently with this ''Fall Creek Postfire Project'' proposal. It will also analyze in an environmental assessment (EA) the ''North Fork Payette River Postfire Project'' proposal covering another portion of the Blackwell landscape.

Purpose and Need

The need is to move toward the desired future conditions, goals and objectives as described in the Payette Forest Plan and the target landscape design in the Blackwell Landscape Assessment. The Blackwell Landscape Assessment was tiered to the Forest Plan and identifies a strategy to implement the plan in an exosystem management context. The proposed action is derived from management opportunities in the landscape assessment. The purpose of each element of the proposed action is:

Salvage: To recover economic value of burned timber for counties and timber-related industries and provide wood fiber for society. Past experience with wildfire timber recovery in south-central Idaho indicates that prompt harvest is needed to recover the economic value of fire-killed trees. The trees in the project area, mostly Douglas-fir, grand fir, and lodgepole pine, are expected to lose an estimated 50% of their economic value by the end of 1996. Part of the salvage sale proceeds will finance the regeneration and wildlife habitat elements of the project.

Thinning: To perpetuate a larch stand for wildlife habitat and reduce fuel loading adjacent to State and private land. This harvest needs to take place concurrently with the salvage due to economic efficiency.

Regeneration: To promptly return to production those lands within the suited base that contribute to the allowable sale quantity.

Wildlife: To replace habitat components lost in the fire.

Proposed Action

The Proposed Action has the following components:

1. Salvage harvest fire-killed and imminently dead trees on approximately 1,000 acres. Harvest by helicopter to protect domestic watershed conditions and fish habitat. Construct two helicopter landings: no road construction or reconstruction is proposed. Harvesting would comply with the Draft Bull Trout Conservation Agreement. The proposal would not harvest within PACFISH Riparian Habitat Conservation Areas, which include riparian corridors along perennial and intermittent streams, wetlands, landslides, and landslide prone areas, where riparian-dependent resources receive primary emphasis. Site specific integrated prescriptions to provide for snags/large wood debris, visual quality, cultural resource protection, and TES plant and animal needs would be developed consistent with the Forest Plan, landscape assessment, and current policy/research.

2. Commercially thin unburned western larch stands on 100 acres. Harvest by helicopter only; no road construction or reconstruction is proposed.

3. Regenerate productive forest suited acres within the project area by planting conifer seedlings or ensuring natural regeneration.

4. Construct great gray owl and goshawk nest platforms adjacent to burned areas.

Forest Plan Amendment

Amendment to the Forest Plan may be needed to:

1. Allow plantation stocking levels below Forest Plan standards and guidelines to reflect natural stand conditions.

2. Allow postfire activities as described in the Fall Creek Postfire Project to proceed without on Order 2 soil survey. Soil information of sufficient detail to address NEPA issues and required effects disclosure will be provided.

Preliminary Issues

The Forest Service has identified six preliminary issues raised by the Proposed Action:

1. Effects on water quality in the North Fork Payette River and Payette Lake, which supplies domestic water to McCall. The river is designated a Stream Segment of Concern by the State of Idaho.
2. Effects on fish habitat in the North Fork Payette River and its tributaries, habitat for westslope cutthroat trout and former habitat for bull trout (sensitive species). The North Fork Payette River is a key watershed in the draft Bull Trout Conservation Agreement between Idaho Fish and Game, U.S. Fish and Wildlife Service, and U.S. Forest Service.
3. Effects on sensitive wildlife species including the boreal owl and three-toed woodpecker.
4. Effects on visual quality as seen from the city of McCall.
5. Effects on wilderness characteristics within the Secesh Roadless Area.
6. The economic efficiency of proposed projects, and effects on soci-economic and social systems around the Payette National Forest.

Possible Alternatives

The Forest Service has identified two alternatives to the Proposed Act: a no action alternative, and an alternative that uses tractor, skyline, and helicopter logging with road construction. As the public raises additional logging with road construction. As the public raises additional issues and provides more information, the Forest may develop additional alternatives.

Decisions To Be Made

The Payette National Forest Supervisor will decide:

Whether to allow salvage logging and/or thinning.

If so, where and how to harvest.

Whether to plant after harvest.

Whether to implement the wildlife projects.

What management requirements and mitigation measures are required as part of the project.

What monitoring requirements are appropriate to evaluate project implementation. And,

What Forest Plan amendment(s) are required.

Public Involvement Meetings

The Forest will hold five public scoping meetings to introduce the Proposed Actions for the three burned landscapes and to invite public comment: Riggins—February 15, 4–9 p.m., City Hall. McCall—February 16, 4–9 p.m., McCall Smokejumper Base. Council—February 21, 4–9 p.m., Council Ranger District office. Boise—February 23, 4–9 p.m., Red Lion Downtowner. Grangeville—February 27, 1–3 p.m., Nez Perce National Forest Supervisor's office. In addition, Forest Service personnel will make added public presentations on request.

Agency/Public Contacts

The Forest is mailing a summary of the Proposed Action, preliminary issues, and background information on the analysis to key individuals, groups, and agencies for comment. The mailing list includes those on the Payette postfire mailing list and those generally interested in Payette National Forest NEPA projects.

Schedule

Draft Environmental Impact Statement, May 1995. Final EIS, August 1995. Implementation, September 1995.

Comments

Comments on the Proposed Action and analysis should be received in writing on or before March 10, 1995. Send comments to: Forest Supervisor, Payette National Forest, P.O. Box 1026, 106 W. Park Street, McCall, ID 83638; telephone (208) 634–0700; FAX (208) 634–0281.

The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions [*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the Draft Environmental Impact Statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts [*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1002 (9th Cir., 1986): and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is important that those interested in this Proposed Action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues raised by the Proposed Action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

David F. Alexander, Forest Supervisor, Payette National Forest, P.O. Box 1026, 106 West Park, McCall, ID 83638.

Dated: January 31, 1995.

David F. Alexander,

Forest Supervisor.

[FR Doc. 95–2915 Filed 2–6–95; 8:45 am]

BILLING CODE 3410–11–M

Main Salmon River Postfire Project, Payette National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: In the summer and fall of 1994, the Corral Fire covered nearly 116,000 acres of Payette National Forest north of McCall, Idaho. The Forest Service intends to prepare an Environmental Impact Statement for portions of the wildfire area to assess and disclose the environmental effects of a proposal. The purpose of the Proposed Action is to remove fire-killed and imminently dead timber, recover its economic value and meet socio-economic demands of local communities, reforest the area, retain and enhance wildlife habitat, reduce soil erosion and decrease sedimentation, and maintain fish habitat.

All actions include provisions for snags, dead and down woody debris,

visual quality, cultural resources, TES species, and wild and scenic river study corridors, and would comply with the Bull Trout Conservation Agreement and the PACFISH guidelines for water quality, and fisheries.

This project would be accomplished through a salvage sale of burned timber on about 8,800 acres, using helicopter logging, skyline logging, and tractor logging; approximately 3.5 miles of road construction in the upper Elkhorn Creek area (followed by road closure); planting of conifer seedlings; and reconstruction or repair of roads to improve vehicle passage and improve watershed conditions. The salvage sale proceeds would help finance the other activities.

The project lies 20 to 35 miles north of McCall, in the Elkhorn, French, Fall, and Carey Creek drainages, tributary to the main Salmon River. It lies partly within the French Creek/Patrick Butte Roadless Area.

FOR FURTHER INFORMATION CONTACT: Kimberly Brandel, New Meadows District Ranger (208 634–0300); or Tracy Beck , Interdisciplinary Team Leader (208 634–0780).

SUPPLEMENTARY INFORMATION: From July to October 1994, wildfires covered a total of about 290,000 acres of Payette National Forest. The Corral Fire was ignited in early August by lightning strikes northwest of the city of McCall, and eventually covered about 116,000 acres until stopped by winter weather in mid-October. Within this perimeter, it burned in a mosaic pattern of fire intensities including some unburned areas.

In October, Payette National Forest convened three interdisciplinary groups of Forest resource specialists to assess the landscapes affected by the fires: one each of the Blackwell landscape, the Corral landscape, and the Chicken landscape. Each landscape was composed of two or more watersheds. The Corral landscape encompassed over 203,000 acres in French Creek and Lake Creek watersheds and portions of California Creek and Lower Main Salmon watersheds. The Forest also convened a team to assess the broad-scale area, which encompasses the three landscapes plus the Thunderbolt landscape to the south.

In January 1995, each landscape team produced a landscape assessment encompassing their analysis area. The teams used a ecosystem-based approach to assess the fires' effects and to propose target landscape conditions, based on the Forest Plan and the historic range of variation. Each team identified management opportunities that could be implemented this year and in the future to move their postfire landscape toward the target landscape design. The Forest leadership team selected a package of proposed actions for each landscape to bring forward into the National Environmental Policy Act (NEPA) analysis process.

The Proposed Action for the main Salmon River described herein is one product of the Corral landscape assessment: it proposes the high-priority short term projects related to timber salvage and other postfire resource opportunities consistent with the target landscape design for the Corral landscape.

Burn intensities, as defined by degree of tree mortality, in the Corral landscape varied from intensely burned to unburned. Within the Corral landscape, which includes a portion of the Corral fire, approximately 22,500 acres burned at high intensity (tree mortality greater than 90%), 19,600 acres at moderate intensity (tree mortality greater than 30% and less than 90%), and 25,300 acres at low intensity (tree mortality less than 30%). The remainder of the landscape did not burn.

An estimated 90,220 acres of the French Creek/Patrick Butte Roadless Area lie within the Corral landscape.

Simultaneous with this Notice of Intent, Payette National Forest is also publishing two Notices of Intent for other postfire proposals. The ''Fall Creek Postfire Project'' EIS will cover part of the Blackwell landscape, and the ''Lower South Fork Salmon River Postfire Project'' EIS will cover the Chicken landscape. The Forest Service will analyze the two projects concurrently with this ''Main Salmon River Postfire Project'' proposal.

Purpose and Need

The need is to move toward the desired future conditions, goals and objectives as described in the Payette Forest Plan and the target landscape design in the Corral Landscape Assessment. The Corral Landscape Assessment was tiered to the Forest Plan and identifies a strategy to implement the plan in an ecosystem management context. The proposed action is derived from management opportunities in the landscape assessment. The purpose of each element of the proposed action is:

Salvage: To recover economic value of burned timber for counties and timber-related industries and provide wood fiber for society. Past experience with wildfire timber recovery in south-central Idaho indicates that prompt harvest is needed to recover the economic value of fire-killed trees. The trees in this project area, mostly Douglas-fir, spruce/fir, and lodgepole pine, are expected to lose 30–60 percent of their economic value by the end of 1996. Part of the salvage sale proceeds will finance the regeneration, watershed improvement, and recreation elements of the project.

Regeneration: To promptly return to production those lands within the suited base that contribute to the allowable sale quantity.

Watershed projects: To improve watershed conditions to meet beneficial uses (fish habitat and domestic water supply).

Recreation: To improve recreation user access and reduce safety hazards caused by the fire.

Proposed Action

The Proposed Action has the following components:

1. Salvage harvest fire killed and imminently dead trees on approximately 8,800 acres using helicopter, skyline, and tractor. Construct helicopter landings along roads. Specifically, in Elkhorn Creek drainage, harvest within 3,540 acres, construct approximately 3.5 miles of road (close the new road to the public during and after salvage sale activities), and improve 12 miles of road. In French Creek drainage, harvest within 3,510 acres and improve 7.5 miles of road. In Fall and Carey Creek drainages, harvest within 1,750 acres and improve 25 miles of road. In the Lake Creek drainage, the Proposed Action includes road improvements and other resource improvement projects, but no salvage timber harvest. All road improvement work is detailed in item 3. of the proposed action. The proposal would not salvage harvest within the French Creek wild and scenic study corridor. It would not salvage harvest within PACFISH Riparian Habitat Conservation Areas, which include riparian corridors along perennial and intermittent streams, wetlands, landslides, and landslide prone areas, where riparian-dependent resources receive primary emphasis. Harvesting would comply with the Draft Bull Trout Conservation Agreement. Site-specific integrated prescriptions to provide for snag/down woody debris retention, visual quality, cultural resource protection, and TES plant and animals would be developed consistent with the Forest Plan, landscape assessment and current policy/research.

2. Regenerate productive forest suited acres within the project area by planting conifer seedlings or ensuring natural regeneration.

3. Reconstruct or repair roads to facilitate log haul, improve vehicle

passage and/or improve watershed conditions, by repairing surface on six road segments, improving 11 stream crossings, and closing one road. Specifically, repair road surface, ditches, and/or fix stream crossings on segments of: Road #1339, Road #318, Road 321, Road #246, Road #1333, Road #592, Road #1340, Road #308, Road #1337, Road #1279, Road #565.

4. Remove hazard trees along recreation trails. There are opportunities to improve and relocate segments of trails within sale area boundaries along Forest Service trails # 115, 145, 149, 374, 500, and 504.

Forest Plan Amendment

Amendment to the Forest Plan may be needed to:

1. Allow plantation stocking levels below Forest Plan standards and guidelines to reflect natural stand conditions.

2. Allow postfire activities as described in the Main Salmon River Postfire Project to proceed without an Order 2 soil survey. Soil information of sufficient detail to address NEPA issues and required effects disclosure will be provided.

Preliminary Issues

The Forest Service has identified six preliminary issues raised by the Proposed Action:

1. Effects on water quality and quantity in the Salmon River, Elkhorn Creek, French Creek, Fall Creek and Carey Creek, and their beneficial use for native fish species and anadromous fish species habitat.

2. Effects on big game, furbearers, neotropical birds, raptors, and sensitive wildlife species habitat in and adjacent to the project areas.

3. Effects on recreation trails and use in the project area.

4. Effects on wilderness characteristics within the roadless area. The proposals lie partly within the French Creek/Patrick Butte Roadless Area.

5. Effects on the ability of the project areas to provide long term growth and yield of timber. Where the Corral Fire burned hot, it left no live trees. Where fire burned at low or moderate intensities, it left a mixture of dead, live, and damaged trees. Trees with crowns and trunks scorched are at risk of dying from fire damage or insect infestation. Grasses and shrubs can invade disturbed sites faster than trees can naturally reforest.

6. The economic, socio-economic, and social effects of salvage timber sales. This includes the economic efficiency of each salvage sale as measured by present net value, the effects on jobs, income, payments to counties, and effects on local social groups.

Possible Alternatives

The Forest Service has identified two alternatives to the Proposed Action: a no action alternative, and an alternative that would not construct road or salvage harvest in the roadless area. As the public raises additional issues and provides more information, the Forest may develop additional alternatives.

Decisions to be Made

The Payette National Forest Supervisor will decide:

Whether to allow salvage logging.

If so, where and how to harvest.

Whether to plant after harvest.

Whether to implement watershed improvement and recreation projects.

What management requirements and mitigation measures are required as part of this project.

What monitoring requirements are appropriate to evaluate project implementation. And,

What Forest Plan amendment(s) are required?

Public Involvement Meetings

The Forest will hold five public scoping meetings to introduce the Proposed Actions for the three burned landscapes and to invite public comment: Riggins—February 15, 4–9 pm, City Hall. McCall—February 16, 4–9 pm, McCall Smokejumper Base. Council—February 21, 4–9 pm, Council Ranger District office. Boise—February 23, 4–9 pm, Red Lion Downtowner. Grangeville—February 27, 1–3 pm, Nez Perce National Forest Supervisor's office. In addition, Forest Service personnel will make added public presentations on request.

Agency/Public Contacts

The Forest is mailing a summary of the Proposed Action preliminary issues, and background information on the analysis to key individuals, groups, and agencies for comment. The mailing list includes those on the Payette postfire mailing list and those generally interested in Payette National Forest NEPA projects.

Schedule

Draft Environmental Impact Statement, May 1995. Final EIS, August 1995. Implementation, September 1995.

Comments

Comments on the Proposed Action and analysis should be received in writing on or before March 10, 1995. Send comments to: Forest Supervisor, Payette National Forest, P.O. Box 1026, 106 W. Park Street, McCall, ID 83638; telephone (208) 634–0700; FAX (202) 634–0281.

The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions [*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the Draft Environmental Impact Statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts [*City of Angoon* v. *Hodel,* 108 F.2d 1016, 1002 (9th Cir., 1986); and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is important that those interested in this Proposed Action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues raised by the Proposed Action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

David F. Alexander, Forest Supervisor, Payette National Forest, P.O. Box 1026, 106 West Park, McCall, ID 83638.

Dated: January 31, 1995.

David F. Alexander,

Forest Supervisor.

[FR Doc. 95–2916 Filed 2–6–95; 8:45 am]

BILLING CODE 3410–11–M

Lower South Fork Salmon River Postfire Project, Payette National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: In the summer and fall of 1994, the Chicken Fire covered 103,000 acres of Payette National Forest northeast of McCall, Idaho. The Forest Service intends to prepare an Environmental Impact Statement for a portion of the wildfire area to assess and disclose the environmental effects of a proposal. The purpose of the Proposed Action is to remove fire-killed and imminently dead timber, recover its economic value and meet socio-economic demands of local communities, reforest the area, retain and enhance wildlife habitat, reduce soil erosion and decrease sedimentation, improve fish habitat, and provide recreation access.

All actions include provisions for snags, dead and down woody debris, visual quality, cultural resources, TES species, and wild and scenic river study corridors, and would comply with the Bull Trout Conservation Agreement and PACFISH guidelines for water quality and fisheries.

This project would be accomplished through a salvage sale of burned timber on about 4,850 acres, using helicopter logging (no road construction); planting of conifer seedlings; repairing and improving drainage conditions on seven existing roads; converting a road to a trail; and constructing nest platforms for great gray owls. The salvage sale proceeds would help finance the other activities.

The project lies 25–40 miles northeast of McCall, in the lower South Fork Salmon River watershed, in the Smith Creek, Pony Creek, and Elk Creek drainages. It lies partly within the Secesh and Cottontail Point/Pilot Peak Roadless Areas.

FOR FURTHER INFORMATION CONTACT: Fred Dauber, Krassel District Ranger (208 634–0600); or Dan Anderson, Interdisciplinary Team Leader (208 634–0631).

SUPPLEMENTARY INFORMATION: From July to October 1994, wildfires covered a total of about 290,000 acres of Payette National Forest. The Chicken Fire was ignited in mid-August by several lightning strikes east of the town of Warren near the South Fork Salmon River, and eventually covered about 103,000 acres until stopped by winter weather in mid-October. Within this perimeter, it burned in a mosaic pattern of fire intensities including some unburned areas.

In October, Payette National Forest convened three interdisciplinary groups of Forest resources specialists to assess the landscapes affected by the fires: one each for the Blackwell landscape, the Corral landscape, and the Chicken landscape. Each landscape was composed of two or more watersheds. The Chicken landscape encompassed nearly 180,000 acres in the Lower South Fork and Elk Creek watersheds. The Forest also convened a team to assess the broad-scale area, which encompasses the three landscapes plus the Thunderbolt landscape to the south.

In January 1995, each landscape team produced a landscape assessment encompassing their fire area. The teams used an ecosystem-based approach to assess the fires' effects and to propose target landscape conditions, based on the Forest Plan and the historic range of variation. Each team identified management opportunities that could be implemented this year and in the future to move their respective postfire landscape toward the target landscape design. The Forest leadership team selected a package of proposed actions for each landscape to bring forward into the National Environmental Policy Act (NEPA) analysis process.

The Proposed Action for the Lower South Fork Salmon River described herein is one product of the Chicken landscape assessment: it proposes the high-priority short term projects related to timber salvage and other postfire resources opportunities consistent with the target landscape design for the Chicken Landscape.

Burn intensities, as defined by degree of tree mortality, in the Chicken landscape varied from intensely burned to unburned. Within the Chicken landscape, which includes a portion of the Chicken Fire, approximately 36,900 acres burned at high intensity (tree mortality greater than 90%), 23,700 acres at moderate intensity (tree mortality greater than 30% and less than 90%), and 28,200 acres at low intensity (tree mortality less than 30%). The remainder of the landscape did not burn.

An estimated 83,300 acres of the Secesh Roadless Area and 30,900 acres of the Cottontail Point/Pilot Peak Roadless Area lie within the Chicken landscape, of which about 34,500 acres and 21,000 acres were burned, respectively.

The primary management emphasis in the South Fork Salmon River drainage is restoration of harvestable, robust, self-sustaining populations of naturally reproducing salmon and trout. The South Fork Salmon River was the single largest producer of summer chinook salmon in the Columbia River Basin by the 1950's. Since then this run has continued to decline significantly, partially due to habitat degradation caused by management-induced sediment. The Snake River spring/summer and fall chinook salmon are now listed as endangered species. The South Fork's steelhead, bull trout, and westslope cutthroat trout are listed by the Forest Service as sensitive. Some spawning areas and major winter habitats for both endangered and sensitive fishes are influenced by the project area. Numerous road-related sediment sources continue to deliver sediment to the South Fork and tributaries, adversely affecting fish habitat.

Simultaneous with this Notice of Intent, Payette National Forest is also publishing two Notices of Intent for other postfire proposals. The ''Fall Creek Postfire Project'' EIS will cover part of the Blackwell landscape, and the ''Main Salmon River Postfire Project'' EIS will cover the Corral landscape. The Forest Service will analyze the two projects concurrently with this ''Lower South Fork Salmon River Postfire Project'' proposal.

Purpose and Need

The need is to adapt to the changed conditions in the South Fork Salmon River drainage and move toward the desired future conditions, goals and objectives as described in the Payette Forest Plan and the target landscape design in the Chicken Landscape Assessment. The Chicken Landscape Assessment was tiered to the Forest Plan and identifies a strategy to implement the plan in an ecosystem management context. The proposed action is derived from management opportunities in the landscape assessment. The purpose of each element of the proposed action is:

Salvage: To recover economic value of burned timber for counties and timber-related industries and provide wood fiber for society. Past experience with wildfire timber recovery in south-central Idaho indicates that prompt harvest is needed to recover the economic value of fire-killed trees. The trees in this project area, mostly ponderosa pine, Douglas-fir, grand fir, and lodgepole pine, are expected to lose

30–40% of their economic value by the end of 1996. Part of the salvage sale proceeds will finance the regeneration, watershed improvement, recreation and wildlife habitat elements of the project.

Regeneration: To promptly return to production those lands within the suited base that contribute to the allowable sale quantity.

Watershed Projects: To improve watershed conditions to meet beneficial uses (fish habitat and domestic water supply).

Recreation: To improve recreation user access.

Wildlife: To enhance habitat components for sensitive species.

Proposed Action

The Proposed Action has the following components:

1. Salvage harvest fire-killed and imminently-dead trees on approximately 4,850 acres. Harvest by helicopter only. Construct seven helicopter landings. Reconstruct about 5.5 miles of road in four segments to facilitate log haul; no road construction is proposed. Specifically, on road #337, reconstruct ¼ mile of road by increasing the radius on 1 switchback; road #340, reconstruct 2¼ miles of road by increasing the radius on two switchbacks and realigning multiple tight radius turns; road #355, reconstruct 1½ miles of road by increasing the radius on one switchback, and improve the running surface where degraded by large rocks; road #359, reconstruct 1⅕ miles of road by improving stream crossings, improving several tight radius turns, and improving the running surface by better drainage. The proposal would not harvest within the South Fork Salmon River wild and scenic study corridor. It would not harvest within PACFISH Riparian Habitat Conservation Areas, which include riparian corridors, wetlands, landslides, and landslide-prone areas, where riparian-dependent resources receive primary emphasis. The proposal would not harvest on land having a combination of high erosion hazard and high sediment delivery to streams. Harvesting would comply with the Draft Bull Trout Conservation Agreement. Site specific integrated prescriptions to provide for snags/large woody debris retention, visual quality, cultural resource protection, and TES plant and animal needs would be developed consistent with the Forest Plan, landscape assessment and current policy/research.

2. Regenerate productive forest suited acres within the project area by planting conifer seedlings or ensuring natural regeneration.

3. Repair and improve drainage conditions on seven existing roads. Specifically, apply gravel, line inslope ditches, improve cross-drainage, stabilize cuts and fills, improve stream crossings, and/or stabilize gullies on segments of the: Hays Station Road (#337), Warren-Profile Gap Road (#340), China Glen Road (#357), Smith Knob Road (#355), Warren Wagon Road (Forest Highway 21), and Pony Meadows Road (#359).

4. Convert the Bear Lake Road (#1211) to a non-motorized trail.

5. Establish a trailhead at the end of Hays Station Road (#337).

6. Construct nest platforms for great gray owls in the Pony Meadows area.

7. Close to all vehicle traffic a non-system road from Warren Summit going west to just above Pony Meadows.

Methodologies, rationale, and findings associated with the Chicken landscape assessment and site specific environmental analysis are to be reviewed by a proposed Federal interagency science panel with panel members selected from Forest Service research and system branches, and other Federal agencies. Recommendations made by this panel could be used by line officers in directing the environmental analysis, formulating alternatives, disclosing environmental consequences, developing a monitoring plan, and making the final decision. This may include the option of not moving ahead with any or part of the proposed action or action alternatives if conclusive information shows that the action would be damaging to anadromous fish.

Forest Plan Amendment

The Payette National Forest Plan has specific management direction for the South Fork Salmon River management areas. The Proposed Action is designed to improve watershed conditions and fish habitat, and is consistent with the objectives and goals of the Forest Plan. However, amendment to standards and guidelines in the Plan may be needed to:

1. Allow postfire activities including salvage logging of fire-killed and imminently dead trees as proposed in the Lower South Fork Salmon River Postfire Project where the cumulative effect of all proposed projects results in a net improvement in potential sediment delivery to the South Fork Salmon River.

2. Allow postfire activities as described in the Lower South Fork Salmon River Postfire Project to proceed without an Order 2 soil survey. Soil information of sufficient detail to address NEPA issues and required effects disclosure will be provided.

3. Allow plantation stocking levels below Forest Plan standards and guidelines to reflect natural stand conditions.

4. Allow helicopter logging one-way flying distances beyond the Forest Plan standard and guideline of 1.5 miles but within 2.5 miles of existing roads.

5. In Management Area 16, allow postfire salvage logging by helicopter as proposed in the Lower South Fork Salmon River Postfire Project.

Preliminary Issues

The Forest Service has identified seven preliminary issues raised by the Proposed Action:

1. Effects on water quality in the South Fork Salmon River and its tributaries and their beneficial use for spring/summer chinook salmon, bull trout, and other fish species habitat. The lower South Fork is a Stream Segment of Concern and a Water Quality Limited Segment (State of Idaho, Division of Environmental Quality).

2. Impacts of not implementing the Forest Plan recovery strategy for the South Fork Salmon River before implementing new timber entry.

3. Effects on sensitive wildlife species including white-headed woodpecker and goshawk.

4. Effects on wilderness characteristics within the Secesh and Cottontail Point/Pilot Peak Roadless Areas.

5. Effects on human use and access due to closing roads to reduce sediment.

6. Effects on the ability of the project areas to provide long term growth and yield of timber. Where the Chicken Fire burned hot, it left no live trees. Where fire burned at low or moderate intensities, it left a mixture of dead, live, and damaged trees. Trees with crowns and trunks scorched are at risk of dying from fire damage or insect infestation. Grasses and shrubs can invade disturbed sites faster than trees can naturally reforest.

7. The economic efficiency of proposed projects, and effects on socio-economic and social systems around the Payette National Forest.

Possible Alternatives

The Forest Service has identified three alternatives to the Proposed Action: a no action alternative, an alternative that would not salvage harvest in the roadless areas, and an alternative that salvage harvests by helicopter additional acres on more sensitive soil types. As the public raises additional issues and provides more information, the Forest may develop additional alternatives.

Decisions To Be Made

The Payette National Forest Supervisor will decide:

Whether to allow salvage logging.

If so, where and how to harvest.

Whether to plant after harvest.

Whether to implement the sediment reducing, recreation, and wildlife improvement projects.

What management requirements and mitigation measures are required as part of the project.

What monitoring requirements are appropriate to evaluate project implementation. And,

What Forest Plan amendment(s) are required.

Public Involvement Meetings

The Forest will hold five public scoping meetings to introduce the Proposed Actions for the three burned landscapes and to invite public comment: Riggins—February 15, 4–9 pm, City Hall. McCall—February 16, 4–9 pm, McCall Smokejumper Base. Council—February 21, 4–9 pm, Council Ranger District office. Boise—February 23, 4–9 pm, Red Lion Downtowner. Grangeville—February 26, 1–3 pm, Nez Perce National Forest Supervisor's office. In addition, Forest Service personnel will make added public presentations on request.

Agency/Public Contacts

The Forest is mailing a summary of the Proposed Action, preliminary issues, and background information on the analysis to key individuals, groups, and agencies for comment. The mailing list includes those on the Payette postfire mailing list and those generally interested in Payette National Forest NEPA projects.

Schedule

Draft Environmental Impact Statement, May 1995. Final EIS, August 1995. Implementation, September 1995.

Comments

Comments on the Proposed Action and analysis should be received in writing on or before March 10, 1995. Send comments to: Forest Supervisor, Payette National Forest, P.O. Box 1026, 106 W. Park Street, McCall, ID 83638; telephone (208) 634–0700; FAX (208) 634–0281.

The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions [*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the Draft Environmental Impact Statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts [*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1002 (9th Cir,. 1986); and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is important that those interested in this Proposed Action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues raised by the Proposed Action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

David F. Alexander, Forest Supervisor, Payette National Forest, P.O. Box 1026, 106 West Park, McCall, ID 83638.

Dated: January 31, 1995.

David F. Alexander,

Forest Supervisor.

[FR Doc. 95–2917 Filed 2–6–95; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m. on Wednesday, March 1, 1995, at the North Carolina Mutual Life Insurance Company, 411 West Chapel Hill Street, Durham, North Carolina 27701. The purpose of this meeting is: (1) to discuss the status of the Commission and Advisory Committees; (2) to hear reports on civil rights progress and/or problems in the State; (3) to discuss the transcripts of the current project on racial tensions in North Carolina.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Asa Spaulding, Jr., at 704–535–4500 or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 27, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–2891 Filed 2–6–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to the Office of Management and Budget for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA)

Title: International Import Certificate.

Agency Form Number: BXA–645P.

OMB Approval Number: 0694–0017.

Type of Request: Extension of a currently approved collection.

Burden: 1,986 hours.

Number of Respondents: 7,441.

Avg Hours Per Response: 10 to 15 minutes depending on the requirement. 1 minute for recordkeeping.

Needs and Uses: The U.S. and 20 other countries have established an Import Certificate Procedure to increase the effectiveness of controls over strategic commodities. When requested

by a foreign exporter, U.S. importers must provide a certification to the U.S. government that specific commodities will be imported into the U.S. and will not be reexported except in accordance with U.S. regulations. Once such representations have been made, BXA provides a copy of the certification to both the foreign exporter and foreign government. Should a violation occur, this documentation can be used against the violator.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle (202) 395–7340.

Agency: Bureau of Export Administration (BXA)

Title of Survey: Notification of Commercial Invoices That Do Not Contain A Destination Control Statement.

Agency Form Number: N/A. Requirements are found at 786.6 of Export Administration Regulations.

OMB Approval Number: 0694–0038.

Type of Request: Extension of a currently approved collection.

Burden: 21 hours.

Number of Respondents: 40.

Avg Hours Per Response: 30 minutes for the reporting requirement and 1 minute for recordkeeping.

Needs and Uses: Commercial invoices, bills of lading, and ther shipping documentation contain destination control statements that indicate the appropriate disposition of the goods or technical data. When a forwarding agent finds the documentation lacking, the agent is required to notify the exporter of the problem so that corrective action can be taken.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Defense Diversification Needs Assessment.

Agency Form Number: None.

OMB Approval Number: 0694–0083.

Type of Request: Revision of a currently approved collection.

Burden: 4,200 hours.

Number of Respondents: 4,200.

Avg Hours Per Response: 1 hour.

Needs and Uses: Commerce is conducting an assessment of defense subcontractors in order to match appropriate government resource programs to the firm's needs, that would assist them in diversifying their operations.

Affected Public: Businesses or other for–profit organizations.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated February 1, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–2997 Filed 2–6–95; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

[A–428–811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany; Initiation of Anticircumvention Inquiry of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of anticircumvention inquiry.

SUMMARY: On the basis of a petition filed with the Department of Commerce (the Department), we are initiating an anticircumvention inquiry to determine whether imports of certain hot-rolled lead and bismuth carbon steel products from the Netherlands are circumventing the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from Germany (58 FR 15324 (March 22, 1993)).

EFFECTIVE DATE: February 7, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow or Wendy J. Frankel, 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) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1994, Inland Steel Bar Company and USS Kobe Steel Company (hereafter, petitioners) filed a petition, pursuant to section 781(b) of the Tariff Act of 1930, as amended, (the Tariff Act) and 19 CFR 353.29 (b) and (f), requesting the Department to investigate whether imports of certain leaded steel products from the Netherlands are circumventing the antidumping duty order issued against certain hot-rolled lead and bismuth carbon steel products from Germany.

Petitioners allege that Thyssen AG, a German steel producer, is shipping leaded steel billets to its wholly-owned subsidiary Nedstahl BV (Nedstahl), located in the Netherlands, hot-rolling the billets into bars and rods and then exporting them from the Netherlands to the United States. Petitioners assert that Thyssen's actions warrant an affirmative determination of circumvention under the Tariff Act.

On August 29, 1994, the law firm of Sharretts, Paley, Carter & Blauvelt filed a letter of appearance on behalf of Thyssen, and an application for administrative protective order.

On December 9, 1994, petitioners submitted additional information in support of its allegation of circumvention.

Initiation of Anticircumvention Inquiry

Section 781(b) of the Tariff Act and 19 CFR 353.29(f) authorize the Department to include merchandise within the scope of an existing antidumping duty order if: (A) The merchandise imported into the United States is of the same class or kind as the merchandise subject to the order; (B) before importation into the United States, such imported merchandise is completed or assembled in a third country from merchandise which (i) is subject to an order, or (ii) is produced in the foreign country with respect to which such order applies; (C) the difference between the value of such merchandise imported into the United States and the value of the merchandise from the country subject to the order which was completed or assembled in the third country is small, and (D) the Department determines that action is appropriate to prevent evasion of such order.

In determining whether to include merchandise assembled or completed in a third country in an order, the Department must take into account such factors as; (a) the pattern of trade, (b) whether the manufacturer or exporter of the merchandise from the country subject to the order is related to the

person in the third country who completes or assembles the merchandise that is subsequently imported into the United States, and (c) whether imports into the third country of the merchandise from the order country have increased after the issuance of such order.

After taking into account any advice provided by the International Trade Commission (ITC), the Department may include such imported merchandise within the scope of such order at any time such order is in effect.

Our analysis of petitioners' submission according to the above criteria leads the Department to conclude that: (1) There is evidence that leaded steel rod imported into the United States from the Netherlands is of the same class or kind as that covered by the German antidumping duty order; (2) the leaded steel rod imported into the United States is completed from leaded steel billets produced in Germany, the country subject to the antidumping duty order; (3) the difference in value is arguably ''small''. Petitioners' evidence on the third factor, combined with other evidence on the record, provides a reasonable basis to initiate an anticircumvention inquiry. In the context of the inquiry, the Department will determine whether inclusion of such imported products within the order is appropriate to prevent evasion of the order.

Our analysis of the information in petitioners' submission leads us to conclude that: (1) U.S. import statistics evidence a shift in the pattern of trade subsequent to issuance of the order; (2) Nedstahl, the entity in the third country who completes or assembles the merchandise that is subsequently imported into the United States, is 100 percent owned by Thyssen, the manufacturer or exporter of the merchandise from the country subject to the order, and therefore, is related; and (3) the data with respect to imports of subject merchandise into the Netherlands from Germany evidences such an increase. Consideration of the other factors identified above strengthens petitioners' position that the order is being circumvented. For further analysis, see Memorandum from Joseph A. Spetrini for Susan G. Esserman, dated January 29, 1995. Based on this information, we are initiating an anticircumvention inquiry of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from Germany, case number A–428–811.

The Department will not suspend liquidation at this time. However, the Department will instruct the U.S. Customs Service to suspend liquidation in the event of an afirmative preliminary determination of circumvention.

This notice is published in accordance with 781(b) of the Tariff Act (19 U.S.C. 1677j(b)) and 19 CFR 353.29.

Dated: January 30, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–3001 Filed 2–6–95; 8:45 am]

BILLING CODE 3510–DS–P

The Ohio State University, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–126. *Applicant:* The Ohio State University, Columbus, OH 43210. *Instrument:* Mass Spectrometer, Model 215-50. *Manufacturer:* Mass Analyser Products Limited, United Kingdom. *Intended Use:* See notice at 59 FR 59212, November 16, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) resolution to 600 daltons, (2) abundance sensitivity of less than 1 ppm of ^{40}Ar detected at ^{39}Ar with an analyzer pressure of 10^{-7} torr, (3) a background M/e=36 of less than $5x10^{-14}$ cm^3 STP and (4) an adjustable Faraday collector for simultaneous ion collection.

This capability is pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 95–2999 Filed 2–6–95; 8:45 am]

BILLING CODE 3510–DS–F

University of Chicago, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–135. *Applicant:* University of Chicago, Chicago, IL 60637. *Instrument:* Electron Microscope, Model CM120. *Manufacturer:* NV Philips, The Netherlands. *Intended Use:* See notice at 59 FR 63762, December 9, 1994. *Order Date:* August 2, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 95–3000 Filed 2–6–95; 8:45 am]

BILLING CODE 3510–DS–F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–153. *Applicant:* University of Washington, Department of Zoology, NJ-15, Seattle, WA 98195. *Instrument:* Electron Microscope, Model CM 100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used by three departments to conduct various studies of biological and other organisms. These studies will include by are not limited to the following: (1) analysis of membrane biogenesis induced by increased HMG-CoA reductase levels, (2) analysis of embryonic and regenerative neural development in insects, (3) several studies of 5S RNA-TFIIIA and 42S RNP particles in the oocyte, (4) research of extracts from purified germ cells and mouse mutants, (5) assessment of mechanisms that coordinate cell cycle functions, (6) questions concerning the morphogenesis of glial cells and neurons, (7) determination of whether strain non-uniformities arise in muscle cells subject to rapid length perturbations, and (8) tracking of cells in mitotic specific domains. *Application Accepted by Commissioner of Customs:* January 10, 1995.

Docket Number: 95–002. *Applicant:* Metropolitan Water District of Southern California, Water Quality Lab, 700 Moreno Avenue, La Verne, CA 91750. *Instrument:* Mass Spectrometer, Model Autospec. *Manufacturer:* Fisons, United Kingdom. *Intended Use:* The instrument will be used to identify unknown organic compounds that are formed at very low concentrations in drinking water during disinfection processes and to study the precursors that when disinfected form the disinfection by-products. While the main use of the instrument will be in research applications, it will be used periodically for the education and training of postdoctoral assistants and undergraduate cooperative-education students who are working on disinfection by-product studies. *Application Accepted by Commissioner of Customs:* January 6, 1995.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 95–2998 Filed 2–6–95; 8:45 am]

BILLING CODE 3510–DS–F

National Institute of Standards and Technology

[Docket No. 941244–4344]

International Standards and Trade Support Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) plans to set up a service to help U.S. industry avoid or overcome non-tariff, technical barriers to trade in many foreign markets. Such barriers to trade are caused by normative standards, measurement standards, conformity testing, and related practices. NIST has operated such a program with great success in Saudi Arabia for the past four years. NIST plans to (1) support ITA, USTR and voluntary standards organizations such as ISO, IEC, ANSI, and to cooperate with regulatory agencies, certifiers, etc.; (2) place NIST standards experts in critical markets; (3) train and place local-hire NIST standards representatives in developing markets; (4) develop close contacts with key authorities in foreign markets through training, etc.; and (5) align its program with the International Trade Administration's, where the Foreign Commercial Counselors at U.S. Embassies assist U.S. companies to overcome specific standards-related non-tariff trade barriers. NIST is interested in industry cooperation and invites responses about countries and types of technical barriers to trade to be addressed.

FOR FURTHER INFORMATION CONTACT: Please address all communications to Dr. Peter L.M. Heydemann, Director, Technology Services, National Institute of Standards and Technology, Gaithersburg, MD 20899; phone (301) 975–4500; FAX (301) 975–2183.

SUPPLEMENTARY INFORMATION: NIST plans to address problems in the European Union, the ten ''big emerging markets'' (BEMs) defined by Under Secretary Jeffrey Garten, Russia and certain of the Newly Independent States (NIS). The ten BEMs are Mexico, China, Indonesia, India, South Korea, Argentina, Brazil, South Africa, Turkey, and Poland.

The strategy of the program will be to develop close, personal contacts between NIST staff and key officials in foreign markets who can influence standards-related non-tariff trade barriers. These contacts will help NIST to negotiate changes from a basis of mutual trust and confidence. One means to develop these contacts are training/information courses that NIST will present in the United States and in foreign markets. NIST will involve a variety of federal authorities, ANSI and other voluntary standards organizations, State Weights and Measures offices, and selected private enterprises in these efforts. NIST standards experts and standards representatives placed in the foreign markets will follow up and help to further develop and maintain these contacts. Their range of contacts will be different but complementary to that of the Foreign Commercial Counselors. They will be able to collect additional information on these markets, on planned standards and test methods, and on newly appointed officials.

The purpose of the program is to enhance U.S. exports by assisting U.S. manufacturers to overcome or avoid standards-related, non-tariff trade barriers (NTBs), especially technical barriers to trade (TBTs), and by facilitating negotiation of mutual recognition agreements for conformance testing. TBTs, whether or not established intentionally by our trading partners, limit U.S. manufacturers' access to export markets and often cause large expenses to exporters when testing of conformance to the standards of one or more receiving countries is required, when tests need to be performed in the buyer's country, or, more generally, through the inevitable delay connected with conformance testing and certification. TBTs result from disparities between standards and conformity assessment practices in the United States and in its trading partners:

Foreign national, regional, or international standards may not reflect the latest U.S. technology and technical practice. In some cases, this is due to lack of U.S. influence in the development of international standards, where European practice prevails in certain technical areas due to the extensive participation of European Authorities and, in some cases, due to bloc voting by European national standards bodies. In many cases, the United States has had limited opportunity to influence standards development of importing countries or regions.

Differences in testing and certification requirements in other countries frequently pose obstacles to U.S. exports. If Mutual Recognition Agreements (MRA) for conformance testing are not in place and test data generated in the United States are not accepted in a foreign country, U.S. exporters must duplicate costly and time-consuming approval and certification procedures in the foreign country to meet regulatory requirements for product acceptance. Agreements on the mutual recognition of conformance testing are often difficult to obtain and even more difficult to enforce. Foreign standards and conformity assessment rules are often complex and detailed, and

many exporters are unable to obtain sufficient, timely information on them. This problem compounds the difficulties created by disparities among national or regional standards and conformity assessment rules.

The major goals of the Technology Services (TS) Standards in Trade program are:

1. Reduce differences between U.S. standards on specific products and those of our NAFTA and other major trading partners, especially in primary and development export areas.

2. Promote the incorporation of U.S. standards and technology into international standards.

3. Maximize adoption by developing countries of U.S. standards and technology.

4. Provide the technical underpinning and develop the contacts necessary for recognition of U.S.-based conformity assessment practices by foreign regulatory authorities and support U.S. negotiators in developing and implementing mutual recognition agreements.

5. Raise awareness by industry and the federal government of the importance of standards, testing and certification practices, especially in international arenas.

6. Develop an automated standards data network relying on all available sources of information to support the information needs of industry and government.

These goals will be achieved through strong support to the Departments of State and Commerce, and the U.S. Trade Representative in international negotiations to secure foreign acceptance of U.S. tests, certificates, quality systems, and registrations, and through the following seven complementary programs and initiatives:

Standards in Trade Programs and Initiatives

I. Support for ISO/IEC and other International Standards Committees and Subcommittees

Assign NIST technical staff to provide technical support to specific committees and subcommittees, whose deliberations may result in standards, guides or recommendations that will affect U.S. trade. Provide coordination and contribute to the necessary resources.

Work with U.S. industry and standards writing organizations to achieve consistent, professional representation on all important international committees and subcommittees.

II. Implementation of NAFTA: Trilateral Committee

Plan the harmonization of measurement services (calibrations, Standard Reference Material, and Standard Reference Data); provide extensive training to participants; compare national measurement standards. Draft test protocols; define areas for mutual recognition of calibration and conformance testing services; define information needs.

III. Implementation of NAFTA: Standards Information

Organize the continuous acquisition of the broad range of information required by NAFTA: federal, state, local and private standards, rules and regulations—both current and planned—that affect trade. Make that information available to U.S. industry and disseminate it automatically to predetermined target groups.

IV. Overcoming Technical Trade Barriers in the European Union

Establish permanent representation at the USEC Mission by resident, professional NIST staff who will (1) work with national and international standards committees to facilitate recognition of U.S. technology and test methods in new standards; (2) review existing foreign or international standards in key U.S. export sectors and, based on private sector input, advocate modifications to remove or reduce technical barriers to trade; (3) support negotiations of mutual recognition agreements for conformance testing; (4) facilitate U.S. input to the development of standards, test methods, and certification procedures supporting regulatory requirements; and (5) provide technical advice and support to commercial and economic staffs in U.S. embassies in Europe for the identification and resolution of trade issues involving technical barriers.

V. Overcoming Technical Barriers to Trade in Major Emerging Markets

Place NIST standards experts with the same tasks described in Section IV in three or four major (BEM) markets (e.g., Argentina, Brazil, Mexico), and in Russia, Saudi Arabia, and the European Union. Establish U.S. standards support offices with local administrative staff in six or seven major (BEM) markets (E.g., Turkey, South Africa, Chile, India, Indonesia, South Korea). Develop programs for metrology and testing laboratories with Russia and the BEMs to provide for recognition of U.S. test results by foreign regulatory authorities. This is an efficient means to remove measurement-related trade barriers where warranted in specific situations. Arrange and support consistent representation of U.S. industry on international standards writing committees.

VI. Training

Provide training and familiarization for metrologists and standards writers from Canada and Mexico as part of the implementation of NAFTA.

Provide training in metrology, conformance testing, and standards writing to representatives of Russia and the BEM governments. The purpose is to familiarize them with U.S. Technology and to lay the groundwork for helping the host country to re-write standards to reflect the use of U.S. technology and of performance versus design standards.

VII. Acquisition and Dissemination of Information

Design, create, and install an on-line database system for standards-related information.

Establish a central NIST inquiry point as part of the database but with access to human experts. Technology Services currently answers about 170,000 inquiries on standards per year mostly by letter, phone, or personal contact. Database access will be able to answer the bulk of these inquiries more efficiently.

(15 U.S.C. 272)

Dated: January 31, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–2963 Filed 2–6–95; 8:45 am]

BILLING CODE 3510–13–M

COMMODITY FUTURES TRADING COMMISSION

Kansas City Board of Trade Application for Designation as a Contract Market in Western Natural Gas Futures and Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Kansas City Board of Trade (KCBT or Exchange) has applied for designation as a contract market in western natural gas futures and option contracts. 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 proposals 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 March 9, 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 KCBT western natural gas futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph Storer 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 will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K street, N.W., 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 KCBT 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 C.F.R. part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 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 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the KCBT, 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 February 1, 1995.

Blake Imel,

Acting Director.

[FR Doc. 95–2909 Filed 2–6–95; 8:45 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information; Survey of Manufacturers of Upholstered Furniture

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of a survey of manufacturers of upholstered furniture. The purpose of this survey is to obtain information about the types of fabrics and filling materials currently used in the production of upholstered furniture.

In 1994, the Commission began a rulemaking proceeding to develop a flammability standard for upholstered furniture to address risks of death, injury, and property damage associated with fires resulting from ignition of upholstered furniture by small open-flame sources. The information obtained from the proposed survey will be used in conjunction with data obtained from flammability testing of upholstered furniture items to make estimates of potential benefits and potential costs of the flammability standard for upholstered furniture now under development.

Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection. Survey of Upholstered Furniture Manufacturers.

Type of request. Approval of a new plan.

Frequency of collection. One time.

General description of respondents. Manufacturers of upholstered furniture.

Total number of respondents. 280.

Number of responses per respondent. 1.

Hours per response. 10.

Total hours for all respondents. 2,800.

Comments. Comments about this request for approval of a collection of information should be addressed to Donald Arbuckle, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7340. Copies of the request for approval of a collection of information are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0416, extension 2245.

This is not a proposal to which 44 USC 3504(h) is applicable.

Dated: January 31, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–2859 Filed 2–6–95; 8:45 am]

BILLING CODE 6355–01–P

[CPSC Docket No. 95–C0007]

General Nitewear Corp., a corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1605.13. Published below is a provisionally-accepted Settlement Agreement with General Nitewear Corp., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by February 22, 1995.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 95–C0007, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Eric L. Stone, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: January 31, 1995.

Sadye E. Dunn,

Secretary.

Consent Order Agreement

General Nitewear Corp. (''General Nitewear'' or ''Respondent'') enters into this Consent Order Agreement with the staff (''the staff'') of the Consumer Product Safety Commission (''the Commission'') pursuant to the procedures set forth in section 1605.13 of

the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR 1605.

This Agreement and Order are for the sole purpose of settling allegations of the staff that Respondent sold children's sleepwear that failed to comply with the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X and Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14, 16 CFR Parts 1615 and 1616 (''the sleepwear standards'').

Respondent and the Staff Agree

1. The Consumer Product Safety Commission is an independent regulatory agency of the United States government. The Commission has jurisdiction over this matter under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.* (CPSA), the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.* (FFA) and the Federal Trade Commission Act (15 U.S.C. *et seq.* (FTCA).

2. Respondent General Nitewear is a corporation organized and existing under the laws of the State of New York with principle corporate offices at 1 West 34th Street, New York, New York 10001.

3. Respondent is now, and has been engaged in one or more of the following activities: the manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of children's sleepwear subject to the sleepwear standards.

4. This Agreement is for the purpose of settling the allegations in the accompanying Complaint. Respondent denies it intentionally violated the sleepwear standard and does not admit that it knowingly violated the law. Moreover, this Agreement does not constitute an admission by Respondent that it is paying a civil penalty as it is Respondent's position that it is paying the amount referenced in the attached Order to settle the Commission's contention that a civil penalty is appropriate. The Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

5. The parties agree this Consent Order Agreement resolves the allegations of the Complaint and the Commission shall not initiate any other criminal, civil or administrative action against the firm for those alleged violations based on the information currently known to the staff.

6. Respondent waives any rights to a formal hearing, and any findings of fact and conclusions of law regarding the allegations set forth in the Complaint. Respondent waives any right to seek judicial review or otherwise challenge or contest the validity of the Commission's Order and to any rights under the Equal Access to Justice Act, Pub. L. 96–481, 94 Stat. 2325, 5 U.S.C. 504.

7. Respondent denies the allegations of paragraphs 1 through 6 of the Complaint that it has knowingly violated the sleepwear standard provisions related to trim of the Flammable Fabrics Act, 15 U.S.C. 1194; and further denies that it intentionally shipped non-conforming children's sleepwear after notification from the Commission.

8. The Commission may disclose the terms of this Consent Order Agreement to the public consistent with section 6(b) of the CPSA.

9. This Agreement and the Complaint accompanying the Agreement may be used in interpreting the Order. Agreements, understandings, representations or interpretations made outside of this Consent Order Agreement may not be used to vary or contradict its terms.

Upon acceptance of this Agreement, the Commission shall issue the following ORDER.

Dated: December 23, 1994.

Eric L. Stone,

Trial Attorney, Division of Administrative Litigation.

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement, Consumer Product Safety Commission.

For the Commission staff.

Harold Jetter,

President & CEO, General Nitewear Corp.

Complaint

The staff of the Consumer Product Safety Commission (''staff'') contends that General Nitewear Corp., a corporation (''Respondent''), is subject to the provisions of the Consumer Product Safety Act, 15 U.S.C. §§ 2051 *et seq.* (CPSA); the Flammable Fabrics Act, 15 U.S.C. §§ 1191 *et seq.* (FFA); the Federal Trade Commission Act (15 U.S.C. §§ 41 *et seq.* (FTCA); the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X and the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14, 16 C.F.R. Parts 1615 and 1616 (''the sleepwear standards''). The staff further contends Respondent violated the sleepwear standards' provisions related to trim.

Based upon the information provided to the Commission by the staff, the Commission determined it is in the public interest to issue this Complaint. Therefore, by virtue of the authority vested in the Commission by section 30(b) of the CPSA, 15 U.S.C. § 2079(b); sections 3 and 5 of the FFA, 15 U.S.C. §§ 1192 and 1194; and section 5 of the FTCA, 15 U.S.C. § 45; and in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR Part 1025, the Commission hereby issues this Complaint and states the staff's charges as follows:

1. Respondent General Nitewear Corp. is a corporation organized and existing under the laws of the State of New York with principal corporate offices at 1 West 34th Street, New York, New York 10001.

2. Respondent is and has been engaged in one or more of the following activities: the manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of children's sleepwear subject to the sleepwear standards.

3. For a period of several years, Respondent manufactured and sold items of children's sleepwear that use a kind of trim known as ''piping.'' Respondent used trim manufactured out of materials that do not comply with the flammability requirements of the sleepwear standards.

4. Respondent failed to properly test the piping and other trim and consequently failed to maintain appropriate records of such testing as required by the sleepwear standards.

5. As the result of these failures to comply with the sleepwear standards, Respondent manufactured for sale, sold, or offered for sale, in commerce, or imported, delivered for introduction, transported in commerce, or sold or delivered after sale or shipment in commerce, a significant number of garments of several different styles and sizes of children's sleepwear garments that failed to comply with the sleepwear standards.

6. After being informed of the violations by the Commission staff, Respondent continued to ship sleepwear with trim that did not comply with the sleepwear requirements.

Relief Sought

Wherefore, the staff requests the Commission to issue an order requiring Respondent to

(a) cease and desist from the manufacture for sale, and sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of children's sleepwear subject to the sleepwear standards that fails to comply with the sleepwear standards, and further,

(b) order Respondent to comply with the recordkeeping and testing requirements of the sleepwear standards.

Wherefore, the premises considered, the Commission hereby issues this Complaint on the 1st day of February 1995.

By direction of the Commission.

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement.

Order

I

It is hereby ordered that Respondent, its successors and assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from selling or offering for sale, in commerce, or manufacturing for sale, in commerce, or importing into the United States or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any item of children's sleepwear with trim that fails to comply with the flammability requirements with respect to trim of the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X, 16 CFR Part 1615.4(d)(2)(ii); or the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14, 16 CFR Part 1616.4(c)(2)(ii).

II

It is further ordered that Respondent shall conduct all prototype testing, and maintain all records for sleepwear with trim required by the Standard for the Flammability of

Children's Sleepwear: Sizes 0 through 6X, 16 CFR Part 1615.31(e)(iii); and the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14, 16 CFR Part 1616.31(d)(iii).

III

It is further ordered that Respondent pay to the United States Treasury a civil penalty of $110,000 within 36 months of service upon Respondent of the Final Order. Such payment may be made in one lump sum payment within twenty days of service of the Final Order or in three installment payments of thirty-six thousand, six hundred and sixty-six dollars and sixty-seven cents ($36,666.67) each. If Respondent elects to make three payments, the first payment is due within twenty (20) days after service upon Respondent of the Final Order in this matter. Respondent shall pay the second installment within 24 months after service of the Final Order, and the third payment within 36 months after service of the Final Order. Upon the failure of Respondent to make any payment in a timely manner, the entire amount of the civil penalty shall be due and payable, and interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961 (a) and (b).

IV

It is further ordered that for a period of three years following the service upon Respondent of the Final Order in this matter, Respondent notify the Commission within 30 days following the consummation of the sale of a majority of its stock or following a change in any of its corporate officers responsible for compliance with the terms of this Consent Agreement and Order.

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Secretary is directed to publish the provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register**.

So ordered by the Commission, this 31st day of January 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–2879 Filed 2–6–95; 8:45 am]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Selection of AmeriCorps* VISTA Sponsors and Projects; Guidelines

AGENCY: Corporation for National and Community Service.

ACTION: Notice of guidelines with respect for comment.

SUMMARY: The Corporation for National and Community Service (the Corporation) is issuing this notice concerning guidelines for the selection of AmeriCorps*VISTA sponsors and projects. The Corporation will refer to this program as AmeriCorps*VISTA. These guidelines outline the way AmeriCorps*VISTA will operate, the overall programmatic direction of the AmeriCorps*VISTA program, criteria for selection of AmeriCorps*VISTA sponsors and projects, and AmeriCorps*VISTA project approval procedures. The Corporation invites all interested parties to comment on the issues discussed in this notice. Any comments received will be given careful consideration in the development of the final guidelines.

DATES: This notice is effective February 7, 1995. Comments must be received on or before March 24, 1995.

ADDRESSES: Comments may be mailed to the AmeriCorps*VISTA Office, The Corporation for National Community Service, Room 9217, 1201 New York Ave., NW., Washington, DC 20525. Comments received may also be inspected at Room 9120 between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Diana B. London, Deputy Director, AmeriCorps*VISTA, (202) 606–5000, extension 228. For individuals with disabilities, information will be made available in alternative formats, upon request.

SUPPLEMENTARY INFORMATION: The Final Notice of VISTA Guidelines, as published in the **Federal Register**, 50 FR 30982, July 31, 1985 and 55 FR 9343, March 13, 1990, are no longer valid. Pursuant to Subtitle B, Chapter 1, section 321 of the National and Community Service Trust Act of 1993 (the Act) Pub. L. 103–82, the purpose of AmeriCorps*VISTA as provided in the Domestic Volunteer Service Act (42 U.S.C. 4950 et seq.) has been broadened to include strengthening local organizations to carry out the purpose of the program. Section 327 of the Act provides additional factors in approving applications for assistance under AmeriCorps*VISTA.

This notice outlines the guidelines for the selection of AmeriCorps*VISTA sponsors and projects. The following provisions address the criteria for sponsorship of new and existing AmeriCorps*VISTA projects, criteria for project selection, and explain the approval process at the State level. In addition, the process for selecting national competitive and national demonstration AmeriCorps*VISTA projects is addressed.

Guidelines for Selection of AmeriCorps*VISTA Sponsors and Projects

Part I. Program Directions

The Corporation for National and Community Service was established by the National and Community Service Act Trust Act of 1993, enacted into law on September 21, 1993. The Corporation manages several types of service initiatives, including the AmeriCorps National Service Network of programs. AmeriCorps is locally driven, offering resources to communities to design and implement their own solutions while maintaining a national AmeriCorps identity.

The mission of AmeriCorps has four components:

Getting Things Done—achieving demonstrable results in meeting Americans' educational, public safety, human, and environmental needs.

Strengthening Communities—uniting citizens from different backgrounds and bringing together diverse institutions in partnerships to transform communities in need.

Encouraging Responsibility—strengthening the spirit of citizenship through service, education about service, and understanding of communities.

Expanding Opportunity—offering education awards in return for service, and providing invaluable life- and job-skills to members which they will carry through the rest of their lives.

Within the AmeriCorps National Service Network of programs is AmeriCorps*VISTA (Volunteers In Service To America), authorized under Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The statutory mandate of AmeriCorps*VISTA is ''to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups * * * to perform meaningful and constructive volunteer service * * * where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicted with such problems. In addition, the objective of (AmeriCorps*VISTA) is to generate the commitment of private sector resources, to encourage volunteer service at the local level, and to strengthen local agencies and organizations to carry out the purposes (of the program)'' (42 U.S.C. 4951).

AmeriCorps*VISTA provides full-time, full-year members to local public

and private non-profit organizations which have goals in accord with AmeriCorps*VISTA's legislative mission, and have projects determined and defined by those to be served. Each AmeriCorps*VISTA project must focus on the mobilization of community resources, the transference of skills to community residents, and the expansion of the capacity of community-based and grassroots organizations to solve local problems. Programming should encourage permanent, long-term solutions to problems confronting low-income communities rather than short-term approaches for handling emergency needs. AmeriCorps*VISTA project sponsors must actively elicit the support and/or participation of local public and private sector elements in order to enhance the chances of a project's success, as well as to make the activities undertaken by AmeriCorps*VISTA self-sustaining when the Corporation for National Service no longer provides those resources.

Part II. Criteria for Selection of AmeriCorps*VISTA Sponsors and Projects

A. Criteria for Sponsorship

The following provisions explain the organizational requirements that must be met to sponsor an AmeriCorps*VISTA project; and the criteria necessary for selection of any AmeriCorps*VISTA project.

1. Organizational Selection Criteria

The applicant must:

a. Be a public sector organization or a private organization designated as non-profit by the Internal Revenue Service (IRS). (Organizations that have submitted applications for non-profit status from the IRS will also be considered.)

b. Comply with applicable financial and fiscal requirements established by the Corporation for National Service or other elements of the Federal Government.

c. Have resources available for AmeriCorps*VISTA members to perform their tasks; i.e., space, consumable supplies, telephone, on-the-job transportation reimbursement; and be able to provide emergency cash advances when needed.

d. Be able to mobilize community, public, and private sector resources to achieve short-term program goals and long-term project self-sufficiency goals, and to encourage local part-time volunteer service.

e. Have the capacity and commitment to recruit, orient, train, supervise, and otherwise support locally and nationally-recruited AmeriCorps*VISTA members in appropriate capacity-building roles.

f. Have an understanding of the concept of, and be committed to, promoting national service and AmeriCorps.

g. Be experienced in the issues related to the beneficiaries of service and those being addressed by the proposed project.

h. Have the capacity to build community partnerships and collaborative efforts in order to achieve project self-sufficiency.

2. Project Selection Criteria

The proposed project must:

a. Address the needs of low-income communities and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973, (DVSA) as amended (42 U.S.C. 4951 et seq.) applicable to AmeriCorps*VISTA and all applicable published regulations, guidelines and Corporation policies.

b. Lead to building organizational and/or community capacity to continue the efforts of the project once AmeriCorps*VISTA resources are withdrawn. This will be demonstrated through measurable goals and objectives and the stated AmeriCorps*VISTA tasks which are attainable within the time-frame of the project.

c. Be designed to generate public and/or private sector resources and to promote local, part-time volunteer service.

d. Describe in measurable terms the anticipated self-sufficiency outcomes at the conclusion of the project, including outcomes related to the sustainability of the project activities.

e. Clearly state how AmeriCorps*VISTAs will be trained, supervised and supported to ensure the achievement of program goals and objectives as stated in the project work plan.

f. Be internally consistent; the problem statement which demonstrates need, the project work plan, the AmeriCorps*VISTA assignment description, and all other components must be related logically to each other.

g. Ensure that AmeriCorps*VISTA and community resources sufficient to achieve project goals and objectives are available.

h. Involve beneficiaries of service in project development and implementation throughout the life of the project.

i. Have the management and technical capability to implement the project successfully.

j. Describe how the number of AmeriCorps*VISTA members being requested is appropriate for project goals and objectives, and how the skills qualifications described in the application are appropriate for the assignment(s).

k. Describe how AmeriCorps*VISTA assignments are designed to utilize the full-time member's time to the maximum extent.

B. Prohibited Activities

Applicant and current sponsoring organizations must ensure that the following prohibitions on AmeriCorps*VISTA and sponsor activity are observed:

1. AmeriCorps*VISTA are prohibited by law from participating in:

(a) Partisan and nonpartisan political activities, including voter registration and transporting voters to the polls.

(b) Direct or indirect attempts to influence legislation, or proposals by initiative petition.

(c) Any outside employment while in AmeriCorps*VISTA service.

2. AmeriCorps*VISTA sponsoring organizations are prohibited by law from:

(a) Carrying out projects resulting in the identification of such projects with partisan or nonpartisan political activities, including providing voters with transportation to the polls and any voter registration activity other than making voter registration applications and nonpartisan voter registration information available to the public on the premises.

(b) Assigning AmeriCorps*VISTAs to activities which would otherwise be performed by employed workers and which would supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(c) Requesting or receiving any compensation for the services of AmeriCorps*VISTA members.

(d) Using funds to finance, directly or indirectly, labor and anti-labor organization and related activities.

(e) Using funds appropriated to carry out AmeriCorps*VISTA programming for any activity for the purposes of influencing the passage or defeat of legislation or proposals by initiative petition unless otherwise permitted under the Domestic Volunteer Service Act of 1973, as amended.

3. AmeriCorps*VISTA members are prohibited from engaging in any religious activities as part of their duties. AmeriCorps*VISTA sponsors are prohibited from conducting any religious instruction, worship, proselytization or other religious

activity as part of the AmeriCorps*VISTA project.

Part III. Americorps*VISTA Project Approval Process

A. Project Approval Process for New Sponsors Selected at State Level

In order to assure all potential sponsors equal consideration, the project approval process for new AmeriCorps*VISTA projects described below is to be followed. Existing projects seeking to change their programmatic emphasis areas and/or substantially change the scope of the activities and duties performed by AmeriCorps*VISTA members (e.g. from literacy to health care) must also comply with these procedures.

1. AmeriCorps*VISTA Pre-Application Requests

a. Requests from potential sponsors for AmeriCorps*VISTA pre-application forms must be submitted, in writing, to the Corporation State Office. The request should briefly outline the proposed use of AmeriCorps*VISTA members.

b. Corporation State Office staff must respond to such requests within 5 working days of receipt by sending a pre-application form to the potential sponsoring organization, or advising the requestor that the organization would be an inappropriate sponsor (e.g. a for-profit organization).

c. Potential sponsors must complete and return the pre-application form to the Corporation State Office within timeframes established by the State Office.

d. Corporation State Office staff will review the pre-application form and advise the applicant in writing, within 10 working days of receipt of the form, as to whether to proceed with the development of a full AmeriCorps*VISTA project application. That decision is based on AmeriCorps*VISTA programming priorities, information on the applicant organization's track record within the community, and conformance with the Corporation State Office's Annual Plan that is due by March 1995, and thereafter, in the fourth quarter of each fiscal year.

2. AmeriCorps*VISTA Project Application Review

a. Corporation State Office staff will send an AmeriCorps*VISTA project application and technical assistance materials to potential sponsoring organizations whose proposed project is consistent with AmeriCorps*VISTA program priorities and the Corporation State Office's approved Annual Plan. Applications submitted prior to the approval of the Annual Plan in March 1995 will be considered without the requirement of conformance with the Corporation State Office's Annual Plan.

b. Prior to submission of the application, the State Office staff will arrange for a site visit to the applicant organization to provide technical assistance and to enhance Corporation State Office staff's knowledge of the applicant organization and the community to be served by the proposed project.

c. The applicant organization will submit a completed application form to the Corporation State Office within the timeframe established by the State Office.

d. The Corporation State Director will review the project application and render a final decision within 15 working days of receipt. For approved applications, the Corporation State Director may convene a community and/or peer panel for the purpose of strengthening, or adding value to, the proposed project. If a project application is approved, the Corporation State Director will advise the sponsoring organization in writing that the project has been approved for one year subject to the availability of funds. The Corporation State Office staff will also provide the organization with appropriate information on AmeriCorps*VISTA recruitment, placement, and training. The Corporation State Director will prepare, sign, and send a Memorandum of Agreement to the sponsoring organization for signature by an authorized official within the organization.

e. The Corporation State Office staff will send to AmeriCorps*VISTA Headquarters a copy of the approved project application and letter to the sponsor. The official project document file will be retained in the Corporation State Office.

f. Applicant organizations whose proposals are disapproved will be informed in writing by the Corporation State Director and provided reasons for disapproval.

g. Project applications from current AmeriCorps*VISTA sponsors proposing to change programmatic emphases and/or substantially change the scope of activities performed by the AmeriCorps*VISTA members from those previously approved are not subject to the denial of refunding procedures contained in section 412 of the Domestic Volunteer Service Act of 1973, as amended, and 45 CFR part 1206, subpart B. Such applications will be treated as new project applications in accordance with the procedures outlined in III A above.

*B. Project Approval Process for Existing AmeriCorps*VISTA Sponsors*

AmeriCorps*VISTA projects will be reviewed at the time of their renewal request to determine the extent to which approved project work plan goals and objectives are being met, paying special attention to capacity building and project self-sufficiency goals as well as to AmeriCorps*VISTA member retention and satisfaction with the service experience.

The project approval process outlined below is to be followed for all AmeriCorps*VISTA sponsors seeking renewal of their existing AmeriCorps*VISTA projects with the exception of sponsors proposing to change programmatic emphasis and/or substantially change the scope of activities as described in paragraph A.2.g.

1. At least 120 calendar days prior to the end of the Memorandum of Agreement, Corporation State Office staff will send out a renewal package to the sponsoring organization. In addition to an application form, the package should include any programmatic recommendations which the Corporation State Office staff believes are needed to improve the quality of the project based on information gleaned during site visits, from project progress reports, and from discussions with project staff and AmeriCorps*VISTA members.

2. At least 90 calendar days prior to the end of the current Memorandum of Agreement, the sponsoring organization will submit the renewal project application to the Corporation State Office.

3. The Corporation State Office staff will review the renewal application within 15 working days of receipt, or at least 75 calendar days prior to the end of the current Memorandum of Agreement. The review will include: a compliance review with AmeriCorps*VISTA regulations and program criteria; a review of progress being made toward achievement of capacity building and self-sufficiency goals; and conformance to the Corporation State Office's approved Annual Plan.

4. If the renewal proposal is approved by the Corporation State Office staff, the Corporation State Director will send an approval letter to the sponsor along with a new Memorandum of Agreement for signature by an authorized official. The project will be continued for one year subject to the availability of funds.

5. Corporation State Office staff will send to AmeriCorps*VISTA Headquarters a copy of the approved project application and a copy of the Corporation State Director's letter to the sponsor. The official project document file will be retained in the Corporation State Office.

6. If the Corporation State Director disapproves the renewal project application, the sponsor will be notified by the Corporation State Director at least 75 calendar days in advance of the end of the current project period that the Corporation for National Service intends to deny the application of renewal. The sponsor will be given reasons for the tentative decisions and an opportunity to show cause why the application should not be denied in accordance with section 412 of the Domestic Volunteer Service Act of 1973, and 45 CFR part 1206, Subpart B. The project will be continued at its existing level of AmeriCorps*VISTA member and project support pending a final decision in accordance with 45 CFR part 1206, subpart B.

7. If the final decision denies project renewal, AmeriCorps*VISTA whose terms of service extend beyond the project's expiration date are covered by the provisions of 45 CFR 1210.3–2(d).

C. Project Approval Process for Inter-Cluster Competitive Slots

1. Upon receiving program priorities, guidance, and timeframes from AmeriCorps*VISTA Headquarters, Corporation field offices will develop a strategy for programming and soliciting concept papers from qualified application organizations. AmeriCorps*VISTA Project Applications which are currently under development may also be considered for competition through the submission of a concept paper. Application organizations will be notified that their concept papers are being entered into an inter-Cluster competitive process. (Corporation Clusters represent a group of Corporation State Offices.)

2. Each Cluster Director shall appoint a review panel comprised of Corporation State Directors/Program Specialists with the Cluster Director serving as chair. The panel shall review and prioritize all concept papers, according to the selection criteria contained in Part II above. The Cluster Director shall submit all concept papers to the Director, AmeriCorps*VISTA, along with a written justification for its prioritized list.

3. The Director, AmeriCorps*VISTA, shall review all concept papers and render a decision on which concept papers are approved for full development as AmeriCorps*VISTA projects. AmeriCorps*VISTA Headquarters staff will notify Cluster Directors in writing of its decisions and establish a time-frame for submission of completed applications to Corporation State Offices. The Corporation State Office staff shall notify all organizations which have submitted a concept paper of Headquarters' decisions.

4. Corporation State Office staff shall provide AmeriCorps*VISTA project applications to organizations with approved concept papers and follow procedures for new sponsor development at the State level contained in Part III, A2 above. In this process, the approved concept paper takes the place of the pre-application form.

5. Renewal applications from competitively-selected projects will follow the procedures set forth in III B above.

*D. Project Approval Process for New AmeriCorps*VISTA National Demonstration Projects*

1. Applications for national demonstration projects will be generated by AmeriCorps*VISTA Headquarters staff which will arrange for technical assistance to be provided to potential sponsors.

2. In addition to being reviewed by AmeriCorps*VISTA Headquarters staff, applications will be made available to those Corporation State Offices having components of proposed national demonstrations operating in their State. Corporation State Office staff will be asked to review such applications and to provide AmeriCorps*VISTA Headquarters with the results of their review focusing on components proposed for operation in their State.

3. The Director of AmeriCorps*VISTA has approval authority for new national demonstration projects. Upon approval of a demonstration project, the Director of AmeriCorps*VISTA will take appropriate action to operationalize the project including coordination with Corporation State Offices having components within their jurisdiction.

*E. Project Approval Process for Existing AmeriCorps*VISTA National Demonstration Projects*

Projects will be reviewed at the time of their renewal request to determine the extent to which approved work plan goals and objectives are being met, paying special attention to capacity building and project self-sufficiency goals as well as to AmeriCorps*VISTA member retention and satisfaction with the service experience.

The project approval process outlined below is to be followed for all AmeriCorps*VISTA national demonstration projects seeking renewal.

1. At least 120 calendar days prior to the end of the current Memorandum of Agreement, AmeriCorps*VITA Headquarters staff will send out a renewal package. In addition to an application form, the package should include any programmatic recommendations which Headquarters believes are needed to improve the quality of the project based on information gleaned during site visits, from project progress reports, from discussions with project staff at national and local levels, from discussions with AmeriCorps*VISTA members, and from recommendations received from Corporation State Offices regarding local components.

2. At least 90 calendar days prior to the end of the current Memorandum of Agreement, the sponsoring organization submits the renewal project application to AmeriCorps*VISTA Headquarters.

3. Upon receipt of the renewal application, Headquarters staff will provide a copy of the application to appropriate Corporation State Offices for review and comment.

4. Within 15 working days of receipt of the national demonstration renewal application, Corporation State Office staff will review and submit written comments on project components within their jurisdiction.

5. Headquarters staff will complete their review of renewal applications within 20 working days of receipt, or at least 75 calendar days prior to the end of the current Memorandum of Agreement. The review will include a compliance review of AmeriCorps*VISTA regulations and program criteria, as well as a review of progress being made toward achievement of capacity building and self-sufficiency goals.

6. If the renewal proposal is approved, the Director of AmeriCorps*VISTA will send an approval letter to the sponsor along with a new Memorandum of Agreement prepared and signed by the Director. The project will be continued for one year subject to the availability of funds. The Director will take all other appropriate administrative action to maintain the operational status of the project.

7. If the Direct of AmeriCorps*VISTA disapproves the renewal project application, the sponsoring organization will be notified by the Director at least 75 calendar days in advance of the end of the current project period that the Corporation for National Service intends to deny the application for renewal. The

sponsor will be given reasons for the tentative decision and an opportunity to show cause why the application should not be denied in accordance with section 412 of the Domestic Volunteer Service Act of 1973, as amended, and 45 CFR, part 1206, subpart B. The project will be continued at its existing level of AmeriCorps*VISTA volunteer and project support pending a final decision in accordance with 45 CFR part 1206, subpart B.

8. Where a final decision denies project renewal, AmeriCorps*VISTA members whose terms of service extend beyond the project's expiration date are covered by the provisions of 45 CFR 1210.3–2(d).

*F. Extensions of Current AmeriCorps*VISTA Projects*

In certain circumstances, current AmeriCorps*VISTA sponsors may wish to extend previously approved projects for up to six months in order to allow already assigned AmeriCorps*VISTAs to complete their terms of service, and/or to conclude activities designed to complete the capacity building and/or self-sufficiency goals of the project prior to the time AmeriCorps*VISTA resources are withdrawn.

In such instances, the AmeriCorps*VISTA sponsor will send to the Corporation State Office, at least 60 days prior to the end of the current project period, a detailed justification, along with Section III of the AmeriCorps*VISTA Project Application form, describing the activities to be performed during the extension period.

The Corporation State Director will review the project extension request and make a determination to approve or disapprove the request within 15 working days of receipt.

The Corporation State Director will take all necessary action to implement an approval decision including extension of the current Memorandum of Agreement. The Corporation State Director will forward a copy of the extension material to AmeriCorps*VISTA Headquarters.

Denial of project extension requests of six months or less are not subject to denial of refunding procedures contained in section 412 of the Domestic Volunteer Service Act of 1973, as amended, and 45 CFR part 1206, subpart B.

*G. Increases in Approved Levels of AmeriCorps*VISTA Volunteers*

1. Existing AmeriCorps*VISTA projects seeking to increase the number of AmeriCorps*VISTAs from their previously approved level must submit their request in writing to the Corporation State Director justifying the requested increase.

2. The Corporation State Director will review the request within the context of the Corporation State Office's approved Annual Plan and render a decision within 15 working days of receipt. The Corporation State Director will notify the sponsor of the decision in writing and provide a copy of the decision to AmeriCorps*VISTA Headquarters. For approved requests, the Corporation State Director will amend the current Memorandum of Agreement and submit a request to increase the number of AmeriCorps*VISTA members to the Governor or other Chief Executive Officer of the State/jurisdiction prior to placement of additional volunteers on the project.

3. Denial of a request to increase the number of AmeriCorps*VISTA members on an approved project is not subject to denial of refunding procedures contained in Section 412 of the Domestic Volunteer Service Act of 1973, as amended, and 45 CFR part 1206, subpart B.

*H. Intergovernmental Review of AmeriCorps*VISTA Projects*

Agencies and organizations submitting new or renewal AmeriCorps*VISTA project applications must comply with the provisions of Executive Order 12372, the ''Intergovernmental Review of Federal Programs and Activities'' as set forth in 45 CFR part 1233. Corporation State Office staff will provide applicant organizations with technical assistance regarding this requirement.

*I. Governor's Approval of AmeriCorps*VISTA Projects*

No AmeriCorps*VISTA members may be assigned to serve in a program or project in any community until the Governor or other Chief Executive Officer of the state has been given 45 days within which to review the application for such program or project and disapprove, in writing, the proposed submission.

Governor's approval must be sought by the Corporation State Director for all new AmeriCorps*VISTA projects as well as for ongoing projects which are requesting an increase in members or substantially changing AmeriCorps*VISTA activities.

*J. Freedom of Information Act Requests Related to AmeriCorps*VISTA Project Reviews*

All Freedom of Information Act (FOIA) requests generated by the project review process shall be directed to the FOIA Office in the Corporation for National Service Headquarters for reply (even if initially addressed to Corporation State or Cluster Office).

Shirley Sagawa,

Executive Vice President and Executive Director.

[FR Doc. 95–3005 Filed 2–6–95; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Second Annual National Security Education Program (NSEP) Institutional Grants Competition

AGENCY: Department of Defense, National Security Education Program (NSEP).

ACTION: Notice.

SUMMARY: The NSEP announces the opening of its Second Annual Competition for Grants to U.S. Institutions of Higher Education.

DATES: Grant solicitations (applications) will be available beginning Monday, March 6, 1995. Preliminary Proposals are due Friday, April 21, 1995.

ADDRESSES: Request copies of the solicitation (application) from NSEP, Institutional Grants, Rosslyn P.O. Box 20010, 1101 Wilson Blvd., Suite 1210, Arlington, VA 22209–2248, by FAX to (703) 696–5667, or via INTERNET: nsep@policy1.policy.osd.mil

FOR FURTHER INFORMATION CONTACT: Mr. Steven R. Dorr, (703) 696–1991.

Dated: February 1, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–2918 Filed 2–6–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Intelligence Agency, Scientific Advisory Board Panel Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: March 15, 1995 (830–400).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory

Board, Washington, D.C. 20340–1328, (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: February 1, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–2919 Filed 2–6–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

USAF Scientific Advisory Board Meeting

The Geophysics Panel of the USAF Scientific Advisory Board will meet on 6–10 March 1995 at Hanscom AFB, Massachusetts from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting will be to provide science and technology assessments on geophysics 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) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–2954 Filed 2–6–95; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by February 15, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. 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: Section of 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection,violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping Burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: February 1, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: State Plan Instructions for Title I, Part A, Improving Basic Programs Operated by Local Educational Agencies.
Frequency: Annually.
Affected Public: State, Local or Tribal Government.
Reporting Burden:
Responses: 53.
Burden Hours: 25,440.
Recordkeepers Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: To receive Title I, Part A funds, the SEA must develop and submit a State plan to the Department for peer review. The Department will use the information for program management and to update their plans to reflect changes in the State's programs and strategies.
Additional Information: Clerance for this information collection is requested for February 15, 1995. In order to give the States sufficient time to prepare plans/applications, the applications need to be mailed to the SEAs by mid-February. OMB approval is needed as soon as possible to allow time for revisions or reproductions.

[FR Doc. 95–2881 Filed 2–6–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Hot Dry Rock Geothermal Energy Systems; Development of a Plant To Produce and Market Electric Power or Thermal Energy

AGENCY: Department of Energy (DOE), Albuquerque Operations Office (AL).

ACTION: Notice of issue of solicitation.

SUMMARY: The DOE Albuquerque Operations Office announces the issue of a competitive Solicitation Number DE–SC04–95AL98784 under DOE Financial Assistance Rules, 10 CFR 600.9, for Hot Dry Rock Geothermal Energy Systems Development of a Plant to Produce and Market Electric Power or Thermal Energy.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Albuquerque Operations Office, P.L. Box 5400, Albuquerque, NM 87185–5400, Attn: Ms. M. Laurene Dubuque, Contracts and Procurement Division, Telephone Number: (505) 845–4301, Fax Number: (505) 845–4004.

A copy of the solicitation can be obtained by contacting Ms. Dubuque at the above address, telephone, or fax number(s). Applicants who have previously requested copies of this solicitation are currently on the mailing list and have been furnished a copy of the solicitation.

SUPPLEMENTARY INFORMATION: This competitive solicitation is seeking industrial partners to participate in a 50/50 cost-shared, industry-led project to develop and operate a prototype plant to produce and market electric power or

heat generated from geothermal energy in hot dry rock. One award is anticipated to be made for a multi-staged, multi-year cooperative agreement, requiring a team composed of a resource owner, developer, operator, and customer for the energy. DOE anticipates that $1,500,000 will be available for the support of activities during the first year of the project with future annual budget allocations ranging from $1,500,000 to $8,000,000. The funding does not include the applicant's cost share.

Background

Geothermal energy is found at depths everywhere in the world in the form of heat stored in rock which is not but essentially dry. Advanced technology to extract the geothermal energy from this hot dry rock has been under development for over 20 years. The technology entails circulating water through a man-made geothermal reservoir to extract thermal energy and bring it to the surface for recovery and use. Several studies have estimated that geothermal energy from hot dry rock could be used to produce electricity at costs of $0.05–0.07 per kWh at numerous high gradient locations located in the western United States and overseas, there appear to be no technical impediments to the commercialization of hot dry rock technology.

On September 14, 1993, DOE/AL issued a Notice of Program Interest to obtain a preliminary indication of interest by private and non-federal public organizations in cost-sharing a project to develop and operate a demonstration plant to generate and market electric power or heat from hot dry rock geothermal energy. On September 7, 1994, a Commerce Business Daily announcement was published for the intent to issue a solicitation. DOE/AL received responses from a number of diverse organizations which constitute the initial mailing list for the solicitation. On the basis of this expressed interest, the solicitation was issued December 28, 1994 with a closing date of March 28, 1995 for receipt of applications.

Purpose

This notice is issued to announce the issue of hot dry rock geothermal energy systems solicitation.

Issued in Albuquerque, New Mexico on January 26, 1995.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 94–3021 Filed 2–66–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance; Industrial Heating Equipment Research Program

AGENCY: Department of Energy.

ACTION: Notice of Availability of a Federal Assistance Solicitation for Cooperative Agreement Proposals (FASCAP).

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rule, 10 CFR 600.9, announces the availability of a solicitation, FASCAP No. DE–PS02–95CE41122, for the Industrial Heating Equipment Research Program.

FOR FURTHER INFORMATION CONTACT: Susan Borthwick, U.S. Department of Energy, Chicago Operations, 9800 S. Cass Avenue, Argonne, IL 60439, (708) 252–2377.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) plans to issue a Federal Assistance Solicitation for Cooperative Agreement Proposals (FASCAP), February 27, 1995, for the Industrial Hearing Equipment Research Program. The program has the following objectives: (1) To improve industrial energy use efficiency and productivity in heating and combustion for process heat by at least 20%; (2) to improve and increase the use of waste-source fuels; (3) to reduce the national environmental impacts of industrial wastes that results from less efficient production and delivery of process heat; and (4) to lower the industrial production costs and improve the competitive position of U.S. industry relative to foreign-based industry.

The areas of interest of the Solicitation are centered on four main targeted areas that economically conserve energy while minimizing or reducing waste materials. They are (1) optimization of heat transfer to furnace loads, (2) development of adjustable co-fired combustors/combustion chambers for converting industrial waste to process heat or electric power, (3) development of low-cost combustion controls for improving efficiency of multi-burner boilers and industrial furnaces, and (4) high temperature (Order of 2000 °F) particulate removal system for application to solid-fueled gas turbines. The work covered by the Solicitation is expected to be applicable to the industries that are high consumers of hearing fuel. Applicants must demonstrate that the proposed technology can economically accomplish more energy efficient and environmentally acceptable production, that the proposed technology, if implemented, can result in 20 percent energy efficiency, and that DOE funding is necessary for development and ultimate commercialization of the proposed technology.

Each research project will consist of up to three phases: Phase I, R&D Definition; Phase II, Development; and Phase III, Demonstration Testing and Commercialization Planning. If one or more of the initial phases or their subparts has already been performed, the applicant may propose a project for only the uncompleted phases; however, the proposal must fully document and demonstrate that the previous phase(s) have been successfully completed. The estimated DOE funding for GFYs 1995 and 1996 is $725,000. A minimum of 20 percent cost sharing (non-federal) is required for Phases I and II and 50 percent for phase III of the project. The resultant agreement will be managed by the DOE, Chicago Operations Office. The period of performance may vary, depending on the project, from one to six years. Proposals will be due by April 17, 1995. If you are interested in receiving the FASCAP, contact Susan Borthwick at the above address or phone number, or Dorothy Pitts at (708) 252–2501. All responsible sources may submit a proposal which will be considered.

The solicitation is subject to the Energy Policy Act, P.L. 102–486, 42 U.S.C. 13525. Section 2306 imposes eligibility requirements on companies seeking financial assistance under titles XX through XXIII of the Act. A company shall be eligible to receive financial assistance under titles XX through XXIII of the Act only if the Secretary finds that the company's participation in any program under such titles would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions of employment in the United States; an agreement with respect to any technology arising from assistance provided under this section to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers.

Issued in Chicago, Illinois on January 27, 1995.

Timothy S. Crawford,

Assistant Manager for Human Resources and Administration.

[FR Doc. 95–3022 Filed 2–6–94; 8:45 am]

BILLING CODE 6450–01–M

Intergovernmental Panel on Climate Change, Working Group III

AGENCY: Office of Policy, DOE.

ACTION: Notice of availability of draft report and request for comment.

SUMMARY: Working Group III of the Intergovernmental Panel on Climate Change (IPCC) has prepared a draft 1995 Assessment of Economic and Cross-cutting Issues. The IPCC Secretariat requires comments on this report from national governments by March 13, 1995, so that the Secretariat can meet its obligations to member governments of the IPCC. The U.S. Government received a copy for formal government comment on January 20, 1995. The Department of Energy, on behalf of the U.S. Global Change Research Program (USGCRP), is responsible for coordinating and preparing the comments of the United States Government. Through today's notice, DOE is announcing the availability of the draft 1995 Assessment, and requesting public comments on this report. These comments will be reviewed and incorporated, as appropriate, in the official U.S. comments to the IPCC.

DATES: Written comments (five copies, and if possible on a 3 1/2″ floppy diskette in either Microsoft Word or WordPerfect format) on the draft 1995 Assessment should be submitted on or before February 21, 1995. DOE does not anticipate extending this deadline because the IPCC requires input by March 13, 1995.

ADDRESSES: Comments should be submitted either by mailing to: IPCC WG III Comments, Office of the U.S. Global Change Research Program, 300 D Street, SW., Suite 840, Washington, DC 20024, or by E-mail in ASCII format on Internet to: ''comments.wg3@usgcrp.gov''.

A copy of the draft 1995 Assessment can be obtained by: (1) telephone request to Ms. Susan Henson at (202) 651–8240, (2) sending E-mail on Internet to ''office@usgcrp.gov'', (3) faxing a request to (202) 554–6715, (4) sending a letter to the USGCRP Office directed to Ms. Henson, or (5) direct pick-up at the USGCRP office at the address shown above.

FOR FURTHER INFORMATION CONTACT: Ed Watts, Office of Global Environment, U.S. Department of Energy at (202) 586–8436.

SUPPLEMENTARY INFORMATION:

I. Background

The Intergovernmental Panel on Climate Change (IPCC) was jointly established in 1988 by the United Nations Environment Programme and the World Meteorological Organization to conduct periodic assessments of the state of knowledge concerning global climate change. The IPCC has formed working groups to study various aspects of climate change. Working Group I addresses the state of the science; Working Group II addresses vulnerability, impacts and adaptation and mitigation strategies; and Working Group III addresses economics and cross-cutting issues associated with climate change. Like the other working groups, Working Group III is charged with issuing periodic assessment reports. The first Scientific Assessment of Climate Change, for example, was published in June 1990. Periodic assessment reports such as this provide a comprehensive statement of the state of knowledge concerning such topics as scientific information, environmental impacts, response strategies, economics, and cross-cutting issues concerning climate change. The draft 1995 Assessment represents the result of Working Group III's efforts since its inception to address economics and cross-cutting issues.

II. Public Input Process

The IPCC Secretariat requires comments by March 13, 1995, so that it can meet its obligations to member governments for a timely completion of the 1995 IPCC assessment. The Department of Energy, on behalf of the USGCRP, is responsible for preparing these comments, and through this notice is seeking public views which will be incorporated, as appropriate, in the official U.S. comments. Because of the short review time provided by the IPCC Secretariat and the need to provide time for review of the public comments and development of the official U.S. comments on the draft document, public comments must be received on or before February 21, 1995.

III. Request for Submission of Public Comments

Interested persons are invited to submit comments on the draft 1995 Assessment. Five copies should be submitted to the address indicated in the **ADDRESSES** section, and must be received by the date indicated in the **DATES** section of this notice. All written comments received from the public will be available for public inspection in the DOE Freedom of Information Office Reading Room, which is located in Room 1E–090 of the DOE Forrestal Building, 1000 Independence Ave, SW., Washington, DC 20585.

Issued in Washington, DC on February 2, 1995.

Abraham E. Haspel,

Deputy Assistant Secretary for Economic and Environmental Policy, Office of Policy.

[FR Doc. 95–3011 Filed 2–6–95; 8:45 am]

BILLING CODE 6450–01–P

Metal Casting Industrial Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the Metal Casting Industrial Advisory Board meeting.

DATES: February 28, 1995, 8:00 am–5:30 pm; March 1, 1995, 8:00 am–12:00 pm.

ADDRESSES: Bay Valley Resort Hotel, 2470 Old Bridge Road, Bay City, Michigan 48706.

FOR FURTHER INFORMATION CONTACT: Douglas E. Kaempf, Program Manager, Department of Energy, Office of Industrial Technologies (EE–23), 1000 Independence Ave. S.W., Washington, D.C. 20585, (202) 586–5264, Fax: (202) 586–3180.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* The Metal Casting Industrial Advisory Board serves to provide guidance and oversight of research programs provided under the Metal Casting Competitiveness Research Program and to recommend to the Secretary of Energy new or revised program activities and Metal Casting Research Priorities.

Tentative Agenda

February 28, 1995

8:00 a.m. Welcome and Instructions, Douglas Kaempf

8:30 a.m. Presentations of the FY 94 selected projects research activities and management plans (30 minutes each):

University of Alabama—Tuscaloosa, Tom Piwonka

Ohio State University/Worcester Polytechnic Institute, Allen Miller

Ohio State University/ Case Western Reserve University

Idaho State University, K.L. Moore

10:30 a.m. Break

10:45 a.m. Continue presentations of the FY 94 selected projects research activities and management plans (30 minutes each):

Texas A&M University, Malur Srinivasan

University of Alabama—Birmingham, Charles Bates

11:45 a.m. Lunch

1:00 p.m. Presentations of selected metal casting research activities and management plans (30 minutes each):

Pennsylvania State University/University of Missouri-Rolla, Robert Voigt
American Foundrymen's Society, TBD
Michigan Technological University, Richard Tieder
University of Wisconsin-Milwaukee, Pradeep Rohatgi
3:00 p.m. Break
3:15 p.m. Presentations of other Federally Funded Metal Casting Research Programs (20 minutes each):
NIST, Robert Schaefer
NSF, Bruce Kramer
DOD/Air Force, Tom Broderick
DOD/Army, Al Gonsiska
DOD/Navy, TBD
EM, TBD
DP, TBD
5:30 p.m. Adjournment

March 1, 1995

8:00 a.m. Welcome
9:00 a.m. Status of metal casting industry vision by metal casting coalition, Dan Twarog
10:00 a.m. Break
10:15 a.m. Panel Discussion—Technology Advances & Opportunities in the National Laboratories:
Argonne, Henry Domanus
Idaho, Marty Sorensen
Lawrence Livermore, Al Lingenfelter
Los Alamos, Billy Hogan
Oak Ridge, Peter Angelini
Sandia, Frank Zanner
12:00 p.m. Adjournment

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. The Chairperson of the Board is empowered to conduct the meeting to facilitate the orderly conduct of business. Any member of the public who wished to make oral statements pertaining to the agenda items should contact Douglas E. Kaempf at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. Written statements may be filed with the Committee either before or after the meeting.

Transcript: Available for public review and copying at the Freedom of Information Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between 9:00 AM and 4:00 PM, Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on February 2, 1995.

Gail Cephas,

Acting Deputy Advisory Committee, Management Officer.

[FR Doc. 95–3009 Filed 2–6–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Additional Public Meeting and Request for Comment on a Draft Outline for a Technical Study Concerning the National Ignition Facility and the Issue of Nonproliferation

AGENCY: Department of Energy.

ACTION: Notice of additional public meeting and request for comment.

SUMMARY: The Department of Energy (DOE) held a workshop on September 8, 1994, to begin a dialogue with the public concerning issues arising from building and operating the National Ignition Facility (NIF). Two public meetings held on January 24, 1995, in Oakland, CA, and on January 30, 1995, in Washington, DC, continued this dialogue, focusing on a draft outline for a technical study that DOE is writing concerning the NIF and the issue of nonproliferation. Today's notice is to announce that DOE is adding an additional public meeting in Livermore, CA, on the draft outline for the study and extending the written comment period. DOE is requesting both oral and written comments on the outline for the technical study.

DATES: Written comments (11 copies) are requested to be received by DOE on or before March 16, 1995. Oral views and data may be presented at an additional public meeting to be held in Livermore, CA, on March 9, 1995, beginning at 1:30 p.m. and concluding at 9:00 p.m. with a break for dinner from 4:30–6:30 p.m. The length of each oral presentation is limited to 10 minutes.

ADDRESSES: All written comments (11 copies) and requests to speak at the public meeting should be addressed to U.S. Department of Energy, NN–40, 1000 Independence Avenue, SW, Washington, DC, 20585, (202) 586–3012. In the event any person wishing to submit a written comment cannot provide eleven copies, alternate arrangements can be made in advance by calling the phone number referenced above.

The public meeting be held at the following location: Research Drive Conference Center, Room One, 2140 Research Drive, Livermore, CA.

Copies of the public meeting transcripts and written comments received may be read and photocopied at DOE Freedom of Information Reading Room, U.S. Department of Energy, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC, 20585, (202) 586–6020, between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday except Federal holidays. These documents may also be read during the same hours at DOE Oakland Operations Office, Federal Building, 1301 Clay Street, Room 1070N (10th Floor), Oakland, CA, 94612 (510) 637–1762.

For further information concerning public participation, see the ''Opportunity For Public Comment'' section of this notice.

SUPPLEMENTARY INFORMATION: NIF and its potential impact on the nonproliferation of nuclear weapons was an issue which was raised at the September 8, 1994, NIF public workshop held in Washington, DC. As a result of this meeting, DOE has prepared an outline for a technical study of this issue. The purpose of the public meetings is to seek the comments of the public on the outline for the technical study and to ensure that the issues the Department plans to address in this study are comprehensive. As such, DOE is soliciting the public to provide oral statements concerning the outline at public meetings and/or to provide written comments. Addresses, dates and times are provided at the beginning of this notice.

Draft Outline

The working title that DOE is using is, ''The National Ignition Facility and its Potential Impact on the Nonproliferation of Nuclear Weapons.''

The outline that DOE is proposing to use for the technical study is:

I. Introduction

- Thermonuclear weapons
  —fusion secondaries
- Controlled thermonuclear reactions
  —inertially-confined fusion
  —ignition and burn

II. The National Ignition Facility

- Overview
- How NIF differs from
  —magnetic confinement
  —its predecessors, NOVA, etc., and similar facilities in the U.S. and other countries

III. Fusion Science and High-Energy-Density Physics

- What important science can be learned at NIF?
- How is it learned?
- What may NIF do that couldn't be done before?
- What do scientists want to do?
  —how does this differ from nuclear weapons science?

IV. Horizontal Proliferation

- What could proliferators learn by
  —access to NIF or comparable facilities?
  —access to unclassified NIF data and reports?
- What could proliferators do with this information?
- How can this information be kept from proliferators?
  —classification/declassification issues
  —access/experimental program control

- Alternate paths to the same or equivalent information (or what could/could not be done without this kind of information?)
- Other country plans for ICC

V. Vertical Proliferation

- What could U.S. weapons designers do with NIF data?
  —impact on advanced designs
  —ability to address stockpile problems
- Plans for ICF research in other nuclear weapons states

Opportunity for Public Comment

A. Written Comment Procedures

Interested persons and organizations are invited to participate by submitting data and views with respect to the proposed outline and issues addressed by the technical study.

Written comments (11 copies) should be identified on the envelope and on the documents themselves with the designation ''NIF & Nonproliferation'' and should be received by the date specified at the beginning of this notice.

B. Public Meeting Procedures

DOE will hold an additional public meeting on the outline and issues addressed above. The additional public meeting will be held on the date and at the location indicated at the beginning of this notice. A request to speak at the public meeting should be addressed to the address or phone number indicated at the beginning of this notice. The person should provide a phone number where he or she may be contacted during the day. Persons will be notified as to the approximate time they will be speaking. The length of each presentation will be limited to 10 minutes or based on the number of persons requesting an opportunity to speak.

A DOE official will preside at the public meeting. The additional public meeting will be another opportunity for the public to provide DOE with its comments concerning the outline and issues to be addressed by the technical study. A transcript of these meetings will be made and will be retained by DOE and made available for inspection at DOE Freedom of Information Reading Room and DOE Oakland Operations Office at the address indicated at the beginning of this notice.

Issued in Washington, DC, on February 1, 1995.

Kenneth N. Luongo,

Director, Office of Arms Control and Nonproliferation.

[FR Doc. 95–3008 Filed 2–6–95; 8:45 am]

BILLING CODE 6450–01–M

Southeastern Power Administration

Proposed Rate Extension, Public Hearing, and Opportunities for Public Review and Comment

AGENCY: Southeastern Power Administration (Southeastern), Department of Energy.

ACTION: Notice of proposed rate extension for the Jim Woodruff Project, notice of public hearing and opportunities for review and comment.

SUMMARY: Southeastern proposes to extend Wholesale Power Rate Schedules JW–1–D and JW–2–B for a five year period from September 20, 1995 to September 19, 2000. Rate schedule JW–1–D is applicable to Southeastern power sold to existing preference customers in the Florida Power Corporation Service area. Rate schedule JW–2–B is applicable to Florida Power Corporation.

Opportunities will be available for interested persons to review the present rates, the supporting studies, and to participate in a hearing and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before May 12, 1995. A public information and public comment forum will he held in Tallahassee, Florida, on March 23, 1995. Persons desiring to speak at the forum must notify Southeastern at least 7 days before the forum is scheduled so that a list of forum participants can be prepared. Others present may speak if time permits. Persons desiring to attend the forum should notify Southeastern at least 7 days before the forum is scheduled. If Southeastern has not been notified by close of business on March 16, 1995, that at least one person intends to be present at the forum, the forum will be automatically canceled with no further notice.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635. The public comment forum will begin at 10 a.m. on March 23, 1995, in the Holiday Inn Capitol Plaza, 101 South Adams Street, Tallahassee, Florida 32303.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance and Marketing Division, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635, (706) 213–3800.

SUPPLEMENTARY INFORMATION:

Discussion

Existing rate schedules are supported by an August 1993 Repayment Study and other supporting data contained in FERC Docket EF94–3031–000. A repayment study prepared in January 1995 shows that the existing rates are adequate to meet repayment criteria. Approval of existing rate schedules JW–1–D and JW–2–B expires September 19, 1995. Southeastern is proposing to extend existing rate schedules for five years, to September 19, 2000. In developing the rate extension, Southeastern considered revenue requirements as determined by the January 1995 system repayment studies. The studies are available for examination at the Samuel Elbert Building, Elberton, Georgia 30635, as is the 1993 repayment study and the proposed Rate Schedules.

Issued in Elberton, Georgia, January 23, 1995.

John A. McAllister, Jr.,

Administrator.

[FR Doc. 95–3010 Filed 2–6–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER94–1297–000, et al.]

Black Creek Hydro, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 27, 1995.

Take notice that the following filings have been made with the Commission:

1. Black Creek Hydro, Inc.

[Docket No. ER94–1297–000]

Take notice that on January 19, 1995, Black Creek Hydro, Inc. (Black Creek) tendered for filing an Agreement for Power Sale (Agreement) between Black Creek and Washington Water Power Company (WWP), dated October 20, 1994. The Agreement provides for the sale by Black Creek to WWP of the total energy produced by the Black Creek Hydroelectric Project, located in King County, Washington.

Black Creek has requested an effective date of January 19, 1995 for the Agreement, and is requesting waiver of the 60 day notice period.

Copies of the filing were served on WWP.

Comment date: February 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc.

[Docket No. ER95–269–000]

Take notice that on January 17, 1995, Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. (Montana-Dakota) tendered for filing an amendment to its original filing in this docket.

Comment date: February 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Southeastern Energy Resources, Inc.

[Docket No. ER95–385–000]

Take notice that on January 19, 1995, Southeastern Energy Resources, Inc. tendered for filing an amendment to its January 4, 1995 filing in the above-referenced docket.

Comment date: February 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Gulf Power Co.

[Docket No. ER95–420–000]

Take notice that on January 12, 1995, Gulf Power Company tendered for filing supplemental agreements for West Florida Electric Cooperative Association at Pittman delivery point, which receives transmission service under Supplement No. 1 to FERC Rate Schedule No. 82 (Service Schedule T of the Gulf/AEC Interconnection Agreement.)

Comment date: February 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER95–442–000]

Take notice that PacifiCorp on January 17, 1995, PNW AC Intertie Capacity Ownership Agreement (Agreement) and Amendatory Agreement No. 1 to the Agreement (Amendment) between PacifiCorp and Bonneville Power Administration (Bonneville).

PacifiCorp requests a waiver of prior notice and that an effective date of January 1, 1995 be assigned to the Agreement and Amendment.

Copies of this filing were supplied to Bonneville, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: February 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Black Hills Corp.

[Docket No. ER95–444–000]

Take notice that Black Hills Corporation, which operates its electric utility business under the assumed name of Black Hills Power and Light Company (BHC) on January 17, 1995, tendered for filing a Power Integration Agreement, dated September 9, 1994 (Power Agreement), entered into between BHC and Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. (MDU). BHC also submitted a Construction, Ownership and Operation Agreement, dated September 9, 1994 (CT Agreement) entered into between BHC and MDU and requests that either the CT Agreement be recognized as nonjurisdictional or, alternatively, be accepted for filing.

The Power Agreement provides for the sale by BHC to MDU for a ten-year period commencing January 1, 1997 of electric power and energy for MDU's service territory in and around Sheridan, Wyoming. The CT Agreement provides for the operation, use and ownership by BHC and MDU of a Combustion Turbine to be constructed at such time BHC's resource planning requires such turbine.

Copies of the filing were provided to MDU, PacifiCorp, the South Dakota Public Utilities Commission, the Wyoming Public Service Commission, and the Montana Public Service Commission.

Black Hills has requested that advance notice requirements of Part 35.3 of the Commission's Regulations be waived; that the Commission accept the Power Agreement for filing with an effective date as of the acceptance, but no later than January 1, 1997; and that the Commission either declare the CT Agreement as nonjurisdictional or, alternatively, accept the CT Agreement for filing with an effective date as of the acceptance, but no later than January 1, 1997.

Comment date: February 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Long Island Lighting Co.

[Docket No. ER95–445–000]

Take notice that Long Island Lighting Company (LILCO) on January 17, 1995, tendered for filing an Amendment, dated December 6, 1994 (the Amendment), to the July 1, 1981 System Exchange Agreement between the Connecticut Light and Power Company and Western Massachusetts Electric Company (the Northeast Utilities Companies) and LILCO.

LILCO has requested a waiver of the Commission's prior notice and filing requirements to permit the Amendment to become effective as of one day after it is filed with the Commission.

Copies of this filing have been served by LILCO on Northeast Utilities Service Company and the New York State Public Service Commission.

Comment date: February 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. The Empire District Electric Co.

[Docket No. ER95–446–000]

Take notice that The Empire District Electric Company (EDE) on January 17, 1995, tendered for filing proposed changes in its Transmission Peaking Service Contract between EDE and the Kansas Electric Power Cooperative, Inc. (KEPCo).

This filing is to replace the Transmission Peaking Service Contract between KEPCo and EDE dated March 16, 1984. The peaking contract was revised to change effective and termination dates and to allow for changes in contract capacity amounts. The new contract does not change rate schedules rates.

Copies of the filing were served upon the Arkansas Public Service Commission, Kansas Corporation Commission, the Missouri Public Service Commission, Oklahoma Corporation Commission and KEPCo.

Comment date: February 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Montaup Electric Co.

[Docket No. ER95–448–000]

Take notice that on January 17, 1995, Montaup Electric Company filed revised tariff service agreements among Montaup and the retail affiliates to which Montaup provides all requirements service: Eastern Edison Company in Massachusetts and Blackstone Valley Electric Company and Newport Electric Corporation in Rhode Island. This eliminates the difference in notice periods between the all requirements and contract demand customers by extending the term of the all requirements service agreements from December 31, 1997 through October 31, 2000. Montaup requests that the filing be made effective on March 19, 1995.

Comment date: February 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Montaup Electric Co.

[Docket No. ER95–449–000]

Take notice that on January 17, 1995, Montaup Electric Company filed a Supplement to the Memorandum of Understanding (MOU) among Montaup and the retail affiliates to which Montaup provides all requirements service: Eastern Edison Company in Massachusetts and Blackstone Valley

Electric Company and Newport Electric Corporation in Rhode Island. The MOU was entered into on August 20, 1993 and has been accepted for filing as part of Montaup's all requirements tariff in Docket No. ER94–1472–000. The Supplement to the MOU moves the language in Section III(D) to a new Section VI in order to clarify the intent of the MOU. Montaup requests that the filing be made effective on March 19, 1995.

Comment date: February 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. PECO Energy Co.

[Docket No. ER95–450–000]

Take notice that on January 18, 1995, PECO Energy Company (PECO), tendered for filing an Agreement between PECO and Electric Clearinghouse, Inc. (ECI) dated January 12, 1995.

PECO states that the Agreement sets forth the terms and conditions for the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to ECI. In order to optimize the economic advantage to both PECO and ECI, PECO requests that the Commission waive its customary notice period and permit the agreement to become effective on January 19, 1995.

PECO states that a copy of this filing has been sent to ECI and will be furnished to the Pennsylvania Public Utility Commission.

Comment date: February 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Power and Light Co.

[Docket No. ER95–451–000]

Take notice that on January 18, 1995, Wisconsin Power and Light Company (WP&L), tendered for filing a signed Service Agreement under WP&L's Bulk Power Tariff between itself and Midcon Power Services Corp. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of December 14, 1994.

Comment date: February 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–458–000]

Take notice that on January 20, 1995, Consolidated Edison Company of New York, Inc. (''Con Edison'') tendered for filing an agreement with Citizens Power and Light Corporation (''Citizens'') to provide for the sale of energy and capacity subject to cost based ceiling rates. The ceiling rate for energy is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per KWhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity sold by Con Edison is $7.70 per megawatt hour. The ceiling rate for capacity sold by Citizens will be the expected cost of Con Edison's alternative source of similar power.

Con Edison states that a copy of this filing has been served by overnight delivery upon Citizens.

Comment date: February 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Missouri Public Service a Division of UtiliCorp United Inc.

[Docket No. ER95–462–000]

Take notice that on January 20, 1995, Missouri Public Service a division of UtiliCorp United Inc. (''MPS'') tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) approving MPS's application for membership in the WSPP. MPS requests it be permitted to become a member of the WSPP. In order to receive the benefits of pool membership, MPS requests waiver of the Commission's prior notice requirement to allow its WSPP membership to become effective as soon as possible, but in no event later than 60 days from this filing.

Copies of the filing were served on WSPP and the Missouri Public Service Commission.

Comment date: February 10, 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. 95–2980 Filed 2–6–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP95–147–000]

Carnegie Interstate Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

February 1, 1995.

Take notice that on January 30, 1995, Carnegie Interstate Pipeline Company (CIPCO), successor to Carnegie Natural Gas Company tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet:

Tenth Revised Sheet No. 7

CIPCO has requested a waiver of the 30-day filing requirement to allow the tariff sheet to become effective February 1, 1995.

CIPCO states that this is its quarterly filing pursuant to revised Section 32.2 of the General Terms and Conditions of its FERC Gas tariff to reflect prospective changes in transportation costs associated with unassigned upstream capacity held by CIPCO on Texas Eastern Transmission Corporation (''Texas Eastern''), for the 3-month period commencing February 1, 1995 and ending April 30, 1995. The filing reflects a reduction in the Transportation Cost Rate from $1.0892 to 1.0490. The new TCR includes a TCR Adjustment of $0.9821 and a TCR Surcharge of $0.0669.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2927 Filed 2–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–206–000]

Central Illinois Public Service Co.; Notice of Filing

February 1, 1995.

Take notice that on January 13, 1995, Central Illinois Public Service Company tendered for filing an amendment in the above-referenced docket.

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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 13, 1995. 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. 95–2923 Filed 2–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–111–000]

The Electric Exchange; Notice of Filing

February 1, 1995.

Take notice that on January 27, 1995, The Electric Exchange (Applicant), filed an amendment to its application filed October 31, 1994 in the above-referenced docket requesting Commission acceptance of Applicant's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. Notice of the original application was published in the **Federal Register** on November 29, 1994 (59 FR 60969).

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 February 13, 1995. 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. 95–2922 Filed 2–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–140–000]

Northern Natural Gas Co., Notice of Proposed Changes in FERC Gas Tariff

February 1, 1995.

Take notice that on January 27, 1995, Northern Natural Gas Company (Northern), tendered for filing, under Section 4 of the Natural Gas Act (NGA), notice of the termination of gathering services offered over facilities located in Crockett County, Texas, effective February 28, 1995. Northern states that on December 19, 1994, the Commission authorized it to abandon, by sale to Peach Ridge Pipeline, Inc. (Peach Ridge), the Crockett County facilities, and declared that these facilities, once acquired by Peach Ridge, would be exempt from Commission regulation under Section 1(b) of the NGA (69 FERC ¶61,354 (1994)). Northern states it was directed to make the instant filing by the December 19, 1994 order.

Northern states that it is abandoning the facilities because, as a result of restructuring under Order No. 636, Northern no longer has a merchant function and does not require these facilities to access supplies to fulfill customer obligations. Regarding twelve customers who received gathering service over the Crockett County facilities (listed in the filing), Northern states they have been mailed the instant notice of termination of services, and that notice of the deletion of receipt and delivery points on the Crockett County facilities has been posted on Northern's Electronic Bulletin Board. Finally, Northern has listed those customers which have entered into private contracts for continued service with Peach Ridge. Although not all of the twelve customers have entered into such contracts, Northern states there were no outstanding protests in the abandonment proceeding; thus Northern is not required to file a default contract.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2924 Filed 2–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–145–000]

Northwest Pipeline Corp., Notice of Proposed Changes in FERC Gas Tariff

February 1, 1995.

Take notice that on January 30, 1995, Northwest Pipeline Corporation (Northwest), tendered for filing and acceptance as part of its FERC Gas Tariff the following tariff sheets with a proposed effective date of March 2, 1995:

Third Revised Volume No. 1
Second Revised Sheet No. 1
First Revised Sheet No. 2
Second Revised Sheet No. 15
Sheet Nos. 122 through 124
Sheet Nos. 126 through 199
First Revised Sheet No. 219
Original Sheet Nos. 363 through 366
Sheet Nos. 367 through 374.

Northwest states that the purpose of this filing is to implement a tariff provision that will allow Northwest to sell (i) gas that becomes the property of Northwest pursuant to the provisions of terminated transportation or storage agreements or due to tariff provisions relating to interruptible storage or shipper imbalances; and (ii) other de minimus volumes of gas as the need arises.

Northwest is also requesting limited waiver of the Commission's conduct and reporting regulations in Order No. 497 in regard to the occasional sale of insignificant amounts of gas.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customers and relevant state regulatory commissions.

Any person desiring to be heard or 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 Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2926 Filed 2–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No RP95–141–000]

Pacific Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

February 1, 1995.

Take notice that on January 30, 1995, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following revised tariff sheets to become effective March 1, 1995:

Sixth Revised Sheet No. 4
Original Sheet No. 6F

PGT states that it is tendering the revised tariff sheets to commence recovery of approximately $14 million of gas supply realignment (''GSR'') costs in accordance with Section 30 of the General Terms and Conditions of PGT's FERC Gas Tariff, First Revised Volume No. 1–A and the Commission's Orders of July 12, 1993 and October 1, 1993, in PGT's restructuring case, Docket No. RS92–46–000. The amount of GSR costs proposed to be recovered represents 75% of its GSR costs PGT paid to date over and above the amounts PGT received authorization to recover in Docket No. RP94–24–000.

PGT states that it will recover 25% of its GSR costs by means of a direct bill and 50% of the GSR costs by means of a volumetric surcharge applicable to service under Rate Schedules FTS–1 and ITS–1. In the event no party successfully challenges the prudence of PGT's GSR costs, PGT will absorb the remaining 25% of its GSR costs.

PGT states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or 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 sections 385.214 or 385.211 of the Commission's Rules of Practice and Procedures. All such motions or protests should be filed on or before February 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2925 Filed 2–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–180–000]

Transcontinental Gas Pipe Line Corp.; Notice of Request Under Blanket Authorization

February 1, 1995.

Take notice that on January 26, 1995, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP95–180–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new sales tap to Exxon Company, U.S.A. (Exxon) under TGPL's blanket certificate issued in Docket No. CP82–426–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

TGPL proposes to install a new sales tap to Exxon consisting of a 4-inch hot tap on TGPL's existing 20-inch South McMullen Lateral in McMullen County, Texas. TGPL estimates the cost of the sales tap to be $82,000, of which, Exxon will reimburse TGPL. TGPL states that Exxon will construct appurtenant facilities to enable it to receive gas from TGPL and submits that the transportation service to Exxon will be rendered pursuant to TGPL's Rate Schedule IT.

TGPL further states that the new sales tap will be used by Exxon to receive up to 400 Mcf per day of gas from TGPL on an interruptible basis. Exxon will use the gas to fuel a compressor in Dilworth Field, McMullen County, TGPL explains. The service rendered to Exxon will be under TGPL's Rate Schedule IT.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2921 Filed 2–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1385–000]

West Texas Utilities Company; Notice of Filing

February 1, 1995.

Take notice that on January 3, 1995, West Texas Utilities Companies tendered for filing an amendment in the above-referenced docket.

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. 2026, 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 February 15, 1995. 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. 95–2951 Filed 2–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–178–000]

Williams Natural Gas Co.; Notice of Application

February 1, 1995.

Take notice that on January 26, 1995, Williams Natural Gas Company (Williams), Post Office Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP95–178–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, requesting permission and approval to abandon approximately 2,200 feet of 8-inch lateral pipeline and authorization to construct and operate approximately 2,300 feet of replacement line consisting of 2-inch and 6-inch lateral pipeline in Wilson County, Kansas, all as more fully set forth in the application of file with the Commission and open to public inspection.

Specifically, Williams states that it proposes to replace line YB across the road from its existing location in order to avoid a Department of Transportation Class III designated area and to eliminate 1920's vintage pipe. Williams further stated that the replacement will insure continued reliable service to the Neodesha, Kansas area.

It is estimated that the cost of the proposed abandonment will be approximately $2,000. It is further estimated that the replacement facilities for this project will cost approximately $168,861, which Williams proposes to finance with funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 22, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williams to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2920 Filed 2–6–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Cases Filed; Week of November 28 Through December 2, 1994

During the week of November 28 through December 2, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: January 30, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of November 28 through December 2, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 28, 1994 ..	Munir A. Malik, Hartford, Connecticut	VFA–0013 VFA–0014	Appeal of an Information Request Denial. If granted: The November 2, 1994 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Munir A. Malik would receive access to specific software products requested.
Nov. 29, 1994 ..	Albuquerque Operations Office, Albuquerque, New Mexico.	VSO–0013	Request for Hearing under C.F.R. Part 710. If granted: An individual employed at Albuquerque Operations Office would receive a hearing under 10 C.F.R. part 710.

REFUND APPLICATIONS RECEIVED

[Week of November 28 Through December 2, 1994]

Date received	Name of refund proceeding/name of refund applicant	Case No.
November 29, 1994	Ortiz Texaco	RF321–21049
November 29, 1994	Ed's Texaco	RF321–21050
December 1, 1994	Ryburn's Texaco Service	RF321–21051
December 1, 1994	Lee's Texaco Station	RF321–21052

[FR Doc. 95–3013 Filed 2–6–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Cases Filed; Week of December 5 Through December 9, 1994

During the week of December 5 through December 9, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: January 30, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 5 Through December 9, 1994]

Date	Name and location of applicant	Case No.	Type of submission
12/05/94	Bituminous Materials, Inc., Los Angeles, California.	RR321–173	Modification/Rescission in the Texaco Refund Proceeding. If granted: The August 26, 1994 Decision and Order (Case No. RF321–21017) issued to Bituminous Materials, Inc. would be modified regarding the application it submitted in the Texaco Refund Proceeding.
12/06/94	Oklahoma/Amoco, Belridge, Palo Pinto, Oklahoma City, Vickers, Amoco II, Oklahoma City, Oklahoma.	RM21–277–RM251–282	Request for Modification/Rescission in the Oklahoma Second Stage Refund Proceeding. If granted: The May 7, 1985 Decision and Order (Case Numbers RM21–277, RM8–278, and RM5–279), and the December 12, 1988 Decision and Order (Case Numbers, RM13–280, RM1–281, and RM251–282) would be modified regarding Oklahoma's application it submitted in the second stage refund proceeding.
12/07/94	Oak Ridge Operations Office, Oak Ridge, Tennessee.	VSO–0014	Request for Hearing under 10 CFR part 710. If granted: An individual employed at Oak Ridge Operations Office would receive a hearing under 10 CFR part 710.

REFUND APPLICATIONS RECEIVED

[Week of December 5 Through December 9, 1994]

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/05/94	National Coop Refinery Assoc	RF345–33
12/06/94	Carl's Arco	RF304–15464
12/07/94	General Paving Co	RG272–2
12/09/94	Coca-Cola of Los Angeles	RC272–268
12/09/94	Beatrice Cheese	RC272–269
12/09/94	Americold	RC272–270
12/09/94	Tropicana Products, Inc	RC272–271
12/09/94	Swift-Eckrich	RF272–272
12/09/94	Americold, Corp	RC272–273
12/09/94	Ozarka Spring Co	RC272–274
12/09/94	Great Bear Spring Co	RC272–275

[FR Doc. 95–3019 Filed 2–6–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Cases Filed During the Week of December 19 Through December 23, 1994

During the week of December 19 through December 23, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 30, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 19 Through December 23, 1994]

Date	Name and location of applicant	Case No.	Type of submission
12/22/94	Hewlett-Woodmere UFSD, Hewlett, New York	RR272–63	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The December 14, 1994 Dismissal Letter (Case No. RF272–82414) issued to Hewlett-Woodmere UFSD would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
12/21/94	National Security Archive, Washington, DC	VFA–0015	Appeal of an Information Request Denial. If granted: The December 5, 1994 Freedom of Information Request Denial issued by the Office of Arms Control and Nonproliferation would be rescinded, and the National Security Archive would receive access to documents relating to Reagan Administration negotiations with Japan regarding transfer of plutonium from 1980–1983.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
12/19/94	Elm Garage, Inc	RF321–21053
12/20/94	Hill Aircraft & Leasing Corp	RF351–30
12/21/94	Kim's Arco	RF304–15466
12/21/94	Holstein Cooperative Elevator	RF272–6
12/23/94	Abelardo Obregon	RF349–20
12/23/94	Wabash County, Indiana	RG272–7

[FR Doc. 95–3014 Filed 2–6–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Cases Filed; Week of December 12 Through December 16, 1994

During the week of December 12 through December 16, 1994, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 12 Through December 16, 1994]

Date	Name and location of applicant	Case No.	Type of submission
12/14/94	Long Island Lighting Company, Hicksville, New York.	VEA–0003	Appeal from Special Assessment to the Uranium Enrichment Decontamination and Decommissioning Fund. If granted: The written determination issued by the Department of Energy on November 14, 1994 would be rescinded and Long Island Lighting Company would receive a refund of payments made to the Decontamination and Decommissioning Fund, all future obligations of Long Island Lighting Company would be cancelled and Long Island Lighting Company's assessment would be adjusted to zero.

Refund Applications Received

Date received	Name of refund proceeding/name of refund application	Case No.
10/12/94	Farmers Union Oil Co.	RG272–5
12/12/94	Harlem & Cermak Arco	RF304–15465
12/12/94	Effingham Equity	RG272–3
12/12/94	Lazy 8, Inc	RF300–21816
12/12/94	Southern States Utilities Inc	RG272–202
12/12/94	Bjorklund Trucking	RC272–276
12/12/94	Southern States Utilities	RG340–202
12/14/94	Buckeye Coop Elevator Co	RG272–4
12/16/94	Lake Charles Refining Co	RF345–34

[FR Doc. 95–3015 Filed 2–6–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Cases Filed; Week of November 7 Through November 11, 1994

During the week of November 7 through November 11, 1994 the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: January 30, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of November 7 Through November 11, 1994]

Date	Name and location of applicant	Case No.	Type of submission
11/7/94	E.O. Smelser, Oklahoma City, Oklahoma	VFA–0011	Appeal of an Information Request Denial/Reconsideration. If granted: The October 4, 1994 Freedom of Information Appeal Decision and Order (Case Number LFA–0420) issued by the Office of Hearings and Appeals would be rescinded, and E.O. Smelser would receive access to remaining NRIS database information.
11/7/94	Texaco/Major Oils, San Francisco, California	RR321–170	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The October 4, 1994 Decision and Order (Case Number RR321–165) issued to Major Oils would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.
11/8/94	Albuquerque Operations Office, Albuquerque, New Mexico.	VSO–0011	Request for Hearings under 10 C.F.R. Part 710. If granted: An individual employed at Albuquerque Operations Office would receive a hearing under 10 C.F.R. Part 710.
11/8/94	Gulf/Ryder Energy Distribution, Hardin, Kentucky.	RR300–261	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The August 9, 1991 Decision and Order (Case Nos. RF300–11185 and RF300–17936) issued to Ryder Energy Distributing would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
11/8/94	Richland Operations Office, Richland, Washington.	VPZ-0001	Request for Deposition. If granted: Benton County would be required to make five individuals available for deposition.
11/8/94	Texaco/Ryder Energy Distributing, Hardin, Kentucky.	RR321–171	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The July 29, 1994 Decision and Order (Case No. RF321–14683) issued to Ryder Energy Distributing would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.

REFUND APPLICATIONS RECEIVED

[Week of 11/7/94 Through 11/11/94]

Date received	Name of refund proceeding/name of refund applicant	Case No.
11/9/94	American Blackline Coatings	RG272–1
11/8/94	United L.P. Gas Corp	RF340–201
11/7/94	P & T Texaco Service	RF321–21042
11/7/94	Dick's Suburban Texaco	RF321–21043
11/8/94	Texaco Utilities Co	RC272–265

[FR Doc. 95–3016 Filed 2–6–95; 8:45 am]

BILLING CODE 6450–1–P

Notice of Issuance of Decisions and Orders; Week of October 17 Through October 21, 1994

During the week of October 17 through October 21, 1994 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Dale N. Treweek, 10/19/94, LFA–0423

Dale N. Treweek filed an appeal from a partial denial of a request for information under the Freedom of Information Act issued by the DOE's Office of Engineering, Operations, Security, and Transition Support (EOST). In response to the request, EOST released some documents and stated that it had found no further responsive documents. After Treweek filed the Appeal, he conducted discussions with representatives of the DOE that identified certain potentially responsive documents that had not been released. The DOE therefore granted the Appeal and remanded the case to EOST for further action.

In Defense of Animals, 10/21/94, LFA–0424

In Defense of Animals (IDA) filed an Appeal from determinations by the DOE's Freedom of Information (FOI) and Privacy Acts Branch and the Nevada Operations Office. In the determinations, these DOE offices stated that no documents could be found that were responsive to the Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the search for responsive documents was inadequate, and the Request was remanded to the FOI and Privacy Acts Branch for a further search. The DOE's Decision was based on the fact that DOE documents pertaining to IDA's request were mentioned in various publications.

Martha L. Powers, 10/17/94, LFA–0411

Martha L. Powers filed an Appeal from a determination issued to her by the DOE's Nevada Operations Office (Nevada Operations) in response to a Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that, with the information available to it, Nevada Operations conducted an adequate search for documents relating to George Egish, a civilian employee of the Army who may have photographed atmospheric atomic explosion tests during the 1940's and 1950's. After consulting with Mrs. Powers, Nevada Operations and various DOE offices, the DOE determined that the agency may be able to identify some responsive documents if she were to submit a new request with additional identifying information. Nevada Operations personnel indicated their willingness to work with Mrs. Powers to refine any new search request she might make. Accordingly, the Appeal was denied.

Painters District Council No. 55, 10/18/94, LFA–0422

Painters District Council No. 55 (PDC) filed an Appeal from a determination issued by the DOE's Bonneville Power Administration (BPA), which determination denied in part a Request for Information PDC submitted under the Freedom of Information Act (FOIA). PDC requested documents relating to BPA's procurement of a painting services contract, including all proposals, the final contract and documents generated by BPA in the course of the procurement process. BPA released redacted copies of the final contract, a document entitled ''Document of Award Decision'' (Decision), and the proposals (Proposals). However, BPA withheld the ''Best Buy Analysis'' and the Analysis of Offers and portions of the Contract, Proposals and Decision pursuant to FOIA Exemptions 4 and 5. In its Appeal, PDC argued that BPA had improperly withheld that material and had failed to provide additional responsive documents. In considering the Appeal, the DOE determined that the unit prices and individual components of unit prices were properly withheld under Exemption 4. However, the DOE found that other portions of the Best Buy Analysis and the Proposals were improperly withheld under Exemption 4. Additionally, the DOE found that portions of the Decision and the Analysis of Offers were improperly withheld pursuant to Exemption 5. The DOE also found that BPA had made an adequate search in response to PDC's FOIA request. Consequently, the DOE granted the Appeal in part and remanded the matter to BPA for further action.

U.A. Plumbers and Pipefitters Local 36, 10/17/94, LFA–0421

U.A. Plumbers and Pipefitters Local 36 (Local 36) filed an Appeal from a determination issued to it on September 16, 1994, by the DOE's Idaho Operations Office. In that determination, the Authorizing Official denied a request for a waiver of fees in connection with a request filed by Local 36 under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as implemented by the DOE in 10 CFR Part 1004. The Authorizing Official advised Local 36 that the cost of processing its request would be approximately $156,255. In its Appeal, Local 36 asked that the Office of Hearings and Appeals (OHA) reverse the initial determination, and grant it a fee waiver. In considering the Appeal, the OHA found that although disclosure of the requested information was in the commercial interest of Local 36, a partial reduction of fees was appropriate because the requested information will primarily benefit the general public. The OHA determined that it would be appropriate to reduce the charges assessed Local 36 by 75 percent. Therefore, the Appeal was granted in part.

Requests for Exception

Brindley Oil Co., 10/21/94, LEE–0123

Brindley Oil Company (Brindley) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' In considering this request, the DOE found that the firm was suffering a gross inequity and a serious hardship. The DOE issued a final Decision and Order determining that the exception request should be granted.

Carter Oil Company, 10/19/94, LEE–0100

Carter Oil Company (Carter) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' The DOE determined that Carter did not meet the standards for exception relief because it was not experiencing a serious hardship or gross inequity as a result of the reporting requirements. Accordingly, exception relief was denied.

Chambers Oil Company, 10/17/94, LEE–0116

Chambers Oil Company (Chambers) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' The DOE determined that Chambers did not meet the standards for exception relief because it was not experiencing a serious hardship or gross inequity as a result of the reporting requirements. Accordingly, exception relief was denied.

Ewing Oil Company, 10/17/94, LEE–0084

Ewing Oil Company filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' In considering Ewing's request, the DOE found that the firm, which the EIA characterized as a ''certainty firm'' because of its significant market share, was not experiencing a serious hardship or a gross inequity. Accordingly, exception relief was denied.

Petroleum Products, Inc., 10/17/94, LEE–0087

Petroleum Products, Inc., filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' In considering this request, the DOE found that the firm was not suffering a gross inequity or serious hardship, and denied Petroleum Product's Application for Exception.

Texpar Energy, Inc., 10/18/94, LEE–0119

Texpar Energy, Inc., filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report,'' and Form EIA–782C, the ''Monthly Report of Prime Supplier Sales of Petroleum Products Sold for Local Consumption.'' In considering this request, the DOE found that the firm was not suffering a gross inequity or serious hardship, and denied Texpar's Application for Exception.

Refund Applications

Draper Energy Co., Inc., 10/18/94, RF272–92349

The DOE issued a Decision and Order concerning the Application for Refund of a claimant in the Subpart V crude oil overcharge refund proceeding. The Application for Refund was based on purchases of gasoline and middle distillates the applicant purchased and resold during the crude oil price control refund period. The DOE determined that the applicant's sales of gasoline and middle distillates allowed it to pass on the costs of any crude oil overcharges to its customers. Therefore, the DOE concluded that the claimant was not injured by any of the crude oil overcharges associated with the gallons that it purchased. Accordingly, the Application for Refund was denied.

Gulf Oil Corporation/Huber's 4 Corners Store, 10/19/94, RF300–10925

Huber's 4 Corners Store filed an Application for Refund in the Gulf Oil Corporation refund proceeding. Huber's requested a refund based on its indirect purchases of Gulf motor gasoline. The DOE noted that an indirect purchaser is not entitled to a refund where the direct purchaser demonstrates that it absorbed the alleged overcharges rather than passing them through to its customers. Because the direct purchaser had established that it absorbed the alleged Gulf overcharges, the DOE determined that Huber's was not entitled to a refund. Accordingly, the Application for Refund was denied.

Texaco Inc./Loop's Airport Texaco, 10/17/94, RR321–167

The DOE issued a Decision and Order partially granting a Motion for Reconsideration filed by Bert N. Loop on behalf of Loop's Airport Texaco. In his Motion, Mr. Loop asked that the DOE modify a Supplemental Order issued on July 20, 1994, *Texaco Inc./Loop's Airport Texaco,* 24 DOE ¶ 85,061 (1994), which ordered him to repay a portion of a refund that he had previously been granted in the Texaco special refund proceeding. Mr. Loop requested that he not be required to pay interest on the excess amount of the refund between the date the refund was issued and the date of repayment. Mr. Loop also requested that he not be held responsible for that portion of the excessive refund that he paid to Federal Refunds, Inc. (FRI), the private company with whom he contracted to help him obtain his refund. In considering these requests, the DOE determined that it was partially responsible for the error that resulted in Mr. Loop's receiving an excessive refund, and it therefore decided that Mr. Loop would not be required to pay interest on the repayment. However, the DOE determined that since any agreement between FRI and Mr. Loop was a private matter between the two parties, it would not reduce his repayment obligation to the DOE.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Cox Construction Co. et al	RF272–86255	10/20/94
Dahlen Farmers Elevator & Oil Company et al	RF272–94775	10/20/94
Farmers Union Oil Co. of Minot	RF272–86878	10/21/94
Gulf Oil Corporation/O.S.T. & Kirby	RF300–20580	10/18/94
Westheimer & Kirby	RF300–20581	.....
Fannin Gulf	RF300–20582	.....
Spencer & Allen Genoa	RF300–20583	.....
Gulf Oil Corporation/Sylvester's Crill & Palm Ave.	RF300–21801	10/17/94
Sylvester's Crill & Palm Ave.	RF300–21802	.....
Sylvester's Crill & Palm Ave.	RF300–21803	.....
Sylvester's Crill & Palm Ave.	RF300–21804	.....
Lanford Flying Service et al	RF272–94809	10/20/94
Texaco Inc./Curtis Beard et al	RF321–14018	10/19/94
Texaco Inc./ Stewart's Texaco et al	RF321–20605	10/20/94
Village of Lyons et al	RF272–97204	10/17/94

Dismissals

The following submissions were dismissed:

Name	Case No.
14 Mile 7 Gratiot Service	RF321–21032
Clinchfield Railroad	RF272–93753
O/T/S/ Oil Co., Inc.,	RF300–21719
William J. Miles	RF272–89769

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 30, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–3017 Filed 2–6–95; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders for the Week of November 21 Through November 25, 1994

During the week of November 21 through November 25, 1994, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Requests for Exception

Applebee Oil & Profane, 11/22/94, LEE–0145

Applebee Oil & Propane of Ovid, Michigan, filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the ''Resellers'/ Retailers' Monthly Petroleum Product Sales Report.'' In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. On August 11, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed at the Office of Hearings and Appeals of the DOE within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying Applebee Oil & Propane's Application for Exception.

West-Pet., Inc., 11/22/94, LEE–0156

West-Pet., Inc. of New Orleans, Louisiana filed an Application for Exception from the Energy Information (EIA) requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. On September 23, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed at the Office of Hearings and Appeals of the DOE within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying Wes-Pet., Inc.'s Application for Exception.

Interlocutory Order

Richland Operations Office, 11/25/94, VPZ–0001

The DOE's Richland Operations Office (Richland) filed a Request for Depositions (request) on November 14, 1994 with the Office of Hearing and Appeals (OHA). The request concerns an evidentiary hearing to be convened in connection with an appeal by Benton County, Washington of a determination issued by Richland denying the County's claim for Payment-Equal-To-Taxes (PETT) under the Nuclear Waste Policy Act of 1982, as amended. In the request, Richland asked that OHA order Benton County to make available for deposition five Benton County witnesses. On considering the request, OHA found that because the five witnesses in question possessed important technical knowledge, further pre-trial discovery was warranted. Accordingly, OHA granted the request.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Enron Corp./ Shelton Oil & Gas Co., Inc	RF340–137	11/25/94
Henson's, Inc	RF340–181	
Cedar Falls utilities	RF340–184	
Fairfax Trucking Company et al	RF272–93369	11/22/94
Gulf Oil Corporation/Helo's Gulf	RF300–20464	11/25/94
Gulf Oil Corporation/Thibaut Oil Company	RF300–20184	11/25/94
Sause Bros. Ocean Towing Co., Inc	RR272–183	11/22/94
Texaco Inc./Jeremiah R. Downey Oil Corp. et al	RF321–6193	11/22/94
Wecota Farmers Union Oil Co. et al	RF272–94981	11/22/94

Dismissals

The following submissions were dismissed:

Name	Case No.
City of Norwalk	RF300–21735
Commonwealth/Cambridge Electric Co.	RF321–20759
Edmonds Arco Service	RF304–13498
Griffin Brothers, Inc	RF272–95021
Little America Refining Co.	RR195–4
Lizza Industries, Inc	RF272–77580
Meadow Gold Dairies, Inc	RF272–77135
Southside Texaco	RF321–20647
Stanley Contruction Co	RF272–97243
Todd Ash Arco	RF304–14934

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 30, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–3018 Filed 2–6–95; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of a total of $338,267.90, plus accrued interest, in crude oil overcharges obtained by the DOE from King Petroleum, Inc., *et al.*, Case No. LEF–0125 (King), and Billy Bridewell, William J. Cobb, *et al.*, Case No. LEF–0126 (Bridewell). The OHA has determined that the funds obtained from King and Bridewell, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

DATES AND ADDRESSES: Applications for Refund from the crude oil funds should be clearly labeled ''Application for Crude Oil Refunds'' and should be mailed to Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Applications for Refund must be filed in duplicate no later than June 3, 1996. Any party who has previously filed an Application for Refund should not file another Application for Refund from the present crude oil funds. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the procedures are finalized.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, DC 20585 (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute a total of $338,267.90, plus accrued interest, remitted to the DOE by King Petroleum, Inc., *et al.*, and Billy Bridewell, William J. Cobb, *et al.*, to the DOE. The DOE is currently holding these funds in an interest bearing account pending distribution.

The OHA will distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the volume of petroleum products that they purchased and the extent to which they can demonstrate injury.

Applications for Refund must be postmarked no later than June 3, 1996. As we state in the Decision, any party who has previously submitted a refund application in the crude oil proceedings should not file another Application for Refund. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the proceedings are finalized.

Dated: February 1, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

Implementation of Special Refund Procedures

Names of Firms: King Petroleum, Inc., *et al.*; Billy Bridewell, William J. Cobb, *et al.*
Date of Filing: May 26, 1994
Case Numbers: LEF–0125; LEF–0126

On May 26, 1994, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute funds which King Petroleum, Inc., *et al.*, (King) and Billy Bridewell, William J. Cobb, *et al.*, (Bridewell) remitted to the DOE pursuant to settlements between the parties and the DOE. King has remitted a total of $1,245.04, while Bridewell has remitted a total of $337,022.86.

In accordance with the procedural regulations codified at 10 CFR. part 205, subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special refund procedures to remedy the effects of any regulatory violations which were resolved by these settlements. This Decision and Order sets forth the OHA's final plan to distribute these funds.

I. Background

On July 29, 1988, the DOE issued a Remedial Order to King for violations of the mandatory petroleum price and allocation regulations governing the resale of crude oil. Prior to the issuance of the Remedial Order, the parties filed in appropriate courts for protection under Chapter 7 of the U.S. Bankruptcy Code. Pursuant to the settlement of those proceedings, the DOE has collected a total of $1,245.04. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper disposition.

On March 23, 1984, the DOE issued a Remedial Order to Bridewell for violations of the mandatory petroleum price and allocation regulations related to Bridewell's production and sale of crude oil during the period of November 16, 1973 through August 31, 1976. The matter was referred to the Department of Justice for enforcement in April 1976. On February 15, 1987, the parties entered into a Compromise Settlement Agreement to resolve all civil liability in this matter. Subsequently, several of the parties filed for protection with the U.S. Bankruptcy Court for Eastern Texas. The DOE has collected a total of $337,022.86 in settlement of this matter. These funds are being held in an interest-bearing account pending a determination regarding their proper disposition.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501–07 (PODRA), *Office of Enforcement,* 9 DOE ¶ 82,508 (1981), and *Office of Enforcement,* 8 DOE ¶ 82,597 (1981).

III. The Proposed Decision and Order

We considered the ERA's Petition that we implement a Subpart V proceeding with respect to the King and Bridewell funds and determined that such a proceeding was appropriate. On August 8, 1994, we issued a Proposed Decision and Order (PDO) setting forth the OHA's tentative plan to distribute these funds. See 59 FR 41755 (August 15, 1994). In the PDO, we stated that the DOE had previously established June 30, 1994 as the final deadline for filing an Application for Refund from the crude oil funds. See 58 FR 26318 (May 3, 1993). Since the PDO was issued after June 30, 1994, we proposed that we would accept no Applications for Refund for the King and Bridewell funds.

Since the issuance of the Proposed Decision and Order, it has been decided to re-open the crude oil proceeding. See 59 FR 55656 (November 8, 1994). The new closing date for this proceeding has been tentatively set for June 3, 1996. *Id.* Accordingly, we have decided that, contrary to the Proposed Decision and Order issued on August 15, 1994, we will accept Applications for Refund for the King and Bridewell funds in the manner set forth below.

IV. The Refund Procedures

A. Crude Oil Refund Policy

We adopt the tentative determination of the PDO to distribute the funds obtained from King and Bridewell in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement. *In re: The Department of Energy Stripper Well Exemption Litigation,* 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986) (the Stripper Well Settlement Agreement). The MSRP establishes that 40 percent of the crude oil funds will be remitted to the federal government, another 40 percent to the states, and up to 20 percent may be initially reserved for payment of claims to injured parties. The MSRP also

specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

The OHA has utilized the MSRP in all Subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). This Order provided a period of 30 days for filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a Notice evaluating the numerous comments which it had received pursuant to the Order Implementing the MSRP. This notice was published at 52 FR 11737 (April 10, 1987) (the April 10 Notice).

The April 10 Notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the Subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) show that they were injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses were unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges. End-users, therefore, need only submit documentation of their purchase volumes. See *City of Columbus, Georgia,* 16 DOE ¶ 85,550 (1987). Additionally we stated that we would calculate crude oil refunds on a per gallon (or volumetric) basis. We obtained this figure by dividing the crude oil refund pool by the total consumption of petroleum products in the United States during the crude oil price control period. The OHA has adopted the refund procedures outlined in the April 10 Notice in numerous cases. See *e.g., Shell Oil Co.,* 17 DOE ¶ 85,204 (1988) *(Shell)*; *Mountain Fuel Supply Co.,* 14 DOE ¶ 85,475 (1986) *(Mountain Fuel).*

B. Refund Claims

These standard crude oil procedures will be used to distribute the monies in the King and Bridewell funds. We have chosen initially to reserve 20 percent of these funds, $67,653.38, plus accrued interest, for direct refunds to claimants in order to ensure sufficient funds will be available for injured parties. This reserve figure may later be reduced if circumstances warrant.

The OHA will evaluate crude oil refund claims filed in this proceeding in a manner consistent with our previous crude oil refund proceedings under Subpart V. *See Mountain Fuel,* 14 DOE at 88,869. Claimants in this proceeding will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the overcharges.

We adopt a presumption that the crude oil overcharges were absorbed, rather than passed on, by applicants which were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h. Under this presumption, end-user claimants need not submit evidence of injury, and may become eligible for a refund by simply documenting their purchase volumes. See *Shell,* 17 DOE at 88,406.

Petroleum retailer, refiner, and reseller applicants must submit detailed documentation of injury. They may not rely upon the injury presumptions utilized in some refined products refund cases. *Id.* These applicants may, however, use econometric evidence of the type found in the *OHA Report on Stripper Well Overcharges,* 6 Fed. Energy Guidelines ¶ 90,507 (1985). See also PODRA § 3003(b)(2), 15 U.S.C. § 4502(b)(2). If a claimant has executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Agreement, it has waived its right to file an application for Subpart V crude oil refund monies. See *Mid-America Dairymen* v. *Herrington,* 878 F.2d 1448 (Temp. Emer. Ct. App.), 3 Fed. Energy Guidelines ¶ 26,617 (1989); *In re: Department of Energy Stripper Well Exemption Litigation,* 707 F. Supp. 1267 (D. Kan.), 3 Fed. Energy Guidelines ¶ 26,613 (1987).

As we have stated in prior Decisions, a crude oil refund applicant need only submit one application for its share of all available crude oil overcharge funds. See, *e.g., A. Tarricone, Inc.,* 15 DOE ¶ 85,495 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date.

The DOE had previously established June 30, 1994 as the final deadline for filing an Application for Refund from the crude oil funds. See 58 FR 26318 (May 3, 1993). Although that date has passed, it has been decided to reopen the crude proceeding. See 59 FR 55656 (November 8, 1994). The new closing date for this proceeding has tentatively been set for June 3, 1996. *Id.* It is the policy of the DOE to pay all crude oil refund claims at the rate of $.0008 per gallon. While we anticipate that the applicants that filed their claims before June 30, 1988 will receive a supplemental refund payment, we will decide in the future whether claimants that filed later applications should receive additional refunds. See *e.g., Seneca Oil Co.,* 21 DOE ¶ 85,327 (1991). Notice of any additional amounts available in the future will be published in the **Federal Register**.

C. Crude Oil Application Requirements

To apply for a crude oil refund, a claimant should submit an Application for Refund containing all of the following information.

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is a corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check.* If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(2) If the applicant's firm is owned by another company, or owns other companies, a list of those companies' names, addresses, and descriptions of their relationship to the applicant's firm;

(3) A brief description of the claimant's business and the manner in which it used the petroleum products listed on its application;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973 through January 27, 1981, an annual schedule displaying the number of gallons of each petroleum product purchased during this refund period, and the total number of gallons of all petroleum products claimed on the refund application;

(5) An explanation as to how the applicant obtained the above mentioned purchase volumes, and, if estimates were used, a description of its method of estimation;

(6) A statement that neither the claimant, its parent firm, affiliates, subsidiaries, successors, nor assigns has waived any right it may have to receive a crude oil refund (e.g., by having executed and submitted a valid waiver accompanying a claim to any of the escrow accounts established pursuant to the Stripper Well Settlement Agreement);

(7) A statement that the applicant has not filed any other refund application in the Subpart V crude oil refund proceeding;

(8) If the applicant is not an end-user, was covered by the DOE price regulations, or is related to the petroleum industry, a showing that the applicant was injured by the alleged crude oil overcharges;

(9) If the applicant is a regulated utility or cooperative, certification that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(10) The statement listed below signed by the individual applicant or responsible official of the company filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both,

* Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 C.F.R. part 205, subpart V. The information may be shared with other federal agencies for statistical, auditing, or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled ''Application for Crude Oil Refund.'' Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated ''confidential,'' containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be sent to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585.

The filing deadline has not yet been set. The DOE has proposed that June 3, 1996, will be the final deadline for all applications in the crude oil proceeding. *See* 59 Fed. Reg. 55656 (November 8, 1994). Notice of the final deadline will appear in the **Federal Register**. Even though an applicant is not required to use any specific form for its crude oil refund application, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

D. Payments to the Federal Government and the States

Under the terms of the MSRP, we have determined that the remaining 80 percent of the Kind and Bridewell funds, plus accrued interest, should be disbursed in equal shares to the states and the federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶ 90,509 at 90,687. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

It Is Therefore Ordered That:

(1) Applications for Refund from the crude oil overcharge funds remitted by King Petroleum, Inc., *et al.*, and Billy Bridewell, William J. Cobb, *et al.*, may now be filed.

(2) All Applications submitted pursuant to paragraph (1) must be filed in duplicate and postmarked no later than June 3, 1996.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller of the Department of Energy shall take all steps necessary to transfer $1,245.04, plus all accrued interest, from the King subaccount (Account No. 650X00358Z), and $337,022.86, plus all accrued interest, from the Bridewell subaccount (Account No. 6A0C00217Z), for a total of $338,267.90, plus all accrued interest, pursuant to Paragraphs (4), (5), and (6) of this Decision.

(4) The Director of Special Accounts and Payroll shall transfer $135,307.16 (plus interest) of the funds obtained pursuant to Paragraph (3) above into the subaccount denominated ''Crude Tracking-States,'' Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer $135,307.16 (plus interest) of the funds obtained pursuant to Paragraph (3) above into the subaccount denominated ''Crude Tracking-Federal,'' Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $67,653.58 (plus interest) of the funds obtained pursuant to Paragraph (3) above into the subaccount denominated ''Crude Tracking-Claimants 4,'' Number 999DOE010Z.

Dated: February 1, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–3020 Filed 2–6–95; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $3,657.84, plus accrued interest, in refined petroleum product violation amounts obtained by the DOE pursuant to a September 30, 1981 Remedial Order issued to Ed's Exxon, Case No. LEF–0078, and an April 27, 1982 Remedial Order issued to Ron's Shell, Case No. LEF–0084. The OHA has determined that the funds obtained from the above firms, plus accrued interest, will be distributed to customers who purchased gasoline from them during the following periods: August 1, 1979 through October 31, 1979 in the Ed's Exxon proceeding and August 1, 1979 through November 13, 1981 in the Ron's Shell proceeding.

DATES AND ADDRESSES: Applications must be filed in duplicate, addressed to ''Ed's Exxon OR Ron's Shell Special Refund Proceeding'' and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585.

Applications should display a prominent reference to the case number ''LEF–0078'' (for the Ed's Exxon proceeding) or ''LEF–0084'' (for the Ron's Shell proceeding).

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 C.F.R. 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants $3,657.84, plus accrued interest, obtained by the DOE pursuant to September 30, 1981 and April 27, 1982 Remedial Orders. In the Remedial Orders, the DOE found that, during periods beginning August 1, 1979, the firms each had sold motor gasoline at prices in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations.

The OHA has determined to distribute the funds obtained from the firms in two stages. In the first stage, we will accept claims from identifiable purchasers of gasoline from the firms who may have been injured by overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in Section III of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of gasoline which they purchased from Ed's Exxon or Ron's Shell.

If any funds remain after valid claims are paid in the first stage, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07.

Applications for Refund must be postmarked by August 31, 1995. Instructions for the completion of refund applications are set forth in the Decision that immediately follows this notice. Applications should be sent to the address listed at the beginning of this notice.

Unless labelled as ''confidential,'' all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, S.W., Washington, DC 20585.

Dated: January 27, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy; Implementation of Special Refund Procedures

January 27, 1995.

Names of Firms: Ed's Exxon, Ron's Shell
Date of Filing: July 20, 1993
Case Numbers: LEF–0078, LEF–0084

On July 20, 1993, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds received pursuant to Remedial Orders issued by the DOE to Ed's Exxon of Cotati, California, and Ron's Shell of Danville, California (hereinafter jointly referred to as the remedial order firms). In accordance with the provisions of the procedural regulations at 10 C.F.R. Part 205, Subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of regulatory violations set forth in the Remedial Order. This Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

Each of the remedial order firms was a retailer of motor gasoline during the periods relevant to this proceeding. The ERA issued Proposed Remedial Orders (PROs) to each of the firms.[1] The PROs alleged that, during separate periods beginning on August 1, 1979, the remedial order firms had: charged more than the maximum lawful selling price for one or more grades of gasoline in violation of 10 C.F.R. 212.93; failed to post and maintain the maximum lawful selling price or a proper certification in violation of 10 C.F.R. 212.129; failed to keep and maintain books and records to support the lawfulness of the price for gasoline on the audit date in violation of 10 C.F.R. 210.92 and 212.93; and/or engaged in unlawful or discriminatory business practices in violation of 10 C.F.R. 210.62.

After considering and dismissing the firms' objections to the PROs, the DOE issued final Remedial Orders. Ed's Exxon, 8 DOE ¶ 83,035 (1981); Alameda Chevron Service, et al., 9 DOE ¶ 83,027 (1982).[2] Each of the firms has since remitted a specified amount in compliance with the Remedial Orders, to which interest has since accrued. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. §§ 4501 et seq., Office of Enforcement, 9 DOE ¶ 82,508 (1981), and Office of Enforcement, 8 DOE ¶ 82,597 (1981) (Vickers).

We have considered the ERA's petition that we implement Subpart V proceedings with respect to the above remedial order funds and have determined that such proceedings are appropriate. This Decision and Order sets forth the OHA's plan to distribute these funds.

III. Proposed Refund Procedures

On December 14, 1994, the OHA issued a Proposed Decision & Order (PD&O) establishing tentative procedures to distribute the Remedial Order funds. That PD&O was published in the **Federal Register**, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. See 59 Fed. Reg. 66029 (December 22, 1994). More than 30 days have elapsed and the OHA has received no comments concerning these proposed refund procedures. Consequently, the procedures will be adopted as proposed.

We will to implement a two-stage refund procedure for distribution of the remedial order funds, by which purchasers of gasoline from the remedial order firms during the period covered by the Remedial Orders may submit Applications for Refund in the initial stage. From our experience with Subpart V proceedings, we expect that potential applicants generally will be limited to ultimate consumers (''end-users''). Therefore, we do not anticipate that it will be necessary to employ the injury presumptions that we have used in past proceedings in evaluating applications submitted by refiners, resellers, and retailers.[3]

A. First Stage Refund Procedures

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of gasoline from the remedial order firm during the period covered by the Remedial Order. Our experience indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. See Marathon Petroleum Co., 14 DOE ¶ 85,269 (1986) (Marathon). Presumptions in refund cases are specifically authorized by the applicable Subpart V regulations at 10 C.F.R. § 205.282(e). Accordingly, we will adopt the presumptions set forth below.

1. Calculation of Refunds

First, we will adopt a presumption that the overcharges were dispersed equally in all of the remedial order firms' sales of gasoline during the period covered by the Remedial Orders. In accordance with this presumption, refunds will be made on a pro-rata or volumetric basis.[4] In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's ''allocable share'' of a Remedial Order fund is equal to the number of gallons purchased from the remedial order firm during the period covered by that Remedial Order times the per gallon refund amount.[5] We derived the per gallon refund figures by dividing the amount of each Remedial Order fund by the total volume of gasoline which each remedial order firm sold during the period specified in that Remedial Order. An applicant that establishes its eligibility for a refund will receive all or a portion of its allocable share plus a pro-rata share of the accrued interest.[6]

In addition to the volumetric presumption, we will adopt a presumption regarding injury for end-users.

2. End-Users

In accordance with prior Subpart V proceedings, we will adopt the presumption that an end-user or ultimate consumer of gasoline purchased from one of the remedial order firms whose business is unrelated to the petroleum industry was injured by the overcharges resolved by the Remedial Order. See, e.g., Texas Oil and Gas Corp., 12 DOE ¶ 85,069 at 88,209 (1984) (*TOGCO*). Members of this group generally were not subject to price controls during the period covered by the Remedial Order, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.* End-users of gasoline purchased from the remedial order firms need only document their purchase volumes from the firm during the period covered by the Remedial Order to make a sufficient showing that they were injured by the overcharges.

B. Refund Application Requirements

To apply for a refund from any of the Remedial Order funds, a claimant should submit an Application for Refund containing all of the following information:

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[1] Ed's Exxon was issued a PRO on January 25, 1980; Ron's Shell was issued a PRO on December 31, 1980.

[2] A Remedial Order was issued to Ed's Exxon on September 30, 1981. A Remedial Order was issued to Ron's Shell on April 27, 1982.

[3] If a refiner, reseller, or retailer should file an application in any of the refund proceedings, however, we will utilize the standards and appropriate presumptions established in previous proceedings. See, e.g., Starks Shell Service, 23 DOE ¶ 85,017 (1993); Shell Oil Co., 18 DOE ¶ 85,492 (1989).

[4] If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of the remedial firm's overcharges. See, e.g., Mobil Oil Corp./Atchison, Topeka and Santa Fe Railroad Co., 20 DOE ¶ 85,788 (1990); Mobil Oil Corp./Marine Corps Exchange Service, 17 DOE ¶ 85,714 (1988). Such a claim will only be granted if the claimant makes a persuasive showing that it was ''overcharged'' by a specific amount, and that it absorbed those overcharges. See Panhandle Eastern Pipeline Co./Western Petroleum Co., 19 DOE ¶ 85,705 (1989). To the degree that a claimant makes this showing, it will receive an above-volumetric refund.

[5] The per gallon refund amount is $0.0251 for claimants applying in the Ed's Exxon proceeding ($2,500 remitted/99,651 gallons sold), $0.0072 in the Ron's Shell proceeding ($1,157.84 remitted/160,777.9 gallons sold).

[6] As in previous cases, we will establish a minimum refund amount of $15. We have found through our experience that the cost of processing claims in which refunds for amounts less than $15 are sought outweighs the benefits of restitution in those instances. See Exxon Corp., 17 DOE ¶ 85,590, at 89,150 (1988) (Exxon).

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for additional information, and the name and address of the person who should receive any refund check.[7] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify those names;

(2) A monthly purchase schedule covering the relevant Remedial Order period.[8] The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its gasoline purchases, but the estimation method must be reasonable and must be explained.

(3) A statement whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in that refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(4) If the applicant is or was in any way affiliated with the remedial order firm, it should explain this affiliation, including the time period in which it was affiliated.[9]

(5) The statement listed below signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled ''Ed's Exxon (Case No. LEF–0078) OR Ron's Shell (Case No. LEF–0084) Special Refund Proceeding.'' Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for that information to be publicly disclosed, it must submit an original application, clearly designated ''confidential,'' containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked on or before August 31, 1995 and sent to: Ed's Exxon OR Ron's Shell Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, D.C. 20585.

C. Refund Applications Filed by Representatives

We will adopt the standard OHA procedures relating to refund applications filed on behalf of applicants by ''representatives,'' including refund filing services, consulting firms, accountants, and attorneys. See, e.g., Starks Shell Service, 23 DOE ¶ 85,017 (1993); Texaco Inc., 20 DOE ¶ 85,147 (1990); Shell Oil Co., 18 DOE ¶ 85,492 (1989). We will also require strict compliance with the filing requirements as specified in 10 C.F.R. § 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant.

The OHA reiterates its policy to scrutinize applications filed by filing services closely. Applications submitted by a filing service should contain all of the information indicated above.

Finally, the OHA reserves the authority to require additional information before granting any refund in these proceedings. Applications lacking the required information may be dismissed or denied.

D. Distribution of Funds Remaining After First Stage

Any funds that remain after all first stage claims have been decided shall be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. § 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the Remedial Order funds that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That: (1) Applications for Refund from the funds remitted to the Department of Energy by Ed's Exxon and Ron's Shell pursuant to the Remedial Orders dated September 30, 1981 and April 27, 1982 may now be filed.

(2) Applications for Refund must be postmarked no later than August 31, 1995.

Dated: January 27, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–3012 Filed 2–6–95; 8:45 am]

BILLING CODE 6450–01–P

[7] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution Act of 1986 and the regulations codified at 10 C.F.R. Part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

[8] The Remedial Orders cover the following periods: August 1, 1979 through October 31, 1979 in the Ed's Exxon proceeding and August 1, 1979 through November 13, 1981 in the Ron's Shell proceeding.

[9] As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates of the remedial order firm were not injured by the firm's overcharges. See, e.g., Marathon Petroleum Co./EMRO Propane Co., 15 DOE ¶ 85,288 (1987). This is because the remedial order firm presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive disadvantage. See Marathon Petroleum Co./Pilot Oil Corp., 16 DOE ¶ 85,611 (1987), amended claim denied, 17 DOE ¶ 85,291 (1988), reconsideration denied, 20 DOE ¶ 85,236 (1990). Furthermore, if an affiliate of the remedial order firm were granted a refund, the remedial order firm would be indirectly compensated from a Remedial Order fund remitted to settle its own alleged violations.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5150–8]

Notice of Open Meeting of the Alternative Financing Workgroup of the Environmental Financial Advisor Board on April 25,1995

The Alternative Financing Workgroup of the Environmental Financial Advisory Board (EFAB) will hold an open workgroup meeting on fee system options for raising revenue to finance water and wastewater infrastructure. The meeting is scheduled for April 25, 1995 in Ballroom ''A'' of the Sheraton Crystal City Hotel located at 1800 Jefferson Davis Highway, Arlington, Virginia. The meeting will begin at 8:30 a.m. and adjourn at 5:00 p.m.

EFAB is chartered with providing authoritative analysis and advice to the Environmental Protection Agency (EPA) on environmental finance issues. The purpose of the workgroup meeting is to take comments on a draft options paper on fee systems for raising revenue to finance water and wastewater infrastructure. The scope of the study includes national and state fees, collection and delivery mechanisms, and state fees, collection and delivery mechanisms, and eligibilities. This paper is being prepared in response to a congressional request for an evaluation of alternative financing options in EPA's FY 95 appropriations bill. A critical part of the development process is to solicit and consider public comment. This is the first of several meetings serving that purpose.

The draft options paper is being developed by the Environmental Finance Center (EFC) of the Maxwell School of Citizenship and Public Affairs at Syracuse University. The draft will be

available in early April for public review before the meeting.

At the meeting on April 25, 1995, a brief presentation of the draft options will be followed by a panel discussion. The workgroup will then take comments from the public on the options presented.

All interested parties who wish to have a copy of the draft options paper should contact the Syracuse University EFC in the Executive Education Department. Please call Ronda Garlow at (315) 443–5612. Those who wish to speak at the meeting are encouraged to notify the Syracuse University EFC in advance by calling Ms. Garlow. There will also be a sign-in list for speakers at the meeting. Ten minutes will be available for each presentation. Written comments in advance of the meeting are encouraged. Please send all written material to: Victoria Kennedy, Syracuse University, Environmental Finance Center, 219 Maxwell Hall, Syracuse, NY 13244–1090.

Dated: February 1, 1995.

George Ames,

Acting Director, Resource Management Division.

[FR Doc. 95–2981 Filed 2–6–95; 8:45 am]

BILLING CODE 6560–60–M

[FRL–5150–6]

Peak Oil Superfund Site; Notice of Proposed de Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed de minimis settlement.

SUMMARY: Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered approximately 700 de minimis parties at the Peak Oil Superfund Site (Site) an opportunity to enter into an Administrative Order on Consent (AOC) to settle claims for past and future response costs at the Site. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement and a list of proposed settling de minimis parties are available from: Mr. Greg Armstrong, Enforcement Project Manager, U.S. Environmental Protection Agency, Region IV, Waste Programs Branch, Waste Management Division, 345 Courtland Street, N.E., Atlanta, Georgia 30365, (404) 347–5059 ext. 6188.

Written comment may be submitted to the person above within 30 days of the date of publication.

Dated: January 25, 1995.

H. Kirk Lucius,

Acting Director, Waste Management Division.

[FR Doc. 95–2982 Filed 2–6–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 31, 1995.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Dorothy Conway, Federal Communications Commission, (202) 418–0217 or via internet at DConway@FCC.GOV. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0272.

Title: Section 94.31 Supplemental information submitted with applications.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit; Not-for-profit institutions; and State, Local or Tribal Governments.

Frequency of Response: On occasion.

Estimated Annual Burden: 4,300 responses; 2 hours burden per response; 8,600 hours total annual burden.

Needs and Uses: Section 94.31 requires applicants for private operational-fixed microwave facilities to submit supplementary information with their applications for station authorization. Information required includes statements on proposed operational use of the frequencies requested, as well as a system diagram, and, if relevant to the applicant's proposed use of the station, statements regarding developmental operation; operation at temporary locations, air navigation hazard information for high towers. This information is used to assure compliance with the Commission's allocation scheme for microwave frequencies.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–2880 Filed 2–6–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; Proposed New System of Records

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed new system of records—''Unclaimed Deposits Reporting System''.

SUMMARY: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the FDIC gives notice of the proposed establishment of a new system of records entitled ''Unclaimed Deposits Reporting System''.

DATES: Comments on the establishment of the system must be submitted by March 20, 1995. The system will become effective April 3, 1995, unless a superseding notice to the contrary is published before that date.

ADDRESSES: Comments should be addressed to Robert E. Feldman, Acting Executive Secretary, Federal Deposit Insurance Corporation, 550–17th Street, NW., Washington, DC 20429, or hand-delivered to Room F–400 at 1776 F Street, NW., Washington, DC, Monday through Friday, between the hours of 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Frederick N. Ottie, Attorney, Office of the Executive Secretary, FDIC, 550–17th Street, NW., Washington, DC 20429, (202) 898–6679.

SUPPLEMENTARY INFORMATION: The FDIC is proposing to establish a new system of records pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, entitled ''Unclaimed Deposits Reporting System''. This new system of records will be used by the FDIC in providing expanded protections to insured depositors under the Unclaimed Deposits Amendments Act of 1993, Pub. L. No. 103–44, 107 Stat. 220 (1993), which amends section 12(e) of the Federal Deposit Insurance Act (12 U.S.C. 1822(e)).

The Unclaimed Deposits Amendments Act extends the period during which insured depositors may claim their deposit insurance, and

permits the involvement of state abandoned property systems to locate the owners of unclaimed deposit insurance. Under prior law, depositors were required to claim their deposit insurance within eighteen months of the closing of an insured depository institution. The new law, which applies to insured depository institutions for which the FDIC is appointed receiver after the enactment date of the Act, June 28, 1993, permits state governments to accept custody of any deposits which remain unclaimed at the end of eighteen months and attempt to locate the depositors for ten years, at which time any remaining deposits are to be returned to the FDIC. As to any accounts which are not accepted by the state, those depositors have until the termination of the receivership to claim their insurance from the FDIC. Congress also included a retroactive provision applicable to any insured depository institution for which the FDIC was appointed receiver after January 1, 1989. For these institutions, the states are not permitted to take custody of unclaimed deposits, but the depositors themselves may claim them directly from the FDIC at any time up to the termination of the receivership.

The FDIC will use the information maintained in the system to respond to requests for research and/or delivery of deposit insurance to a claimant. The system will consist of records relating to unclaimed insured or transferred deposits from closed insured depository institutions for which the FDIC was appointed receiver after January 1, 1989.

Accordingly, the Board of Directors of the FDIC proposes to establish the system to read as follows:

FDIC 30–64–0024

SYSTEM NAME:

Unclaimed Deposits Reporting System.

SYSTEM LOCATION:

Designated FDIC service centers and consolidated field offices. A list of the designated locations is available from the Chief of Policy & Planning, Operations Branch, Division of Depositor and Asset Services, FDIC, 550–17th Street, NW, Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Owners of unclaimed insured or transferred deposits from closed insured depository institutions for which the FDIC was appointed receiver after January 1, 1989.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to unclaimed insured or transferred deposits from closed insured depository institutions for which the FDIC was appointed receiver after January 1, 1989.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 9, 11, and 12 of the Federal Deposit Insurance Act (12 U.S.C. 1819, 1821, and 1822).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information in this system of records may be disclosed:

(1) To the appropriate state accepting custody of unclaimed deposits as specified in section 12(e)(2)–(3) of the Federal Deposit Insurance Act (12 U.S.C. 1822(e)(2)–(3));

(2) To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; and

(3) To the appropriate federal, state or local agency or authority responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto; and

(4) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained on local area network specified file servers, computer disks, tapes or hard copy printouts stored in secured areas which limits access to authorized personnel only.

RETRIEVABILITY:

Indexed by depository institution name, depository institution number, depositor name, depositor social security number, depositor tax identification number, or account/check number.

SAFEGUARDS:

Information is encrypted and accessed only by authorized FDIC personnel. Hard copy data is stored in secured areas which limits access to authorized personnel only.

RETENTION AND DISPOSAL:

If the appropriate state has accepted ten-year custody of unclaimed deposits, a record of the deposits will be retained by the FDIC during the custody period, pending return of any deposits not claimed from the state during the ten-year custody period. Such records will subsequently be destroyed in accordance with the FDIC's records retention policy in effect at the time of return of any deposits to the FDIC from the state. If the appropriate state has declined to accept custody of unclaimed deposits, upon termination of the receivership of the closed insured depository institution, records of all deposit insurance claims paid are destroyed in accordance with the FDIC's current records retention policy.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Policy & Planning, Operations Branch, Division of Depositor and Asset Services, FDIC, 550–17th Street, NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Requests must be made in writing and addressed to the Office of the Executive Secretary, FDIC, 550–17th Street, NW., Washington, DC 20429.

RECORD ACCESS PROCEDURES:

Same as ''Notification'' above.

CONTESTING RECORD PROCEDURES:

Same as ''Notification'' above.

RECORD SOURCE CATEGORIES:

Information originates from deposit records of closed insured depository institutions. Records of unclaimed transferred deposits are provided to the FDIC from insured depository institutions to which the FDIC transferred deposits upon closing of the former institution.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

By direction of the Board of Directors.

Dated at Washington, DC, this 31st day of January, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–2959 Filed 2–6–95; 8:45 am]

BILLING CODE 6714–01–P

Privacy Act of 1974; Amendment to an Existing System of Records

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of amendment to an existing system of records—''Consumer Complaint and Inquiry System''.

SUMMARY: As part of an ongoing examination of the FDIC's systems of records, the ''Consumer Complaint and Inquiry System'' has been reviewed for compliance with the Privacy Act, 5 U.S.C. 552a. Review was necessitated by a recent reorganization within the FDIC which resulted in the creation of a new division, the Division of Compliance and Consumer Affairs. Numerous minor amendments have been made that will more accurately describe the following elements in this system of records: System location, categories of individuals covered by the system, categories of records in the system, retention and disposal, system manager(s) and address, and record source categories.

EFFECTIVE DATE: February 7, 1995.

FOR FURTHER INFORMATION CONTACT: Frederick N. Ottie, Attorney, Office of the Executive Secretary, FDIC, 550–17th Street, NW, Washington, DC 20429, (202) 898–6679.

SUPPLEMENTARY INFORMATION: The FDIC's system of records entitled ''Consumer Complaint and Inquiry System'' is being amended to describe its contents more accurately. These modifications update language in the system notice describing system location, categories of individuals covered by the system, categories of records in the system, system manager(s) and address, and record source categories to reflect organizational changes within the FDIC and delineate more precisely that this system of records encompasses complaints and inquiries concerning the activities and practices of FDIC-insured depository institutions. Additionally, the description of the system's provisions for retention and disposal of records is amended to reflect that all records are retained for two years after receipt unless updated by correspondence received during the second year, and that electronic records are deleted from the electronic system and files are destroyed by shredding.

Accordingly, the Board of Directors of the FDIC amends the ''Consumer Complaint and Inquiry System'' to read as follows:

FDIC 30–64–0005

SYSTEM NAME:

Consumer Complaint and Inquiry System. [Complete text appears at 52 FR 34297, September 10, 1987.]

SYSTEM LOCATION:

Division of Compliance and Consumer Affairs, FDIC, 550–17th Street, NW, Washington, DC 20429, and designated FDIC regional offices for complaints or inquiries originating within or involving an FDIC-insured depository institution located in an FDIC region. A list of regional offices is available from the Office of Corporate Communications, FDIC, 550–17th Street, NW, Washington, DC 20429, telephone (202) 898–6996.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed complaints or inquiries concerning activities or practices of FDIC-insured depository institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains correspondence and records of other communications between the FDIC and the individuals filing complaints or making inquiries, including copies of supporting documents supplied by the individual. May contain correspondence between the FDIC and the FDIC-insured depository institution in question and/or intra-agency or inter-agency memoranda or correspondence.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETENTION AND DISPOSAL:

Records are retained for two years after receipt unless updated by correspondence received during the second year. Electronic records are deleted from the electronic system and files are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Compliance and Consumer Affairs, FDIC, 550–17th Street, NW, Washington, DC 20429. The appropriate FDIC regional manager for records maintained in FDIC regional offices.

* * * * *

RECORD SOURCE CATEGORIES:

The information is obtained from the individual on whom the record is maintained; FDIC-insured depository institutions that are the subject of the complaint; the appropriate agency, whether federal or state, with supervisory authority over the institution; congressional offices that may initiate the inquiry; and other parties providing information to the FDIC in an attempt to resolve the complaint or inquiry.

* * * * *

By direction of the Board of Directors.

Dated at Washington, DC, this 31st day of January, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–2958 Filed 2–6–95; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before April 10, 1995.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Donald Arbuckle, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0146.

Title: State Administrative Plans for Individual and Family Grant Program.

Abstract: The collection of this information is needed for the purpose of making grants to individuals and families for disaster-related expenses and serious needs for administration of the program. The plan forms an agreement between the State and Federal governments that the program will be implemented according to the regulations and nation-wide eligibility criteria.

Type of Respondents: State or Local Governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 168 hours.

Number of Respondents: 56.

Estimated Average Burden Time per Response: 3 hours.

Frequency of Response: Annually and when amendments to the plan are required to meet current policy during disasters where IFG assistance is requested.

Dated: February 1, 1995.

Linda S. Borror,

Acting Director, Administrative Services Division.

[FR Doc. 95–2961 Filed 2–6–95; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) 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 § 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.: 202–007680–88

Title: American West Africa Freight Conference

Parties: Atlantic Bulk Carriers Limited, Joint Service of Societe Navale Et Commerciale Delmas-Vieljeux and America-Africa-Europe Line GMBH, Farrell Lines, Inc., Maersk Line, Societe Ivoirienne De Transport Maritime, Sitram, Torm West Africa Line, Wilhelmsen Lines A/S

Synopsis: The proposed amendment amends Article 7.2—Membership, Withdrawal and Expulsion to establish an admission fee.

By Order of the Federal Maritime Commission.

Dated: February 1, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–2878 Filed 2–6–95; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 95–02]

Nordana Line AS v. Jamar Shipping, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Nordana Line AS (''Complainant'') against Jamar Shipping, Inc. (''Respondent'') was served February 1, 1995. Complainant alleges that Respondent, a licensed ocean freight forwarder, has violated sections 10(a)(1) and 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), and 1709(d)(1) by failing to pay over to complainant ocean freight received by it from the shipper for shipments carried by complainant from Houston, Texas to Lattakia, Syria in March 1994.

This proceeding has been assigned to the office of Administrative Law Judges. Hearings in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by February 1, 1996, and the final decision of the Commission shall be issued by June 1, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 95–2877 Filed 2–6–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Berkshire Financial Services, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have 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.

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 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.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 21, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Berkshire Financial Services, Inc., Lee, Massachusetts; to engage *de novo* through its subsidiary Berkshire Financial Centers, Inc., Lee, Massachusetts, in providing securities brokerage activities, related securities credit activities, and incidental activities solely for the account of customers (and not securities underwriting or dealing), pursuant to § 225.25(b)(15) of the Board's Regulation Y; and also providing mortgage origination services pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Massachusetts, Connecticut, New York and Vermont.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Carlinville National Bank Shares, Inc., Carlinville, Illinois; to make an equity investment of 41 percent of the common stock of Macoupin County Community Development Corporation, Carlinville, Illinois, and thereby engage

de novo in providing small business access to financial capital that otherwise is unavailable in the private section and assisting housing development for low and moderate income residents, meeting the requirements for community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–2941 Filed 2–6–95; 8:45 am]

BILLING CODE 6210–01–F

Marlene Crowe Embry, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 21, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Marlene Crowe Embry; O'Neal Embry, Trustees, both of Duluth, Georgia, and Charles Benjamin Ginden, Trustee, Atlanta, Georgia; to retain 26.5 percent, for a total of 44.9 percent, of the voting shares of Embry Bankshares, Inc., Atlanta, Georgia, and thereby indirectly acquire Embry National Bank, Duluth, Georgia.

Board of Governors of the Federal Reserve System, February 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–2942 Filed 2–6–95; 8:45 am]

BILLING CODE 6210–01–F

Issac Gilinski y Cia. S. en C., 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 March 3, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Issac Gilinski y Cia. S. en C.; Jamie Gilinski y Cia. S. en C.; Perla Bacal de Gilinski y Cia, S. en C.; Raquel Kardonski y Cia. S. en. C.; and PBZ Ltda. y. Cia S. en C., all of Santa F de Bogota, Colombia; to become bank holding companies by acquiring 99.2 percent of the voting shares of Eagle National Bank of Miami, Miami, Florida.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Marshall & Ilsley Corporation, Milwaukee, Wisconsin, to acquire 100 percent of the voting shares of Sharon State Bank, Sharon, Wisconsin, and Citizens Bancorp of Delavan, Inc., Delavan, Wisconsin, and thereby indirectly acquire Citizens Bank of Delavan, Delavan, Wisconsin.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. National City Bancshares, Inc., Evansville, Indiana; to acquire 100 percent of the voting shares of White County Bank, Carmi, Illinois.

Board of Governors of the Federal Reserve System, February 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–2943 Filed 2–6–95; 8:45 am]

BILLING CODE 6210–01–F

The Toronto-Dominion Bank; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) 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 acquire or control voting securities or assets of a company engaged 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 21, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. The Toronto-Dominion Bank,, Toronto, Canada; to acquire Lancaster

Financial Corporation, New York, New York, and thereby engage in permissible financial advisory activities, pursuant to § 225.25(b)(4)(vi) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–2944 Filed 2–6–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Public Meeting on the Development of Colorectal Cancer Screening Clinical Practice Guideline

The Agency for Health Care Policy and Research (AHCPR) announces that a public meeting will be held to receive comments and information pertaining to the development of the clinical practice guideline on Screening for Colorectal Cancer. The guideline will focus on tests used to screen for colorectal cancer and the evidence of their effectiveness. The guideline is being developed by a non-profit contractor of AHCPR with the assistance of a panel of health care experts and consumers. Collaborative support for this effort is being provided by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK).

A notice announcing that AHCPR was arranging for the development of this clinical practice guideline was published in the **Federal Register** on August 17, 1993 (Vol. 58, No. 157). That notice invited nominations for experts and consumers to serve on the panel that is developing the guideline.

A public meeting to provide an opportunity for interested parties to contribute relevant information and comments, including research in areas relevant to the guideline, will be held as follows:

Meeting: Colorectal Cancer Screening
Date: April 19, 1995
From: 9:00 a.m.–12:00 p.m.
Location: Old Town Holiday Inn, 480 King Street, Alexandria, Virginia 22314
Phone: (703) 549–6080
Fax: (703) 684–6508

Background

The AHCPR is charged, under Title IX of the Public Health Service Act, with enhancing the quality, appropriateness, and effectiveness of health care services, and access to such services. The AHCPR accomplishes its goals through the establishment of a broad base of scientific research, and through the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services. (See 42 U.S.C. 299–299c–6 and 1320–12.)

In keeping with its legislative mandates, AHCPR arranges for the development, periodic review, and update of clinically relevant guidelines that may be used by physicians, nurses, other health care providers, educators, and consumers to assist in determining how diseases, disorders, and other health care conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed. Medical review criteria, standards of quality, and performance measures are then developed based on the guidelines produced.

Section 912 of the Act (42 U.S.C. 299b–1(b)), as amended, requires that the guidelines:

1. Be based on the best available research and professional judgment;
2. Be presented in formats appropriate for use by physicians, nurses, other health care providers, medical educators, medical review organizations, and consumers;
3. Be presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, education programs, and reviewing quality and appropriateness of medical care;
4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and
5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Section 914 of the Act (42 U.S.C. 299b–3(a)), as amended, identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods for disease prevention;
2. Improve methods of diagnosis, treatment, and clinical management, and thereby benefit a significant number of individuals;
3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatment; and
4. Reduce clinically significant variations in the outcomes of health care services and procedures.

Also, in accordance with Title IX of the PHS Act and section 1142 of the Social Security Act, the AHCPR Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines and guideline updates.

Arrangements for the April 19, 1995 Public Meeting on Colorectal Cancer Screening

Representatives of organizations and other individuals are invited to provide relevant written comments and information, and make a brief (5 minutes or less) oral statement to the panel. Individuals and representatives who would like to attend must register with Michael Stolar, Project Manager, American Gastroenterological Association (AGA), at the address set out below by April 5, 1995, and indicate whether they plan to make an oral statement. A written copy of the oral statement, comments, and information should be submitted to AGA by April 5, 1995. If more requests to make oral statements are received than can be accommodated between 9:00 a.m. and 12:00 p.m. on April 19, 1995, the chairperson will allocate speaking time in a manner which ensures, to the extent possible, that a range of views of health care professionals, consumers, product manufacturers, and pharmaceutical manufacturers are presented. Those who cannot be granted their requested speaking time because of time constraints are assured that their written comments will be considered when decisions regarding the guideline are made.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact AGA by April 5, 1995, at the address below.

Registration should be made with, and written materials submitted to: Michael Stolar, Ph.D., Project Manager, American Gastroenterological Association, 7910 Woodmont Avenue, Suite 914, Bethesda, Maryland 20814, Phone: (301) 654–2055, Fax: (301) 654–5920.

For Additional Information

Additional information on the guideline development process is contained in the AHCPR Program Note, ''Clinical Practice Guideline Development,'' dated August 1993. This document describes AHCPR's activities with respect to clinical practice guidelines including the process and criteria for selecting panels. This document may be obtained from the AHCPR Publications Clearinghouse,

P.O. Box 8547, Silver Spring, MD 20907; or call Toll-Free: 1–800–358–9295.

Also, information can be obtained by contacting Douglas B. Kamerow, M.D., M.P.H., Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Boulevard, Suite 310, Rockville, MD 20852, Phone 301–594–4015, Fax: 301–594–4027.

Dated: January 30, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–2939 Filed 2–6–95; 8:45 am]

BILLING CODE 4160–90–P

Public Meeting on a Model Survey for Monitoring Consumers' Access to Care, Use of Services, Health Outcomes, and Patient Satisfaction

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of public meeting.

SUMMARY: A meeting is being held to discuss the results of AHCPR's project to design a survey to monitor consumers' access to care, use of services, health outcomes, and patient satisfaction.

DATES: The meeting, open to the public, will be on Friday, March 10, 1995, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be at the Four Seasons Hotel, Dumbarton Room, 2800 Pennsylvania Avenue, N.W., Washington, D.C. 20007.

SUPPLEMENTARY INFORMATION:

I. Purpose

The purpose of this meeting is to present and discuss the results of the Agency for Health Care Policy and Research (AHCPR) project, ''Design of a Survey to Monitor Consumers' Access to Care, Use of Services, Health Outcomes, and Patient Satisfaction''. This project, carried out under contract with the Research Triangle Institute of Research Triangle Park, NC, developed information on consumers' perceptions and ratings of their health care plans for use in choosing health plans.

II. Agenda

The meeting will begin at 9 a.m. on Friday, March 10, 1995, and provide an overview of the purpose and scope of the project. A presentation of the model survey instrument that resulted from the project will follow; and a question and comment period will conclude the session with adjournment at 12 p.m.

III. Arrangements for the March 10, 1995 Meeting

Individuals and representatives of organizations who would like to attend the meeting must register by February 21 with Moshman Associates, Inc., the contractor providing administrative support to AHCPR for the meeting. Registration information and a draft agenda may be obtained by writing to Moshman Associates, Inc., Attention: Technical Conference Division, Suite 410, North Tower, 7315 Wisconsin Avenue, Bethesda, MD 20814. Requests for registration materials may also be submitted by facsimile transmission at 301–961–553, Attention: Technical Conference Division. Facsimile cover sheets should include a sender's name, organization, address, telephone and facsimile numbers.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, the Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594–6666, no later than February 21, 1995.

Additional information on the meeting can be obtained by contacting Sandra K. Robinson, Project Officer, Office of Program Development, Agency for Health Care Policy and Research, at the following address: Sandra K. Robinson, Project Officer, Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 603, Rockville, Maryland 20852, Phone: 301–594–1455, FAX: 301–594–2157.

Dated: January 30, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–2938 Filed 2–6–95; 8:45 am]

BILLING CODE 4160–0–P

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for Preventive Health Services-Sexually Transmitted Diseases (STD)/Human Immunodeficiency Virus (HIV) Prevention Training Centers-Program Announcement 514; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Disease, Disability, and Injury Prevention and Control.

SEP: Cooperative agreements for Preventive Health Services-STD/HIV Prevention Training Centers-Program Announcement 514.

Times and Dates: 8:30 a.m.–4:30 p.m., March 7, 1995; 8:30 a.m.–4 p.m., March 8, 1995.

Place: Corporate Square, Building 11, Room 1413, Corporate Square Boulevard, Atlanta, Georgia 30329.

Status: Closed.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 514. The application being reviewed include information of a confidential nature, including personal information concerning individuals associated with the applications.

The meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Acting Associate Director for Policy Coordination, CDC, pursuant to Pub. L. 92–463.

Contact Person for More Information: John R. Lehnherr, Chief, Resource Analysis Office (E07), National Center for Prevention Services, CDC, Corporate Square, Corporate Square Boulevard, Atlanta, Georgia 30329, telephone 404/639–8023.

Dated: January 31, 1995.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–2933 Filed 2–6–95; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 93S–0220]

Extension of Electronic Docket for Medical Device/Radiological Health Policy Statements and Operating Procedure Guides and Cessation of Public Docket

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has decided to extend an electronic docket that was established over 1 year ago to enhance public access to policy speeches and statements, standard operating procedure guides, and other types of documents related to product evaluation and regulatory enforcement for its medical device and radiological health programs. The agency has also decided to cease maintaining a public ''hard copy'' docket, which was established concurrently with and contains the same information as the electronic docket. Both dockets have been operating on a 1-year pilot basis.

DATES: Continuation of the electronic docket will extend for an indefinite

period of time. Written comments and suggestions regarding operation of the electronic docket are acceptable at any time. Cessation of the public docket is effective immediately.

ADDRESSES: Submit written comments on the management of the electronic docket to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John F. Stigi, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597.

SUPPLEMENTARY INFORMATION: Throughout its existence, the Center for Devices and Radiological Health (CDRH) has employed a number of outlets to communicate with regulated industry, the medical community, and interested consumers about its policies and operations. Although these modes of communication were generally regarded as effective, many persons expressed the desire for even broader access to CDRH-generated information to better assist them in complying with FDA regulatory requirements. In response, CDRH created two dockets to serve as readily accessible repositories of current and important materials. FDA announced the establishment of both dockets in the **Federal Register** of July 27, 1993 (58 FR 40150), and stated there would be a 1-year trial period for both information retrieval systems.

One docket, from which documents in ''hard copy'' form can be acquired, has been located at the Dockets Management Branch (address above). Interested persons were required to physically visit this facility in order to access the information.

CDRH also established an electronic docket as a means to further increase industry access to policy documents. This menu-driven system allows interested persons to access, read, print, and download documents using personal computers at their places of business.

Throughout the pilot year, CDRH has monitored the number of inquiries received through each of the two dockets. Approximately 100 document requests were made through the public (''hard copy'') docket. In contrast, more than 17,000 inquiries were received through the electronic docket, and the number of system accesses continues to increase. During the period August through September 1994, slightly more than 5,800 requests were made. In addition to these utilization statistics, CDRH has taken note of articles, editorials in trade publications, and correspondence that have commented favorably about the usefulness of the electronic docket in particular.

In view of the positive feedback on the electronic docket, as reflected by the comparatively large volume of inquiries, the agency believes there is sufficient justification for maintaining this public service. Persons interested in availing themselves of this information access system must have a video terminal or personal computer with communications software (VT emulation) and a modem that can operate at a baud rate of 1200, 2400, 4800, or 9600. For those persons who wish to transfer files from the electronic docket, the KERMIT file transfer protocol must be used. The telephone number to access the system is 1–800–252–1366 or 301–594–2741.

From the experience gained in operating the electronic docket, CDRH is contemplating a number of refinements to improve its information delivery capability, as well as the scope of material available for public access. These will include, for example, announcements of upcoming meetings of the agency's various medical device advisory panels. As other enhancements to the system are introduced, CDRH will inform potential users through CDRH newsletters, trade publications, public speeches, and other communication vehicles.

Effective immediately, FDA is terminating the public docket pilot program. Because of the marginal utilization of the public docket, CDRH believes that the administrative costs associated with its operation are no longer justified.

The actions announced in this notice do not affect the status of two other information access systems referred to in the **Federal Register** notice of July 7, 1993: (1) The CDRH ''Flash FAX'' system, from which virtually all documents formerly offered in the public docket are presently or shortly will be available; and (2) the premarket notification (510(k)) submission status reporting system.

To receive information or assistance regarding any of the systems described in this notice, contact the CDRH Division of Small Manufacturers Assistance at 1–800–638–2041 or 301–443–6597, or by FAX at 301–443–8818, or write to the contact person above.

Dated: January 13, 1995.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 95–2991 Filed 2–6–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

Agency: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511).

1. *Type of Information Collection:* New; *Type of Review Requested:* Regular submission; *Title of Information Collection:* Race and Ethnicity Survey; *Form No.:* HCFA-R–173; *Use:* This is a survey to improve the completeness of race and ethnicity information contained on the Medicare enrollment database; *Respondents:* Individuals or households; *Obligation to Respond:* Voluntary; *Number of Respondents:* 1,800,000; *Total Annual Responses:* 1,800,000; *Total Annual Hours Requested:* 60,000.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: January 30, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–2888 Filed 2–6–95; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to Robert Benson at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7735 ext 267; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Polysaccharide-Protein Conjugates

Shouson Szu, Rachel Schneerson, and John B. Robbins (NICHD), Serial No. 07/155,799, Patent Issued 20 Apr 93, U.S. Patent Number 5,204,098.

The invention concerns conjugates of pathogenic microorganism capsular polysaccharides and proteins useful as vaccines. The broadest claim reads: ''A composition for enhancing the antibody response of a host comprising a capsular polysaccharide having carboxyl groups conjugated through a thio derivative of said carboxyl groups to a protein in a physiologically acceptable carrier.'' Applications are pending in Japan and Canada.

The conjugates having capsular polysaccharide from *Staphylococcus* have been exclusively licensed and are not available.

Pertussis Toxin Used as a Carrier Protein With Non-Charged Saccharides in Conjugate Vaccines

Rachel Schneerson, Lily Levi, and John B. Robbins (NICHD), Serial No. 07/932,960, Filed 21 Aug 92.

This invention concerns conjugates of non-charged capsular polysaccharides from pathogenic bacteria with pertussis toxin for use as vaccines. Bacteria having non-charged capsular polysaccharides include *Streptococcus pneumoniae* types 7 and 14. The invention is described in Infection and Immunity 60(9), 3528–3532, 1992. Mice injected with Pn14-pertussis toxin conjugates raised serum antibodies against both type 14 capsular polysaccharide and pertussis toxin. Also claimed are methods of synthesis, immunization methods and vaccines. The application has been foreign filed, PCT/US93/07732.

Immunogenic Polysaccharide-Protein Conjugates Containing Poly Alpha (2–8), Alpha (2–9) Neunac Capsular Polysaccharides

Rachel Schneerson, John B. Robbins, and Sarvamangala Devi (NICHD), Filed 12 Mar 91 (priority date), Serial No. 08/153,263 (CON of 07/667,170).

The invention concerns conjugates of *E. coli* K92 capsular polysaccharide and carrier proteins, such as tetanus toxoid. The conjugates have been shown to raise antibodies that react with Group B and Group C *Neisseria meningitis* and *E. coli* K1 capsular polysacchrides. The conjugate is a potential vaccine against Group B meningitis. Infant rats have been protected from lethal injections of *E. coli* K1 using antisera raised against the conjugates. The invention is described in P.N.A.S. *88*, 7175–7179 (1991). Applications are pending in Canada, Australia, Japan and Europe.

Detoxified LPS-Cholera Toxin Conjugate Vaccine for Prevention of Cholera

Shouson Szu, John B. Robbins, and Rajesh K. Gupta (NICHD), Filed 16 Jan 92 (priority date), Serial No. 08/171,188 (CON of 07/821,453).

The invention concerns a conjugate of detoxified lipopolysaccharide (LPS) from *V. cholera* and proteins, potentially useful as a cholera vaccine. The LPS is detoxified by treatment with anhydrous hydrazine, resulting in a detoxified LPS that is less toxic and more immunogenic than cholera LPS's detoxified by other means. The invention has been foreign filed, PCT/US93/00253. In a phase I clinical trial, 38 volunteers were injected with a conjugate of the detoxified LPS and tetanus toxoid. The conjugate vaccines of the invention elicit higher levels of anti-LPS IgG antibodies than whole cell vaccine. IgG can penetrate the intestinal membrane to reach the gut, and, thus, is the primary reason for protection. The serum from the volunteers is vibriocidal for at least nine months; tests are continuing. In the field trials of the whole cell vaccine, protection is correlated with the level of serum vibriocidal antibodies.

Synthesis of Typhoid Fever Vaccine From a Plant or Fruit Polysaccharide

Shouson Szu and Slavomir Bystrisky (NICHD), Filed 17 Oct 94, Serial No. 08/323,918.

The invention is a synthetic *Salmonella typhi* capsular polysaccharide, Vi, made by chemically modifying fruit pectin. The synthetic Vi is useful as a component of a subunit vaccine for typhoid fever. The synthetic Vi is made by acetylating the C_2 and C_3 hydroxyls of the galacturonate subunits of pectin. A vaccine is made by conjugating the synthetic Vi to a carrier protein, such as tetanus toxoid. The synthetic Vi-tetanus toxoid conjugates were shown to react with *S. typhi* antisera, and when injected into mice raised antibodies reactive with natural *S. typhi* Vi antigen. The conjugates were able to elicit a booster effect. Antibodies or antisera raised against the conjugates and useful for diagnostic purposes and for passive immunization are also part of the invention. The invention is described in Infection & Immunity *62*, 5545–5549 (1994).

Glucuronoxylomannan-Protein Conjugates of Cryptococcus Neoformans

Sarvamangala Devi, Rachel Schneerson, John E. Bennett, and John B. Robbins (NICHD), Filed 16 Sep 91 (priority date), Serial No. 08/231,444 (CON of 07/760,143).

Cryptococcus neoformans is an encapsulated fungus that causes systemic infections in humans, particularly in those who are immunocompromised. The incidence of infection is high in AIDS patients. The invention concerns conjugates of the glucuronoxylomannan (GXM) capsular polysaccharide of *C. neoformans* and carrier proteins such as tetanus toxoid or cholrea toxin. These conjugates are potential vaccines to be given to people at high risk of HIV infection. Another facet of the invention is passive immunization, a therapeutic treatment, using antisera or antibodies raised against the conjugates. Passive protection has been demonstrated in mice. Human clinical trials are ongoing. The basic invention is described in Infection & Immunity *59*, 3700–3707 (1991).

Dated: January 28, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–2862 Filed 2–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the National Cancer Institute for February, March and April 1995.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notice and for the review of concepts being considered for funding. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the

review, discussion and evaluation of individual grant applications and contract proposals and for the critique and evaluation of extramural/intramural programmatic and personnel policies, including consideration of personnel qualifications and performance and the competence of individual investigators. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, the Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630E, 6130 Executive Blvd MSC 7405, Bethesda, Maryland 20892–7405, (301–496–5708) will provide a summary of the meetings and the roster of committee members, upon request. Other information pertaining to the meetings may be obtained from the contact person indicated below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the person listed for that particular meeting.

Committee Name: Board of Scientific Counselors, Division of Cancer Treatment.

Contact Person: Dr. Bruce A. Chabner, DCT, NCI, NIH, Bldg. 31, Room 3A44, Bethesda, MD 20892–2440, Telephone: (301) 496–4291.

Date of Meeting: February 27, 1995.

Place of Meeting: Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Open: February 27, 1995 8 a.m. to 4:30 p.m.

Agenda: Review of program plans within the Division, review of concepts of contract recompetitions, and the budget for the Division's programs.

Closed: February 27, 1995 4:30 p.m. to 5:30 p.m.

Agenda: Extramural/Intramural programmatic and personnel policies of a sensitive nature and consideration of personnel qualifications and performance and the competence of individual investigators.

Committee Name: Subcommittee B of the Cancer Research Manpower and Education Review Committee.

Contact Person: Dr. Neil B. West, Executive Plaza North, Room 611D, Telephone: (301) 402–2785.

Date of Meeting: February 28–March 2, 1995.

Place of Meeting: Holiday Inn—Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20851.

Closed: February 28, 1995 8 a.m. to recess; March 1, 1995 8 a.m. to recess; March 2, 1995 8 a.m. to adjournment.

Agenda: Review, discussion and evaluation of individual grant applications.

Committee Name: Board of Scientific Counselors, Division of Cancer Etiology.

Contact Person: Dr. Jerry R. Rice, DCE, NCI, NIH, Bldg. 31A, Room 11A03, Bethesda, MD 20892. Telephone: (301) 496–6618.

Date of Meeting: March 9–10, 1995.

Place of Meeting: Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Open: March 9, 1995 1 p.m. to recess; March 10, 1995 9 a.m. to adjournment.

Agenda: Discussion and review of the Division budget and review of concepts for grants and contracts.

Closed: March 9, 1995 9 a.m. to 12 noon.

Agenda: Extramural/Intramural programmatic and personnel policies of a sensitive nature and consideration of personnel qualifications and performance and the competence of individual investigators.

Committee Name: Subcommittee A of the Cancer Biology-Immunology Contracts Review Committee.

Contact Person: Dr. Lalita D. Palekar, Room 601D, Executive Plaza North, Telephone: (301) 496–7575.

Date of Meeting: March 20, 1995.

Place of Meeting: Conference Room G, 6130 Executive Boulevard, Rockville, MD 20852.

Closed: March 20, 1995 8:30 a.m. to adjournment.

Agenda: Review, discussion and evaluation of individual contract proposals.

Committee Name: Subcommittee A of the Cancer Centers and Research Programs Review Committee.

Contact Person: Dr. David E. Maslow, Room 643A, Executive Plaza North, Telephone: (301) 496–2330.

Date of Meeting: April 5–7, 1995.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Closed: April 5, 6 p.m. to recess; April 6, 8 a.m. to recess; April 7, 8 a.m. to adjournment.

Agenda: Review, discussion and evaluation of individual grant applications.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: January 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–2868 Filed 2–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, February 24, 1995. The meeting will be held at the National Institutes of Health, Building 31, Conference Room 8, C–Wing, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9:00 a.m. to adjournment, to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Clarice D. Reid, Executive Secretary, Sickle Cell Disease Advisory Committee, Divison of Blood Diseases and Resources, NHLBI, Federal Building, Room 508, Bethesda, Maryland 20892, (301) 496–4868, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–2860 Filed 2–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases on February 23–24, 1995, in the Congressional Ballroom at the Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland which was published in the **Federal Register** on December 27, 1994 (59 FR 66549).

This committee was to have convened at 8 a.m. on February 23 and continue until adjournment on February 24. The meeting has been changed to adjourn on February 23.

Dated: January 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–2869 Filed 2–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: February 23, 1995, February 24, 1995.

Time: 6:30 p.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland.

Contact Person: Theresa Lo, Ph.D., Scientific Review Administrator, Natcher Building, 45 Center Drive, Room 5AS–25U, Bethesda, Maryland 20892–6500, (301) 594–4952.

Purpose/Agenda: To review and evaluate research grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, project grants in arthritis, musculoskeletal and skin diseases research], National Institutes of Health, HHS)

Date: January 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–2865 Filed 2–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee B.

Date: March 9–10, 1995.

Time: March 9, 6 p.m.–10 p.m.; March 10, 8 a.m.–adjournment.

Place: Embassy Suites Hotel, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Michael W. Edwards, Ph.D., Natcher Building, Room 6AS–37J, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8892.

Purpose/Agenda: To review and evaluate research grant applications.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee C.

Date: March 9–10, 1995.

Time: March 9, 8:30 a.m.–5 p.m.; March 10, 8:30 a.m.–adjournment.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Daniel Matsumoto, Ph.D., Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8894.

Purpose/Agenda: To review and evaluate research grant applications.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee D.

Date: March 2–3, 1995.

Time: March 2, 3 p.m.–7 p.m.; March 3, 8 a.m.–adjournment.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, Maryland 20852.

Contact Person: Ann A. Hagan, Ph.D., Natcher Building, Room 6AS–43G, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8891.

Purpose/Agenda: To review and evaluate research grant applications.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: January 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–2866 Filed 2–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of General Medical Sciences; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following advisory committee meeting of the National Institute of General Medical Sciences.

This meeting will be open to the public as indicated below with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 45, Room 3AS–43, Bethesda, Maryland 20892, (301) 496–7301, in advance of the meeting.

Mrs. Dieffenbach will provide a summary of the meeting and a roster of committee members upon request. Substantive program information may be obtained from the contact listed below.

Committee Name: Minority Access to Research Careers Review Subcommittee, Minority Programs Review Committee.

Meeting Date: February 22–23, 1995.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Open: February 22, 8:30 a.m.–9:30 a.m.

Agenda: Special reports related to committee activities.

Closed: February 22, 9:30 a.m.–5 p.m.; February 23, 8:30 a.m.–adjournment.

Agenda: Review and evaluation of grant application.

Contact: Dr. Richard Martinez, Scientific Review Admin, Building 45, Room 1AS–19G, National Institutes of Health, Bethesda, MD 20852, Telephone (301) 594–2849.

This meeting will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.859, 93.862, 93.863, 93.880, National Institute of General Medical Sciences, National Institutes of Health)

Dated: January 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–2863 Filed 2–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Biomedical Library Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on March 1–2, 1995, convening at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on March 1 will be open to the public from 8:30 a.m. to

approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Roger W. Dahlen at 301–496–4221 two weeks before the meeting.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting on March 1 will be closed to the public for the review, discussion, and evaluation of individual grant applications from 11 a.m. to approximately 5 p.m., and on March 2 from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Scientific Review Administrator, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health.)

Dated: January 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–2864 Filed 2–6–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Multidisciplinary Sciences.
Date: February 27, 1995.
Time: 1:00 p.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Houston Baker, Scientific Review Administrator, 5333 Westbard Ave., Room 2A15B, Bethesda, MD 20892, (301) 594–7374.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 2, 1995.
Time: 1:00 p.m.
Place: NIH, Westwood Building, Room 407A, Telephone Conference.
Contact Person: Dr. Calbert Laing, Scientific Review Administrator, 5333 Westbard Ave., Room 407A, Bethesda, MD 20892, (301) 594–7190.

Name of SEP: Multidisciplinary Sciences.
Date: March 2–4, 1995.
Time: 8:30 a.m.
Place: Marriott Copley Place, Boston, MA.
Contact Person: Dr. Marjam Behar, Scientific Review Administrator, 5333 Westbard Ave., Room 2A11A, Bethesda, MD 20892, (301) 594–7376.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 3, 1995.
Time: 9:00 a.m.
Place: NIH, Westwood Building, Room 407A, Telephone Conference.
Contact Person: Dr. Calbert Laing, Scientific Review Administrator, 5333 Westbard Ave., Room 407A, Bethesda, MD 20892, (301) 594–7190.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 3, 1995.
Time: 1:00 p.m.
Place: NIH, Westwood Building, Room 407A, Telephone Conference.
Contact Person: Dr. Calbert Laing, Scientific Review Administrator, 5333 Westbard Ave., Room 407A, Bethesda, MD 20892, (301) 594–7190.

Name of SEP: Chemistry and Related Sciences.
Date: March 7, 1995.
Time: 9:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Mike Radtke, Scientific Review Administrator, 5333 Westbard Ave., Room 337, Bethesda, MD 20892, (301) 594–7212.

Name of SEP: Clinical Sciences.
Date: March 10, 1995.
Time: 10:00 a.m.
Place: NIH, Westwood Building, Room 207, Telephone Conference.
Contact Person: Dr. Krish Krishnan, Scientific Review Administrator, 5333 Westbard Ave., Room 207, Bethesda, MD 20892, (301) 594–7156.

Name of SEP: Clinical Sciences.
Date: March 13 1995.
Time: 10:00 a.m.
Place: NIH, Westwood Building, Room 207, Telephone Conference.
Contact Person: Dr. Krish Krishnan, Scientific Review Administrator, 5333 Westbard Ave., Room 207, Bethesda, MD 20892, (301) 594–7156.

Name of SEP: Multidisciplinary Sciences.
Date: March 13, 1995.
Time: 9:00 a.m.
Place: Holiday Inn, Crystal City, VA.
Contact Person: Dr. Paul Parakkal, Scientific Review Administrator, 5333 Westbard Ave., Room 437, Bethesda, MD 20892, (301) 594–7258.

Name of SEP: Behavioral and Neurosciences.
Date: March 22, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Peggy McCardle, Scientific Review Administrator, 5333 Westbard Ave., Room 305, Bethesda, MD 20892, (301) 594–7293.

Name of SEP: Biological and Physiological Sciences.
Date: March 28, 1995.
Time: 1:00 p.m.
Place: NIH, Westwood Building, Room 421C, Telephone Conference.
Contact Person: Dr. Camilla Day, Scientific Review Administrator, 5333 Westbard Ave., Room 421C, Bethesda, MD 20892, (301) 594–7389.

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.

Name of SEP: Multidisciplinary Sciences.
Date: February 27–28, 1995.
Time: 2:00 p.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Houston Baker, 5333 Westbard Ave., Room 2A15B, Bethesda, MD 20892, (301) 594–7374.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 3, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Bethesda, MD.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 5333 Westbard Ave., Room 235, Bethesda, MD 20892, (301) 594–7078.

Name of SEP: Multidisciplinary Sciences.
Date: March 13–14, 1995.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Houston Baker, Scientific Review Administrator, 5333 Westbard Ave., Room 2A15B, Bethesda, MD 20892, (301) 594–7374.

Name of SEP: Biological and Physiological Sciences.
Date: March 20, 1995.
Time: 8:00 a.m.
Place: American Inn, Bethesda, MD.
Contact Person: Dr. Dennis Leszczynski, Scientific Review Admin., 5333 Westbard Ave., Room 210, Bethesda, MD 20892, (301) 594–7218.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 31, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–2861 Filed 2–6–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Close Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.

Name of SEP: Multidisciplinary Sciences.
Date: February 23, 1995.
Time: 8:30 a.m.
Place: Wyndham Bristol Hotel, Washington, DC.
Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 5333 Westbard Ave., Room 2A11B, Bethesda, MD 20892, (301) 594–7276.

Name of SEP: Multidisciplinary Sciences.
Date: March 13, 1995.
Time: 8:00 a.m.
Place: Georgetown Inn, Washington, DC.
Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 5333 Westbard Ave., Room 2A11B, Bethesda, MD 20892, (301) 594–7276.

Name of SEP: Multidisciplinary Sciences.
Date: March 13–14, 1995.
Time: 8:00 a.m.
Place: Crowne Plaza, Rockville, MD.
Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 5333 Westbard Ave., Room 2A18A, Bethesda, MD 20892, (301) 594–7342.

Name of SEP: Multidisciplinary Sciences.
Date: March 17, 1995.
Time: 8:00 a.m.
Place: Hilton, Tysons Corner, VA.
Contact Person: Dr. Eileen Bradley, Scientific Review Administrator, 5333 Westbard Ave., Room 2A10, Bethesda, MD 20892, (301) 594–7188.

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.
Date: March 6–8, 1995.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Ms. Jo Pelham, Scientific Review Administrator, 5333 Westbard Ave., Room 349, Bethesda, MD 20892, (301) 594–7254.

Name of SEP: Multidisciplinary Sciences.
Date: March 12, 1995.
Time: 7:00 p.m.
Place: Crowne Plaza, Rockville, MD.
Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 5333 Westbard Ave., Room 2A18A, Bethesda, MD 20892, (301) 594–7342.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 13, 1995.
Time: 11:00 a.m.
Place: NIH, Westwood Building, Room 404B, Telephone Conference.
Contact Person: Dr. Sami Mayyasi, Scientific Review Administrator, 5333 Westbard Ave., Room 404B, Bethesda MD 20892, (301) 594–7073.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 14, 1995.
Time: 11:00 a.m.
Place: NIH, Westwood Building, Room 404B, Telephone Conference.
Contact Person: Dr. Sami Mayyasi, Scientific Review Administrator, 5333 Westbard Ave., Room 404B, Bethesda, MD 20892, (301) 594–7073.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 15, 1995.
Time: 11:00 a.m.
Place: NIH, Westwood Building, Room 404B, Telephone Conference.
Contact Person: Dr. Sami Mayyasi, Scientific Review Administrator, 5333 Westbard Ave., Room 404B, Bethesda, MD 20892, (301) 594–7073.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–2867 Filed 2–6–95; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Draft SAMHSA Strategic Plan

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA).

ACTION: Request for comments on working draft of SAMHSA Strategic Plan.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) has developed a working draft of its Strategic Plan. SAMHSA welcomes comments on this working draft and ideas for specific objectives and actions that should be taken to bring about the greatest possible improvement in the quality and availability of needed services. To be considered, all comments and suggestions must be received by March 15, 1995.

Copies of the draft SAMHSA Strategic Plan are available toll-free by request from the National Clearinghouse for Alcohol and Drug Information at (800) 729–6686 and by modem from the SAMHSA electronic bulletin board system at (800) 424–4294 or (301) 443–0040. Please send comments to: Dr. Frank Sullivan,Associate Administrator for Policy and Program Coordination, Substance Abuse and Mental Health Services Administration, Room 12C–06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Comments may also be faxed to Dr. Sullivan at (301) 443–0496, sent via E-mail to FSULLIVA@A0A2.SSW.DHHS.GOV, or left as voice mail messages at (800) 222–7711. Comments can also be shared via the SAMHSA electronic bulletin board system.

Dated: February 1, 1995.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–2855 Filed 2–6–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–4410–02]

Diamond Mountain and Book Cliffs Resource Areas, UT; Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Environmental Assessment (EA).

SUMMARY: This notice is to notify the public that the Vernal District, Bureau of Land Management has completed an EA that proposes to amend the Diamond Mountain and the Book Cliffs resource management plans (RMPs). The EA was prepared in order to identify public land not previously identified for disposal by sale within Uintah County, Utah. This action is announced pursuant to Section 203 of the Federal Land Management and Policy Act of 1976 and 43 CFR part 1610.

DATES: Protest on the proposed planning amendments will be accepted until March 9, 1995.

ADDRESSES: Send protests to the Director, Bureau of Land Management (760) MS 406 LS, 1849 C Street, NW,

Washington, D.C. 20240, within 30 days after the publication of this notice on the proposed planning amendments.

SUPPLEMENTARY INFORMATION: If approved and implemented, the proposed planning amendments would enable the BLM to identify and offer for public sale approximately 3,600 acres of mostly scattered, isolated tracts of public land to offset a recent federal land acquisition of 5,129 acres of private land within Uintah County, Utah.

The proposed planning amendments are subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with 43 CFR 1610.5–2. Protests must contain the following minimal information: Name, address, telephone number, and interest of the person filing protest; statement of issue or issues being protested; statement of part or parts of the planning amendments being protested, citing page(s), paragraph(s), map(s), etc.; copies of all documents submitted by the protestor during the planning process or a reference to the date when the protestor discussed issue(s) for the record; and a concise statement as to why the protestor believes the BLM State Director's proposed decision could be wrong.

FOR FURTHER INFORMATION, CONTACT: Peter A. Kempenich, Natural Resource Specialist, Vernal District Office, (801) 781–4432.

G. William Lamb,

Associate State Director.

[FR Doc. 95–2910 Filed 2–6–95; 8:45 am]

BILLING CODE 4310–DQ–M

[UT–040–05–1430–00]

Resource Management Plans, etc.; Cedar Resource Area, et al., UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: This notice is to advise the public that the Bureau of Land Management (BLM) is proposing to amend the Cedar/Beaver/Garfield/Antimony (CBGA) Resource Management Plan (RMP), approved October 1, 1986, and the Paria Management Framework Plan (MFP), approved April 22, 1981, to allow for the disposal of certain public lands located in Garfield County and Kane County, Utah.

DATES: For a period of 30 days from February 7, 1995, interested parties may submit comments on the issues to be addressed in the subsequent Environmental Analysis.

FOR FURTHER INFORMATION CONTACT: Verlin L. Smith, Area Manager, Kanab Resource Area, 318 North 100 East, Kanab, Utah 84741. Existing planning documents and information are available at the above address or telephone (801) 644–2672. Comments on these proposed plan amendments should be sent to the above address.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the CBGA RMP and the Paria MFP, which includes public lands in Garfield and Kane Counties. The proposed amendments would be to make certain public lands available for disposal pursuant to the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.) to local government entities in Garfield and Kane Counties for the purposes of developing source reduction sites and solid waste transfer stations for solid waste management.

The public land being considered for disposal is described as follows:

Salt Lake Meridian, Utah

T. 34 S., R. 5 W.,
Sec. 26, SW¼SW¼SE¼.
Containing 10 acres.

T. 42 S., R. 1 E.,
Sec. 35, SE¼SE¼SE¼SE¼.
Containing 2.5 acres.

The existing plans do not identify these lands as suitable for disposal. However, because of resource values, public values, and objective involved, the public interest may be well served by disposal of these lands to local government entities. An environmental assessment will be prepared to analyze the impacts of this proposal and alternatives.

G. William Lamb,

Associate State Director.

[FR Doc. 95–2911 Filed 2–6–95; 8:45 am]

BILLING CODE 4310–DQ–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Ringling Bros.-Barnum and Bailey Circus, Vienna, VA, PRT–798745

The applicant requests a permit for the import and re-export of two captive born tigers (*Panthera tigris*) from/to Chipperfield's, Oxon, United Kingdom for the purpose of enhancement of the survival of the species through conservation education.

Applicant: Adriatic Animal Attractions, Inc., Orlando, FL, PRT–798515

The applicant requests a permit to export four captive born tigers (*Panthera tigris*) to Dreamworld, Gold Coast, Australia for the purpose of enhancement of the survival of the species through conservation education.

Applicant: University of Central Florida, Carlos Diez, Orlando, FL, PRT–798725

The applicant requests a permit to export blood samples collected from live hawksbill sea turtles (*Eretmochelys imbricata*) and tissue samples collected from dead hatchlings at Mona Island, Puerto Rico to Dr. H. Koike, Kyushu University, Japan for scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 2, 1995.

Susan Lieberman,

Acting Chief, Office of Management Authority.

[FR Doc. 95–2985 Filed 2–6–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Boston National Historical Park; Draft General Management Plan/ Environmental Assessment Volume 3/ Dorchester Heights; Availability and Public Comment Period

In accordance with the National Environmental Policy Act (P.L. 91–190) the National Park Service (NPS) announces that the Boston National Historical Park Draft General Management Plan/Environmental Assessment, Volume 3 for Dorchester Heights will be available for public

review and comment from February 13–March 15, 1995.

This draft document presents a proposed action for management of the site and three alternative actions. These alternatives address planning issues including resource protection, site development, interpretation and visitor services. Once approved, the final plan will guide the management of the site for fifteen to twenty years.

During the thirty day comment period, interested persons may review the document and provide written comments to the Park Planner, Boston National Historical Park, Charlestown Navy Yard, Boston, MA 02129.

The document will be mailed to federal, state, regional and local agencies. Copies will be available at the South Boston Branch Library at 646 E. Broadway and the Washington Village Branch Library at 1226 Columbia Road, South Boston. Copies are also available by contacting Boston National Historical Park at (617) 242–5691.

Chrysandra L. Walter,

Acting Regional Director.

[FR Doc. 95–2987 Filed 2–6–95; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 28, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by February 22, 1995.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Wilcox County

Snow Hill Normal and Industrial Institute, Co. Rd. 26 N side, NW of Snow Hill, Snow Hill vicinity, 95000146

Tait-Ervin House, 205 Co. Rd. 33, Camden vicinity, 95000147

ARIZONA

Cochise County

Rucker Canyon Archeological District, Address Restricted, Douglas vicinity, 95000157

Coconino County

Anderson Mesa Incline (Logging Railroad Resources of the Coconino and Kaibab National Forests MPS), Address Restricted, Flagstaff vicinity, 95000154

Archeological Site No. AR–03–04–03–810 (Logging Railroad Resources of the Coconino and Kaibab National Forests MPS), Address Restricted, Flagstaff vicinity, 95000149

Archeological Site No. AR–03–04–03–811 (Logging Railroad Resources of the Coconino and Kaibab National Forests MPS), Address Restricted, Flagstaff vicinity, 95000150

Archeological Site No. AR–03–04–03–812 (Logging Railroad Resources of the Coconino and Kaibab National Forests MPS), Address Restricted, Flagstaff vicinity, 95000151

Archeological Site No. AR–03–04–03–414 (Logging Railroad Resources of the Coconino and Kaibab National Forests MPS), Address Restricted, Flagstaff vicinity, 95000152

Archeological Site No. AR–03–04–03–440 (Logging Railroad Resources of the Coconino and Kaibab National Forests MPS), Address Restricted, Flagstaff vicinity, 95000153

Barney Flat Historic Railroad Logging Landscape (Logging Railroad Resources of the Coconino and Kaibab National Forests MPS), Perkinsville Rd., S of Williams, Kaibab NF, Williams vicinity, 95000155

Saginaw & Manistee Camp 2 (Logging Railroad Resources of the Coconino and Kaibab National Forests MPS), Address Restricted, Flagstaff vicinity, 95000148

COLORADO

Clear Creek County

Echo Lake Park (Denver Mountain Parks MPS), Along CO 103 and CO 5 SW of Idaho Springs, Idaho Springs vicinity, 95000109

Summit Lake Park (Denver Mountain Parks MPS), Mt. Evans Rd., SW of Idaho Springs, Idaho Springs vicinity, 95000110

Jefferson County

Fillius Park (Denver Mountain Parks MPS), CO 74 NW of Evergreen, Evergreen vicinity, 95000108

Little Park (Denver Mountain Parks MPS), Miller Ln. (CO 74) SW of Idledale, Idledale vicinity, 95000111

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

Lincoln Industrial Mission—Lincoln Memorial Congregational Church, 1701 11th St., NW., Washington, 95000163

Waggaman—Ray Commercial Row, 1141, 1143 and 1145 Connecticut Ave., Washington, 95000162

FLORIDA

Palm Beach County

Lavender House, 875 Alamanda St., Boca Raton, 95000165

Sarasota County

Municipal Auditorium—Recreation Club, 801 N. Tamiani Trail, Sarasota, 95000164

LOUISIANA

East Baton Rouge Parish

Peralta, Sarah, Archeological Site, Address Restricted, Baton Rouge vicinity, 95000134

MONTANA

Missoula County

Gleim Building II (Missoula MPS), 255–257 W. Front St., Missoula, 95000143

Sweet Grass County

Spannring, John Otto, Family Farm, 7 mi. E of Big Timber, Big Timber vicinity, 95000145

NEBRASKA

Seward County

Troyer Site, Address Restricted, Milford vicinity, 95000159

Thayer County

Durflinger Site, Address Restricted, Hebron vicinity, 95000160

NEW YORK

Suffolk County

Maycroft, Ferry Rd. (NY 114), North Haven, 95000158

NORTH CAROLINA

Duplin County

Hebron Presbyterian Church, NC 1551 NW side, 0.15 mi. NE of jct. with NC 1554, Pink Hill vicinity, 95000144

Stokes County

Walnut Cove Colored School, Jct. of Brook and Dalton Sts., NW corner, Walnut Cove, 95000161

Transylvania County

Galloway, Flem, House (Transylvania MPS), NC 1388 W side, 2 mi. S of jct. with NC 1129, Calvert vicinity, 95000137

PENNSYLVANIA

Blair County

Roaring Spring Historic District, Roughly bounded by Barley, Lower, Walnut, Roosevelt, California, Hickory, Fairview, Sugar and N. Main Sts., Roaring Spring, 95000133

Cambria County

Jones, Benjamin F., Cottage, Third St., Cresson Township, Cresson, 95000125

Westmont Historic District, Roughly bounded by Clarion St., Edgehill Dr., Blair and Wayne Sts., Diamond Blvd. and Stackhouse Park, Westmont, 95000131

Chester County

Marlborough Village Historic District, 354–418 Marlborough Rd. and 901 and 940 Marlborough Springs Rd., East Marlborough and Newlin Townships, Kennett Square, 95000130

North Warwick Historic and Archeological Districts, Address Restricted, Warwick vicinity, 95000135

Zook, Jacob, House, 290 E. Lincoln Hwy., West Whiteland Township, Exton, 95000127

Delaware County

Brandywine Summit Camp Meeting, 119 Beaver Valley Rd., Concord Township, Chadds Ford, 95000132

Fayette County

New Geneva Historic District (Greensboro–New Geneva MPS) Roughly bounded by Front St. E from Church Ln., Georges Cr. and the Monongahela R., Nicholson Township, New Geneva, 95000119

Thompson, Thomas, H., House, 815 Water St., Brownsville, 95000128

Greene County

Boughner, Alexander V., House (Greensboro–New Geneva MPS), Jct. of Second and Minor Sts., Greensboro, 95000114

Crawford, John Minor, House (Greensboro–New Geneva MPS), PA 2014, Monongahela Township, Glassworks, 95000122

Eberhart–Gabler House (Greensboro–New Geneva MPS), PA 2033, Monongahela Township, Glassworks, 95000123

Glassworks–Core House (Greensboro–New Geneva MPS), PA 2014, Monongahela Township, Glassworks, 95000121

Glassworks–Gabler House (Greensboro–New Geneva MPS), PA 2014, Monongahela Township, Glassworks, 95000120

Greensboro Historic District (Greensboro–New Geneva MPS), Roughly bounded by County, Second, Walnut, Front and Clear Sts. and the Monongahela R., Greensboro, 95000118

Greensboro Public School (Greensboro–New Geneva MPS), Jct. of Second and Clear Sts., Greensboro, 95000113

Jones, James, House (Greensboro–New Geneva MPS), Jct. of Front and Stone Sts., Greensboro, 95000112

Parreco, James, House (Greensboro–New Geneva MPS), Jct. of Third and Clear Sts., Greensboro, 95000115

Peters–Graham House (Greensboro–New Geneva MPS), Jct. of Walnut and Second Sts., Greensboro, 95000116

Reppert–Gabler House (Greensboro–New Geneva MPS), PA 1014, Monongahela Township, Glassworks, 95000117

Somerset County

Zimmerman, Daniel B., Mansion, 800 Georgian Place Dr., Somerset Township, Somerset, 95000129

Washington County

Welsh–Emery House, 114 Emery Rd., Centerville Borough, Richeyville, 95000126

Westmoreland County

Compass Inn, Jct. of US 30 (Lincoln Hwy.) and California Ave., Ligonier Township, Laughlintown, 95000124

WISCONSIN

Barron County

Island of Happy Days, Stout Island, Red Cedar Lake, Cedar Lake, 95000141

Kenosha County

Lucas Site, Address Restricted, Pleasant Prairie vicinity, 95000136

Price County

Phillips High School, 300 Cherry St., Phillips, 95000156

Waukesha County

Barrett, Everett P., House, 120 D. Porter Ave., Waukesha, 95000140

Chicago and Northwestern Railroad Passenger Depot, 319 Williams St., Waukesha, 95000142

Clarke, George Lawrence Jr., House, 12810 W. Hampton Ave., Butler, 95000138

Fabacker, Joseph, House, 341 NW., Barstow St., Waukesha, 95000139

[FR Doc. 95–2988 Filed 2–6–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–43 (Sub-No. 167X)]

Illinois Central Railroad Company—Abandonment Exemption—in St. Tammany and Washington Parishes, LA

Illinois Central Railroad Company (IC) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its 14.9-mile line of railroad between milepost NN–54.00 near Talisheek and milepost NN–68.85 near Lees Creek, in St. Tammany and Washington Parishes, LA.[1]

IC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 9, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by February 17, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 27, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Myles L. Tobin, Illinois Central Railroad Company, 455 North Cityfront Plaza Dr., 20th Floor, Chicago, IL 60611.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by February 10, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 31, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–2976 Filed 2–6–95; 8:45 am]

BILLING CODE 7035–01–P

[1] The abandonment of the line segment which connects with this line between milepost 36.66, near Slidell, LA, and milepost 54, near Talisheek, was exempted in Illinois Central Company—Abandonment Exemption—in St. Tammany Parish LA, Docket No. AB–43 (Sub-No. 157X) (ICC served May 20, 1994).

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; DDBSA Joint Venture

Notice is hereby given that, on December 28, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), H.B. Fuller Company filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of the parties to the DDBSA Joint Venture (''Joint Venture''). The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The changes consist of the addition of the following parties to the DDBSA Joint Venture: J.F. Daly International LTD, Chicago, IL (represented by Technology Science Group, Inc., Washington, D.C.); MVTechnologies, Inc., Akron, OH; and Weeks Chemical, Inc., Sicily Island, LA. In addition, The Stepan Co., Northfield, IL has withdrawn from the Joint Venture and Diversey Corporation's corporate name should be shown as Diversey Corp.

No other changes have been made in either the membership, corporate names, or planned activities of the Joint Venture. Membership in the Join Venture remains open, and the parties intend to file additional written notification disclosing any changes in membership.

On April 15, 1992, H.B. Fuller Company filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 29, 1992 (57 FR 22829). The last notification was filed with the Department on June 28, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 17, 1993 (58 FR 43654).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–2887 Filed 2–6–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Research and Development Program for the Advancement of In Situ Bioremediation Technologies

Notice is hereby given that, on December 13, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), E.I. du Pont de Nemours and Company (''DuPont Company'') filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a Joint Research and Development Program for the Advancement of In Situ Bioremediation Technologies. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Ciba-Geigy Corporation, Ardsley, NY; The Dow Chemical Company, Midland, MI; DuPont Company, Wilmington, DE; General Electric Company. Fairfield, CT; Monsanto Company St. Louis, MO; and Zeneca, Inc., Wilmington, DE. The objectives of the program are to share existing research in the techniques of intrinsic bioremediation, bioventing, and accelerated anaerobic bioremediation for the remediation of chlorinated solvent contaminants in soil or ground water; to work collectively to demonstrate the treatment systems in the field at hazardous waste sites; and ultimately to advance the technologies to the point of public and regulatory acceptability.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–2885 Filed 2–6–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Pyrethrin Joint Venture

Notice is hereby given that, on January 9, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), AgrEvo Environmental Health filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the corporate name of a member of the Pyrethrin Joint Venture (''Joint Venture''). The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Roussel UCLAF Corporation's corporate name has been changed to AgrEvo Environmental Health, Montvale, NJ.

No other changes have been made in either membership, corporate names, or planned activities of the Joint Venture. Pyrethrin Joint Venture remains open and the parties intend to file additional written notification disclosing all changes in membership.

On February 6, 1987, the Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 18, 1986 (51 FR 9286). The last notification was filed with the Department of Justice on May 29, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 1992 (57 FR 33523).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 95–2884 Filed 2–6–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Sodium Bisulfate Joint Venture

Notice is hereby given that, on December 21, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Reckitt & Colman Household Products filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The change consists of the addition of the following party to the Sodium Bisulfate Joint Venture: Jones-Hamilton, Walbridge, OH. No other changes have been made in either the membership, corporate names, or planned activities of the Joint Venture. Membership in the Joint Venture remains open and the parties intend to file additional written notification disclosing all changes in membership.

On May 23, 1991, the Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section

6(b) of the Act on June 27, 1991 (56 FR 29500).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–2886 Filed 2–6–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States: 1995 Adverse Effect Wage Rates and Allowable Charges for Agricultural and Logging Workers' Meals

AGENCY: Employment Service, Employment and Training Administration, Labor.

ACTION: Notice of adverse effect wage rates (AEWRs) and allowable charges for meals for 1995.

SUMMARY: The Director, U.S. Employment Service, announces 1995 adverse effect wage rates (AEWRs) for employers seeking nonimmigrant alien (H–2A) workers for temporary or seasonal agricultural labor or services and the allowable charges employers seeking nonimmigrant alien workers for temporary or seasonal agricultural labor or services or logging work may levy upon their workers when they provide three meals per day.

AEWRs are the minimum wage rates which the Department of Labor has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant alien agricultural workers (H–2A visaholders). AEWRs are established to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers.

The Director also announces the new rates which covered agricultural and logging employers may charge their workers for three daily meals.

EFFECTIVE DATE: February 7, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. John M. Robinson, Deputy Assistant Secretary for Employment and Training, U.S. Department of Labor, Room N4700, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: 202–219–5257 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Attorney General may not approve an employer's petition for admission of temporary alien agricultural (H–2A) workers to perform agricultural labor or services of a temporary or seasonal nature in the United States unless the petitioner has applied to the Department of Labor (DOL) for an H–2A labor certification. The labor certification must show that (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.

DOL's regulations for the H–2A program require that covered employers offer and pay their U.S. and H–2A workers no less than the applicable hourly adverse effect wage rate (AEWR). 20 CFR 655.102(b)(9); see also 20 CFR 655.107. Reference should be made to the preamble to the July 5, 1989, final rule (54 FR 28037), which explains in great depth the purpose and history of AEWRs, DOL's discretion in setting AEWRs, and the AEWR computation methodology at 20 CFR 655.107(a). See also 52 FR 20496, 20502–20505 (June 1, 1987).

A. Adverse Effect Wage Rates (AEWRs) for 1995

Adverse effect wage rates (AEWRs) are the minimum wage rates which DOL has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant (H–2A) agricultural workers. DOL emphasizes, however, that such employers must pay the highest of the AEWR, the applicable prevailing wage or the statutory minimum wage, as specified in the regulations. 20 CFR 655.102(b)(9). Except as otherwise provided in 20 CFR Part 655, Subpart B, the regionwide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstances provisions of 20 CFR 655.93) for which temporary alien agricultural labor (H–2A) certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA does not provide data on Alaska). 20 CFR 655.107(a).

The regulation at 20 CFR 655.107(a) requires the Director, U.S. Employment Service, to publish USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** notice. Accordingly, the 1995 AEWRs for work performed on or after the effective date of this notice, are set forth in the table below:

1995 ADVERSE EFFECT WAGE RATES (AEWRS)

State	1995 AEWR
Alabama	$5.66
Arizona	5.80
Arkansas	5.19
California	6.24
Colorado	5.62
Connecticut	6.21
Delaware	5.81
Florida	6.33
Georgia	5.66
Hawaii	8.73
Idaho	5.57
Illinois	6.18
Indiana	6.18
Iowa	5.72
Kansas	5.99
Kentucky	5.47
Louisiana	5.19
Maine	6.21
Maryland	5.81
Massachusetts	6.21
Michigan	5.65
Minnesota	5.65
Mississippi	5.19
Missouri	5.72
Montana	5.57
Nebraska	5.99
Nevada	5.62
New Hampshire	6.21
New Jersey	5.81
New Mexico	5.80
New York	6.21
North Carolina	5.50
North Dakota	5.99
Ohio	6.18
Oklahoma	5.32
Oregon	6.41
Pennsylvania	5.81
Rhode Island	6.21
South Carolina	5.66
South Dakota	5.99
Tennessee	5.47
Texas	5.32
Utah	5.62
Vermont	6.21
Virginia	5.50
Washington	6.41
West Virginia	5.47
Wisconsin	5.65
Wyoming	5.57

B. Allowable Meal Charges

Among the minimum benefits and working conditions which DOL requires employers to offer their alien and U.S. workers in their applications for temporary logging and H–2A agricultural labor certification is the provision of three meals per day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4) and 655.202(b)(4). Where the employer provides meals, the job offer must state the charge, if any, to the worker for meals.

DOL has published at 20 CFR 655.102(b)(4) and 655.111(a) the methodology for determining the maximum amounts covered H–2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR 655.202(b)(4) and 655.211(a) to covered H–2B logging employers. These rules provide for annual adjustments of the previous year's allowable charges based upon Consumer Price Index (CPI) data.

Each year the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are changed by the same percentage as the twelve-month percent change in the CPI for all Urban Consumers for Food (CPI–U for Food) between December of the year just past and December of the year prior to that. Those regulations and 20 CFR 655.111(a) and 655.211(a) provide that the appropriate Regional Administrator (RA), Employment and Training Administration, may permit an employer to charge workers no more than a higher maximum amount for providing them with three meals a day, if justified and sufficiently documented. Each year, the higher maximum amounts permitted by 20 CFR 655.111(a) and 655.211(a) are changed by the same percentage as the twelve-month percent change in the CPI–U for Food between December of the year just past and December of the year prior to that. The regulations require the Director, U.S. Employment Service, to make the annual adjustments and to cause a notice to be published in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural and logging employers for providing three meals daily to their U.S. and alien workers. The 1994 rates were published in a notice on February 4, 1994 at 59 FR 5444.

DOL has determined the percentage change between December of 1993 and December of 1994 for the CPI–U for Food was 2.4 percent.

Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 1995 are as follows: (1) For 20 CFR 655.102(b)(4) and 655.202(b)(4), the charge, if any, shall be no more than $6.97 per day, unless the RA has approved a higher charge pursuant to 20 CFR 655.111 or 655.211(b); for 20 CFR 655.111 and 655.211, the RA may permit an employer to charge workers up to $8.71 per day for providing them with three meals per day, if the employer justifies the charge and submits to the RA the documentation required to support the higher charge.

Signed at Washington, DC, this 20th day of January 1995.

John M. Robinson,

Deputy Assistant Secretary for Employment and Training.

[FR Doc. 95–2964 Filed 2–6–95; 8:45 am]

BILLING CODE 4510–30–M

[General Administration Letter No. 1–95]

Procedures for H–2B Temporary Labor Certification in Nonagricultural Occupations

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA), Department of Labor has issued General Administration Letter (GAL) No. 1–95 that transmits to State and Regional Offices revised procedures for processing H–2B temporary labor certification applications in nonagricultural occupations, including revised standards for determining the temporary nature of a job under the H–2B classification. The revised procedures and standards replace: (1) GAL 10–84, Subject: Procedures for Temporary Labor Certifications in Nonagricultural Occupations, issued April 23, 1984; (2) GAL 10–84, Change 1, Subject: Revised Standards for Determining the Temporary or Permanent Nature of a Job Offer Made in Conjunction With an Application for Nonagricultural Temporary Labor Certification, issued August 21, 1989; and (3) General Administrative Letter No. 10–84, Change 2, Subject: Handling of Temporary Labor Certification Applications for Boilermakers, issued May 9, 1990.

GAL 1–95 is published below for the information of all interested parties.

DATES: GAL 1–95 was issued on November 10, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Denis Gruskin, Senior Specialist, Division of Foreign Labor Certifications, Employment and Training Administration, Room N–4456, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 219–4369 (this is not a toll-free number).

Signed at Washington, DC, this 7th day of December 1994.

John M. Robinson,

Deputy Assistant Secretary for Employment and Training.

Directive: General Administration Letter No. 1–95

To: All State Employment Security Agencies

From: Barbara Ann Farmer, Administrator for Regional Management

Subject: Procedures for H–2B Temporary Labor Certification in Nonagricultural Occupations

Classification: ES/Nonag.

Correspondence symbol: TEES

Date: Nov. 10, 1994

1. *Purpose.* To transmit revised procedures for processing H–2B temporary labor certification applications in nonagricultural occupations, including revised standards for determining the temporary nature of a job under the H–2B classification.

2. *References.* Title 20 CFR Parts 652 and 655, 8 CFR 214.2(h), 48 FR 2587, GAL 10–84.

3. *Background.* The H–2B visa classification applies to aliens coming temporarily to the U.S. to perform nonagricultural work of a temporary or seasonal nature, if U.S. workers capable of performing such service or labor cannot be found in the United States. The H–2B visa classification requires a temporary labor certification from the Secretary of Labor advising the Immigration and Naturalization Service (INS) whether or not U.S. workers capable of performing the temporary services or labor are available and whether or not the alien's employment will adversely affect the wages and working conditions of similarly employed U.S. workers, or a notice that such certification cannot be made, prior to filing an H–2B visa petition with INS.

The attached procedures are intended to clarify and update DOL procedures for processing applications for temporary labor certification and to incorporate INS standards for determining the temporary nature of a job opportunity under the H–2B classification. They do not apply to applications filed on behalf of aliens in the entertainment industry and in professional team sports. These procedures replace:

- General Administration Letter No. 10–84: Procedures for Temporary Labor Certifications in Nonagricultural Occupations (Issued 4/23/84);
- General Administration Letter No. 10–84, Change 1: Revised Standards for Determining the Temporary or Permanent Nature of a Job Offer Made in Conjunction With an Application for Nonagricultural Temporary Labor Certification (Issued 8/21/89); and
- General Administration Letter No. 10–84, Change 2: Handling of Temporary Labor Certification Applications for Boilermakers (Issued 5/9/90).

4. *Action Required.* SESA Administrators are required to provide the attached procedures to appropriate staff, and instruct that they be followed in processing H–2B applications.

5. *Inquiries.* Inquiries should be directed to the appropriate Regional Certifying Officer.

6. *Attachments.* Procedures for H–2B Temporary Labor Certification in Nonagricultural Occupations.

Rescissions: GAL Nos. 10–84; 10–84, Ch. 1; 10–84, Ch. 2

Expiration Date: December 31, 1995

Procedures for H–2B Temporary Labor Certification in Nonagricultural Occupations

I. General

A. An H–2B temporary nonagricultural worker is an alien who is coming temporarily to the U.S. to perform temporary services or labor if qualified U.S. workers capable of performing such services or labor are not available, and whose employment will not adversely affect the wages and working conditions of similarly employed U.S. workers.

B. Immigration and Naturalization Service (INS) regulations at 8 CFR 214.2(h)(6) establish requirements for the H–2B visa classification. INS regulations require: (1) That the H–2B petitioner be a U.S. employer, or the authorized representative of a foreign employer having a location in the Untied States; and (2) that the employer apply for temporary labor certification with the Department of Labor (DOL) prior to filing a petition with INS to classify an alien as an H–2B worker in all areas of the United States, except the Territory of Guam. In Guam, an employer must apply to the Governor of Guam for an H–2B temporary labor certification.

C. A temporary labor certification is advice from the Secretary of Labor to INS on whether or not U.S. workers capable of performing the temporary services or labor are available and whether or not the alien's employment will adversely affect the wages and working conditions of similarly employed U.S. workers. The INS is not bound by DOL's certification or notice that certification cannot be made.

D. DOL regulations at 20 CFR 655 Subpart A—Labor Certification Process for Temporary Employment in Occupations Other Than Agriculture, Logging, or Registered Nursing in the United States (H–2B Workers) govern the labor certification process for temporary employment in the U.S. under the H–2B visa classification. They require that DOL, through the appropriate Regional Administrator of the Employment and Training Administration, issue a temporary labor certification if it finds that qualified persons in the U.S. are not available and that the terms of employment will not adversely affect the wages and working conditions of similarly employed workers in the U.S. In making its findings, DOL considers such matters as the employer's attempts to recruit U.S. workers and the appropriateness of the wages and working conditions offered, and the policies for the U.S. Employment Service set forth at 20 CFR 652 and 20 CFR 655, subparts A, B and C.

E. This document clarifies and updates procedures issued by ETA in General Administration Letter (GAL) 10–84 and Changes 1 and 2, to carry out responsibilities of making labor certification determinations pursuant to regulations at 8 CFR 214.2(h)(6) and 20 CFR 655, subpart A. It conforms DOL standards for determining the temporary nature of a job offer under the H–2B classification with those of INS and modifies DOL recruitment requirements to provide for a more effective test of the labor market for available U.S. workers. These procedures do not apply to applications filed on behalf of aliens in the entertainment industry and in professional team sports.

II. Standards for Determining the Temporary Nature of a Job Offer Under the H–2B Classification

A. A job opportunity is temporary under the H–2B classification if the employer's need for the duties to be performed is temporary, whether or not the underlying job is permanent or temporary. As a general rule, the period of the employer's need must be 1 year or less, although there may be extraordinary circumstances where the need may be for longer than 1 year. The labor certification application may be filed for up to, but not exceeding, 12 months. If there are unforeseen circumstances where the employer's need exceeds 1 year, a new certification is required for each period beyond 1 year.

Temporary employment should not be confused with part-time employment which does not qualify for temporary (or permanent) labor certification.

B. The employer's need for the services or labor shall be either: (1) A one-time occurrence; (2) a seasonal need; (3) a peakload need; or (4) an intermittent need.

1. One-time Occurrence

The employer must establish: (1) that it has not employed workers to perform the services or labor in the past; and (2) that it will not need workers to perform the services or labor in the future, or that it has an employment situation that is otherwise permanent, but a temporary event of short duration has created the need for a temporary worker.

2. Seasonal Need

The employer must establish that the service or labor is traditionally tied to a season of the year by an event or pattern and is of a recurring nature. The employer must specify the period(s) of time during each year in which it does not need the services or labor. The employment is not seasonal if the period during which the services or labor is needed is unpredictable, subject to change, or considered a vacation period for the employer's permanent employees.

3. Peakload Need

The employer must establish that it regularly employs permanent workers to perform the services or labor at the place of employment and its needs to supplement its permanent staff on a temporary basis due to a seasonal or short-term demand with temporary employees who will not become a part of the regular operation.

4. Intermittent Need

The employer must establish that it has not employed permanent or full-time workers to perform the services or labor, but occasionally or intermittently needs temporary workers for short periods.

III. Filing Instructions

A. An employer that wants to use foreign workers for temporary employment must file a temporary labor certification application with the State Employment Security Agency (SESA) serving the area of employment.

B. Every temporary application shall include:

1. An original and one copy of Form ETA 750, Part A, the offer of employment portion of the Application for Alien Employment Certification form signed by the employer. Part B, Statement of Qualifications of Alien, is not required.

2. Documentation of any efforts to recruit U.S. workers the employer may have made before filing the application.

3. A statement explaining why the job opportunity is temporary and why the employer's need for the work to be done meets the standard of either a one-time occurrence, a seasonal need, a peakload need, or an intermittent need.

C. To allow for enough recruitment of U.S. workers and enough processing time by State and Regional Offices, the State Employment Security Agency (SESA) shall advise employers to file requests for temporary labor certification at least 60 days before the labor certification is needed in order to receive a timely determination.

D. Unless the Certifying Officer specifies otherwise, the SESA should return to employers requests for temporary labor certification filed more than 120 days before the worker is needed and advise them to refile the application no more than 120 days before the worker is needed. This is necessary since the availability of temporary U.S. workers changes over short periods of time and an adequate test of the labor market cannot be made for a longer period.

E. More than one alien may be requested on an application if they are to do the same type of work on the same terms and conditions, in the same occupation, in the same area(s) of employment during the same period. However, the number requested may not exceed the actual number of job openings. The number of openings the employer intends to fill must also be specified in the advertisement and the job order required in section IV of these instructions.

F. If the employer's agent files the application, the employer must sign the ''authorization of agent'' statement on the Application for Alien Employment Certification which authorizes the agent to act on the employer's behalf. The employer is fully responsible for the accuracy of all representations made by the agent on the employer's behalf. An attorney must file a Notice of Appearance (Form G–28) naming the attorney's client(s).

G. If extraordinary circumstances establish a need that requires the services of the alien beneficiary for more than a year, a new application must be filed (see section II.A). However, in no instance may the time for which a particular job be certified exceed 3 unbroken years.

H. When the job opportunity requires the work to be done in more than one location, the application must include the itinerary of locations and dates of work in each location. Such applications will be filled with the SESA having jurisdiction over the area where the employment will begin.

IV. State Job Service Processing

A. Upon receiving a request for temporary labor certification, the SESA shall review the

job offer for completeness. A job offer containing a wage below the prevailing wage for such employment in the local area is inappropriate and would adversely affect the wages of similarly employed U.S. workers. The SESA shall determine the prevailing wage, guided by the regulations at 20 CFR 656.40.

B. If the job offer is less than full-time, or contains unduly restrictive job requirements, or has terms and conditions of employment which otherwise inhibit the effective recruitment and consideration of U.S. workers for the job, the SESA shall advise the employer to correct the deficiencies before commencing the recruitment.

C. The SESA shall prepare a job order, using the information on the application, and place it into the regular ES system for 10 days. During this period, the SESA should refer qualified applicants who walk-in and those in its active files.

D. The employer shall advertise the job opportunity after filing the application, in a newspaper of general circulation for 3 consecutive days or in a professional, trade or ethnic publication, whichever is most appropriate for the occupation and most likely to bring responses from U.S. workers. The advertisement shall:

1. Identify the employer's name and direct applicants to report or send resumes to the SESA for referral to the employer;

2. Include SESA identification number and the complete name and address of the SESA.

3. Describe the job opportunity with particularity, including the duration of the employment;

4. State the rate of pay, which shall not be below prevailing wage for the occupation;

5. Offer prevailing working conditions;

6. State the employer's minimum job requirements;

7. Offer wages, terms, and conditions of employment which are not less favorable than those offered to the alien and are consistent with the nature of the occupation, activity, and industry.

E. The employer shall document that unions and other recruitment sources, appropriate for the occupation and customary in the industry, were unable to refer qualified U.S. workers.

F. The employer shall provide the SESA the ''tearsheets'' (for each day the advertisement was published) from the publication in which the advertisement appeared and written results of all recruitment which must:

1. Identify each recruitment source by name:

2. State the name, address, and telephone number and provide resumes (if submitted to the employer) of each U.S. worker who applied for the job; and

3. Explain the lawful job-related reasons for not hiring each U.S. worker.

G. After the recruitment period, the SESA shall send the application, results of recruitment, prevailing wage findings, and other appropriate information to the regional certifying officer.

V. Temporary Labor Certification Determinations

A. The certifying officer shall determine whether to grant the temporary labor certification, or to issue a notice that such certification cannot be made based on whether or not:

1. U.S. workers are available for the temporary employment opportunity.

a. The certifying officer, in judging if a U.S. worker is available for the temporary employment opportunity, shall determine from documented results of the employer's and SESA's recruitment efforts, if there are other appropriate sources of workers where the employer should have recruited or may recruit U.S. workers. If further recruitment is required, the application should be returned to the SESA with specific instructions for the additional recruitment.

b. To determine if a U.S. worker is available, the certifying officer shall consider U.S. workers living or working in the area of intended employment, and may also consider U.S. workers who are willing to move from elsewhere to take the job at their own expense, or at the employer's expense, if the prevailing practice among employers who employ workers in the occupation is to pay such relocation expenses.

c. The certifying officer shall consider a U.S. worker able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, can perform the duties involved in the occupation as customarily performed by other U.S. workers similarly employed and is willing to accept the specific job opportunity.

d. To determine if U.S. workers are available for job opportunities that will be performed in more than one location, workers must be available in each location on dates specified by the employer.

2. The employment of the alien will adversely affect wages and working conditions of U.S. workers similarly employed. To determine this, the certifying officer shall consider such things as labor market information, special circumstances of the industry, organization, and/or occupation, the prevailing wage rate for the occupation in the area of intended employment, and prevailing working conditions, such as hours of work.

3. The job opportunity contains requirements or conditions which preclude consideration of U.S. workers or which otherwise prevent their effective recruitment, such as:

a. The employment opportunity is represented as temporary and the Department of Labor believes it can and should be offered to U.S. workers on a permanent basis.

b. A permanent certification was issued to an employer for the same job opportunity.

c. The job opportunity is vacant because the former occupant is on strike or locked out in the course of a labor dispute involving a work stoppage or the job is at issue in a labor dispute involving a work stoppage.

d. The job opportunity's terms, conditions, and/or occupational environment are contrary to Federal, State, or local law.

e. The employer has no location within the U.S. to which U.S. worker can be referred and hired for employment.

f. The employer will not pay a wage or salary for the job to be performed.

g. The job's requirements are unduly restrictive.

h. The employer has not recruited U.S. workers according to DOL policies and procedures.

B. If the Certifying Officer issues a notice that a certification cannot be made, the notice shall:

(1) Detail the reasons why certification cannot be made;

(2) Address the availability of U.S. workers in the occupation, and the prevailing wages and working conditions of U.S. workers in the occupation; and

(3) Indicate the specific DOL policies which were to be followed.

C. If the Certifying Officer issues a temporary labor certification, it shall be for the duration of the temporary employment, opportunity, not to exceed 12 months. If extraordinary circumstances establish a need that require the alien beneficiary for more than 1 year, a new application must be filed. However, in no instance can the time for which a particular job may be certified exceed 3 unbroken years.

D. The date on the temporary labor certification shall be the beginning and ending dates of certified employment and the date certification was granted. The beginning date of certified employment may not be earlier than the date certification was granted.

VI. Document Transmittal

A. After making a temporary labor certification determination, the certifying officer shall notify the employer, in writing, of the determination.

B. If the labor certification is granted, the certifying officer shall send the certified application containing the official temporary labor certification stamp, supporting documents, and completed Temporary Determination Form to the employer of, if appropriate, the employer's agent or attorney. The Temporary Determination Form shall indicate that the employer should submit all documents together with the employer's petition to the appropriate INS office.

C. If a notice is issued that certification cannot be made, the certifying officer shall return one copy of the Application for Alien Employment Certification form, supporting documents, and completed Temporary Determination Form to the employer, or, if appropriate, to the employer's agent or attorney. The Temporary Determination Form shall indicate the bases on which the decision was made not to issue a temporary labor certification, and shall advise the employer of the right to appeal to the INS.

VII. Appeal of a Notice That a Certification Cannot Be Made

A. The finding by the certifying officer, that a certification cannot be made, is the final decision of the Secretary of Labor. There is no provision for reconsideration or appeal of the decision within DOL. Administrative appeal of such a finding must be made to INS, as set forth below, or the employer may file a new application.

B. Under the Act and regulations of INS, DOL's role is only advisory. The Attorney General has the sole authority for the final approval or denial of a petition for temporary alien employment. The employer can submit

countervailing evidence to INS, according to 8 C.F.R. 214.2(h)(6)(IV)(E), that qualified persons in the U.S. are not available, that wages and working conditions of U.S. workers will not be adversely affected, and the Department of Labor's employment policies were observed.

VIII. Validity of Temporary Labor Certifications

A. A temporary labor certification is valid only for the number of aliens, the occupation, the area of employment, the specific activity, the period of time, and the employer specified in the certification.

B. A temporary labor certification is limited to one employer's specific job opportunity; it may not be transferred from one employer to another.

IX. Applications Requiring Special Processing

A. Aerospace Engineers

If the temporary labor certification application is for an aerospace engineer, the SESA shall:

1. Take a job order on all aerospace engineer certification requests.
2. Require the employer to advertise in a newspaper or appropriate engineering publication. Advertisements shall describe wages, terms, and conditions of employment, and shall not identify the employer, but shall direct applicants to send resumes to the local Job Service for referral to the employer. Results of ads must be documented. Advertising copy should include the elements specified in section IV. D. above, and indicate the same wages, education, working conditions, and location of work as that in the application for alien employment and on the order taken by the SESA.
3. Require employers to offer laid-off engineers reemployment before applying for labor certification.
4. Ensure that all applications for alien employment certification from contract engineering firms identify the user aerospace companies and specify where the aliens will work.
5. Ensure that a copy of the alien's proposed contract accompanies all contract engineering firm certification requests.
6. Place into interstate clearance all alien certification job orders for aerospace engineers and related occupations.
7. Process the application according to parts II, III, and IV of these procedures, as appropriate.

B. Construction Workers

1. General

Unions representing construction workers in the same or substantially equivalent job classification as those for which labor certification is requested shall be contacted to determine availability of U.S. workers when SESAs receive requests for 10 or more workers in the same occupation for the same employer at any one time or within a 6-month period.

The Human Resources Development Institute (HRDI) is the employment and training arm of the AFL–CIO; it serves as a centralized liaison between the Department of Labor and individual unions in providing labor market information in skilled trades in order to make an informed labor certification determination.

2. Procedures

a. The SESA should process the application according to parts II, III and IV of these procedures.

b. The SESA shall advise the employer to obtain, from the union local, a letter describing the availability of qualified U.S. workers for the position offered to the alien.

c. Before making a determination, certifying officers should contact, by fax or telephone, the Executive Director, Human Resources Development, 815–16th Street, NW., Washington, DC 20006, and send the following information for each application:

(1) Name and address of company requesting certification;

(2) Location of work site;

(3) Local number and name of the union, if known;

(4) Dates of any prior certifications requested by company;

(5) Total number of aliens requested;

(6) Duration of employment of aliens;

(7) Job classification, special qualifications and wage offered;

(8) Assistance offered to aliens (subsistence housing, other); and

(9) Reasons for requesting alien labor.

d. If HRDI knows of available U.S. workers, they will provide this information to the certifying officer, along with the name of the appropriate local for the employer to contact. If no response is received within 5 days of the request, a determination will be made on information in the file.

C. Boilermakers

1. General

On occasion, boilermakers must be brought into the U.S. on an emergency basis. Such emergencies are generally precipitated by unscheduled outages in utility, petro-chemical and paper industries. Because of special considerations involved with boilermakers when there is an emergency situation, it was decided that the most efficient and effective way to process applications for boilermakers in emergency situations would be to centralize their handling in the National Office.

2. Procedures

a. Labor certifications for boilermakers in emergency situations are to be sent directly to National Office for processing. The address is: U.S. Department of Labor, Employment and Training Administration, Division of Foreign Labor, Certifications, 200 Constitution Avenue, N.W., Room N–4456, Washington, D.C. 20210.

b. Labor certification applications for boilermakers during nonemergency situations should be processed according to parts II, III, and IV of these procedures.

[FR Doc. 95–2965 Filed 2–6–95; 8:45 am]

BILLING CODE 4510–30–M

Notice of Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities that have submitted attestations (Form ETA 9029 and explanatory statements) to one of four Regional Offices of DOL (Boston, Chicago, Dallas and Seattle) for the purpose of employing nonimmigrant alien nurses. A decision has been made on these organizations' attestations and they are on file with DOL.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue NW., Washington, D.C. 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process: Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

Regarding the Complaint Process: Questions regarding the complaint process for the H–1A nurse attestation program will be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign

nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR Parts 655, Subpart D, and 29 CFR Part 504, (January 6, 1994). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing and those which have been rejected.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staff. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officer also are listed to aid public inquiries. In addition, attestations and explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under the attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 12th day of January 1995.

John M. Robinson,

Deputy Assistant Secretary, Employment and Training Administration.

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS

[Form ETA–9029]

CEO-name/facility name/address	State	Action date
ETA REGION 1 11/28/94 TO 12/04/94		
Admin. Michael Konig, Union Square Nursing Center, 533 Cambridge Street, Allston, MA, 617–782–2053 ..... ETA CONTROL NUMBER—1/216069 ACTION—ACCEPTED	MA	12/02/94
Marilyn Baader, Crouse Irving Memorial Hospital, 736 Irving Avenue, Syracuse, NY 13210, 315–470–7523 ..... ETA CONTROL NUMBER—1/216071 ACTION—ACCEPTED	NY	12/02/94
ETA REGION 1 12/19/94 to 12/25/94		
Kailash Gupta, Hill Top Care Center, Hook Mountain Road, Pine Brook, NJ 07058, 201–227–1330 ..... ETA CONTROL NUMBER—1/216313 ACTION—ACCEPTED	NJ	12/19/94
Lester M. Bornstein, Newark Beth Israel Medical Center,201 Lyons Avenue, Newark, NJ 07112, 201–926–7000 ..... ETA CONTROL NUMBER—1/216259 ACTION—ACCEPTED	NJ	12/19/94
Elizabeth Ann Maloney, St. Elizabeth Hospital, 225 Williamson Street, Elizabeth, NJ 07207 908–527–5329 ..... ETA CONTROL NUMBER—1/216367 ACTION—ACCEPTED	NJ	12/19/94
Kenneth Jewell, Geritech Providers, Inc., 234 5th Avenue, 4th Floor, New York, NY 10001, 212–213–0473 ..... ETA CONTROL NUMBER—1/216258 ACTION—ACCEPTED	NY	12/19/94
ETA REGION 10 12/05/94 TO 12/11/94		
Amy Handscom, Hillhaven San Francisco CA, 1359 Pine Street, San Francisco, CA 94109, 415–673–8405 ..... ETA CONTROL NUMBER—10/205987 ACTION—ACCEPTED	CA	12/09/94
Sr. Mary McMahon, Oakwood Religious of Sacred Heart, 140 Valparaiso Avenue, Atherton, CA 94027, 415–323–8343. ETA CONTROL NUMBER—10/205908 ACTION—ACCEPTED	CA	12/07/94
Kaldeep S. Brar, Stat Medical Services, Inc., 6430 Sunset Boulevard Suite 1207, Hollywood, CA 90028, 213–465–1134. ETA CONTROL NUMBER—10/205984 ACTION—ACCEPTED	CA	12/09/94
ETA REGION 10 12/12/94 TO 12/18/94		
Tim Howard, Mesa General Hospital Medical Ctr, 515 North Mesa Drive, Mesa, AZ 85201, 602–844–4151 ..... ETA CONTROL NUMBER—10/205956 ACTION—ACCEPTED	AZ	12/15/94
Steve Barker, Centinela Hospital Medical Center, 555 East Hardy Street, Inglewood, CA 90307, 310–419–8620 ..... ETA CONTROL NUMBER—10/205986 ACTION—ACCEPTED	CA	12/15/94
Amy Handscom, Hillhaven Fair Oaks Healthcare Ctr, 8845 Fair Oaks Boulevard, Carmichael, CA 95608, 617–861–5408. ETA CONTROL NUMBER—10/205988 ACTION—ACCEPTED	CA	12/15/94
ETA REGION 10 12/19/94 TO 12/25/94		
Jeaneen Hartline, Safford Care Center, 1933 Peppertree Drive, Safford, AZ 85546, 602–428–4910 ..... ETA CONTROL NUMBER—10/206035 ACTION—ACCEPTED	AZ	12/19/94
Sharon Dudley, St Luke's Medical Hospital, 1800 E. Van Buren, Phoenix, AZ 85006, 602–251–8336 ..... ETA CONTROL NUMBER—10/206034 ACTION—ACCEPTED	AZ	12/19/94
Beverly Heberden, Belmont Grand Convalescent Hosp, 1730 Grand Avenue, Long Beach, CA 90804, 310–930–0777.	CA	12/20/94

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued

[Form ETA–9029]

CEO-name/facility name/address	State	Action date
ETA CONTROL NUMBER—10/206147 ACTION—ACCEPTED		
Naomi Pueble, CJS Nursing Services, 1415 West Garvey Avenue Suite 101, West Covina, CA 91790, 818–854–0740.	CA	12/19/94
ETA CONTROL NUMBER—10/206051 ACTION—ACCEPTED		
Ulysses Baniga, Cloverleaf Healthcare Center, 275 North San Jacinto, Hemet, CA 92343, 909–658–9441	CA	12/19/94
ETA CONTROL NUMBER—10/206231 ACTION—ACCEPTED		
Christopher Monroe, Country Villa Rehabilitation Center, 340 South Alvarado Street, Los Angeles, CA 90057, 213–484–9730.	CA	12/20/94
ETA CONTROL NUMBER—10/206071 ACTION—ACCEPTED		
Melanie Fuentes, Cypress Rehabilitation and Nursing, 2990 Soquel Avenue, Santa Cruz, CA 95062, 408–479–6950	CA	12/23/94
ETA CONTROL NUMBER—10/206170 ACTION—ACCEPTED		
Peter B. Shin, Grace Family Medical Group, 23560 Madison Street Suite 201, Torrance, CA 90505, 310–326–2161	CA	12/20/94
ETA CONTROL NUMBER—10/206069 ACTION—ACCEPTED		
Arthur Flaster, HRN Services, Inc., 8383 Wilshire Blvd. Suite 258, Beverly Hills, CA 90211, 213–951–1450	CA	12/20/94
ETA CONTROL NUMBER—10/206106 ACTION—ACCEPTED		
Nancy P. Villalba, Prime-America Nursing Source, 17199 West Bernardo Drive Suite A–108, San Diego, CA 92127, 619–674–4714.	CA	12/20/94
ETA CONTROL NUMBER—10/206167 ACTION—ACCEPTED		
Toni B. Ong, Ridgewood Care Center, 809 Fremont Avenue, Los Altos, CA 94024, 415–941–5255	CA	12/19/94
ETA CONTROL NUMBER—10/206050 ACTION—ACCEPTED		
Victoria Jefferson, Salinas Care Center, 637 East Romie Lane, Salinas, CA 93901, 408–424–0687	CA	12/20/94
ETA CONTROL NUMBER—10/206218 ACTION—ACCEPTED		
Marilyn Baker-Venturini, Self-Help for the Elderly, 407 Sansome Street Suite 300, San Francisco, CA 94111, 415–982–9171.	CA	12/20/94
ETA CONTROL NUMBER—10/206188 ACTION—ACCEPTED		
Dr. Rolando Atiga, M.D., Tri-City Urgent Care Center, 408 West Baseline Road, Glendora, CA 91740, 818–914–2893.	CA	12/19/94
ETA CONTROL NUMBER—10/206068 ACTION—ACCEPTED		
Brenda Manke, Valley Palms Care Center, 13400 Sherman Way, North Hollywood, CA 91605, 818–983–0103	CA	12/20/94
ETA CONTROL NUMBER—10/206172 ACTION—ACCEPTED		
Wilfred Brooks, Vista Health Care Prof., Inc., 3812 Pierce Plaza, Suite H, Riverside, CA 92503, 714–748–1077	CA	12/19/94
ETA CONTROL NUMBER—10/206049 ACTION—ACCEPTED		
Suwaran Brar, White Cap Nursing Agency, 2500 Marconi Avenue, Suite 108, Sacramento, CA 95821, 916–484–0144.	CA	12/21/94
ETA CONTROL NUMBER—10/206146 ACTION—ACCEPTED		
Joseph O'Grady, O'Grady-Peyton International USA, 470 Atlantic Avenue, Boston, MA 02210, 617–482–5655	MA	12/19/94
ETA CONTROL NUMBER—10/206047 ACTION—ACCEPTED		
ETA REGION 10 12/26/94 TO 01/01/95		
Chetan P. Tanna, Calexico Hospital, 450 Birch Street, Calexico, CA 92231, 619–235–2132	CA	12/27/94
ETA CONTROL NUMBER—10/206253 ACTION—ACCEPTED		
ETA REGION 5 12/05/94 TO 12/11/94		
Carol Lieberman, Providence Hospital, 1150 Varnum Street, NE., Washington, DC 20017, 202–269–7000	DC	12/07/94
ETA CONTROL NUMBER—5/234234 ACTION—ACCEPTED		
Sylvia Y. Mostello, Deauville Health Care Center, 7445 N. Sheridan Rd., Chicago, IL 60626, 312–338–3300	IL	12/07/94
ETA CONTROL NUMBER—5/234238 ACTION—ACCEPTED		
Sandy Bauer, Fair Oaks Health Care Center, 471 W. Terra Cotta Avenue, Crystal Lake, IL 60014–3434, 815–455–0550.	IL	12/07/94
ETA CONTROL NUMBER—5/234239 ACTION—ACCEPTED		
Michael Filippo, Fox River Pavilion Ltd Partnership, 400 East New York Street, Aurora, IL 60505, 708–897–8714	IL	12/07/94
ETA CONTROL NUMBER—5/234226 ACTION—ACCEPTED		
Ms. Sylvia Y. Mostello, Heritage Healthcare Center, 5888 N. Ridge, Chicago, IL 60660, 312–769–2626	IL	12/07/94
ETA CONTROL NUMBER—5/234236 ACTION—ACCEPTED		
Sister M. Elizabeth, Holy Family Health Center, 2380 E. Dempster Street, Des Plaines, IL 60016, 708–296–3335	IL	12/07/94
ETA CONTROL NUMBER—5/234227 ACTION—ACCEPTED		
Agustina T. Artates, Midwest Quality Nursing Services, 18 W 182 73rd Street, Westmont, IL 60559, 708–960–1529	IL	12/07/94
ETA CONTROL NUMBER—5/234233 ACTION—ACCEPTED		
John Schlofrock, Redwood Assoc Limited Partnership, 3535 N. Rochelle, Peoria, IL 61604, 309–685–8800	IL	12/07/94
ETA CONTROL NUMBER—5/234224 ACTION—ACCEPTED		
Virginia G. Leavitt, Valley Hi Nursing Home for McHenry, 2406 Hartland Road, Woodstock, IL 60098, 815–338–0312	IL	12/07/94
ETA CONTROL NUMBER—5/234237 ACTION—ACCEPTED		
Lori DeBoer, Menorah House, 26715 Greenfield, Southfield, MI 48076, 810–557–0050	MI	12/05/94
ETA CONTROL NUMBER—5/234137 ACTION—ACCEPTED		
Velma Farris, Alpha Manor Nursing Home, 440 E. Grand Blvd., Detroit, MI 48207, 313–579–2900	MI	12/05/94
ETA CONTROL NUMBER—5/234139 ACTION—ACCEPTED		
Paul Tirjan, Quaker Health, Inc., 80 West Lancaster Avenue, Devon, PA 19333, 215–688–8335	PA	12/07/94

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued

[Form ETA–9029]

CEO-name/facility name/address	State	Action date
ETA CONTROL NUMBER—5/234206 ACTION—ACCEPTED		
ETA REGION 5 12/12/94 TO 12/18/94		
Charlene Wells, Peterson Park Health Care Center, 6141 N. Pulaski, Chicago, IL 60646, 312–478–2000 ETA CONTROL NUMBER—5/234542 ACTION—ACCEPTED	IL	12/14/94
Orlando Morales, Grand Park Surgical Center, Inc., 1479 E. 84th Place, Merrillville, IN 46410, 219–738–2828 ETA CONTROL NUMBER—5/234543 ACTION—ACCEPTED	IN	12/14/94
Joseph Dismond, Woodmont Healthcare Center, 11 Dairy Lane, Fredericksburg, VA 22404, 703–371–9414 ETA CONTROL NUMBER—5/234478 ACTION—ACCEPTED	VA	12/12/94
ETA REGION 5 12/19/94 TO 12/25/94		
Barbara Rohrbach, Embassy Care Center, 555 West Kahler Road, Wilmington, IL 60481–1527, 815–476–2200 ETA CONTROL NUMBER—5/234894 ACTION—ACCEPTED	IL	12/22/94
Bill Brotzman, Maplewood Care Inc., 50 North Jane Drive, Elgin, IL 60123, 708–697–3750 ETA CONTROL NUMBER—5/234895 ACTION—ACCEPTED	IL	12/22/94
Ken Deardorff, St. Patrick's Residence, 1400 Brookdale Road, Naperville, IL 60563, 708–416–6565 ETA CONTROL NUMBER—5/234891 ACTION—ACCEPTED	IL	12/22/94
Betty Down, Meridian Nrsing Cntr Multi-Medical, 7700 York Road, Towson, MD 21204, 410–821–5500 ETA CONTROL NUMBER—5/234893 ACTION—ACCEPTED	MD	12/22/94
Cynthia Cieciwa, Medilodge of Howell, 1333 W. Grand River, Howell, MI 48843, 517–548–1900 ETA CONTROL NUMBER—5/234925 ACTION—ACCEPTED	MI	12/22/94
Becky M. Radford, Jefferson Surgical Clinic, Inc., 1234 Franklin Road, S.W., Roanoke, VA 24016, 703–345–1561 ETA CONTROL NUMBER—5/234928 ACTION—ACCEPTED	VA	12/22/94
ETA REGION 5 12/26/94 TO 01/01/95		
Paule Levadas, Acadia Health Professionals Inc., 3007 M Street, NW., Suite 301A, Washington, DC 20007, 202–337–6928. ETA CONTROL NUMBER—5/235068 ACTION—ACCEPTED	DC	12/28/94
Douglas Shepherd, National Rehabilitation Hospital, 102 Irving Street, NW, G–050, Washington, DC 20010, 202–877–1680. ETA CONTROL NUMBER—5/235070 ACTION—ACCEPTED	DC	12/28/94
Sandra Bell, Dauphin Manor, 1205 S. 28th Street, Harrisburg, PA 17111, 717–558–1000 ETA CONTROL NUMBER—5/235073 ACTION—ACCEPTED	PA	12/28/94
ETA REGION 6 12/05/94 TO 12/11/94		
Ms. Charlotte Butts, Boulevard Manor Nursing Center, 2839 S. Seacrest Blvd., Boynton Beach, FL 33435, 407–732–2464. ETA CONTROL NUMBER—6/223242 ACTION—ACCEPTED	FL	12/07/94
Mr. Bob A. Dodd, East Pasco Medical Center, 7050 Gall Boulevard, Zephyrhills, FL 33541, 813–788–0411 ETA CONTROL NUMBER—6/223244 ACTION—ACCEPTED	FL	12/07/94
Mr. Gary S. Cooke, Evergreen Woods Health Center, 7045 Evergreen Woods Trail, Springhill, FL 34608, 904–596–8371. ETA CONTROL NUMBER—6/223311 ACTION—ACCEPTED	FL	12/07/94
Mr. Dennis W. O'Leary, Mariner Health Care of Port Orange, 5600 Victoria Gardens Blvd., Port Orange, FL 32127, 904–760–7773. ETA CONTROL NUMBER—6/223326 ACTION—ACCEPTED	FL	12/07/94
Ms. Ella Wilson, Presbyterian Nursing Center, 1919 Lakeland Hills Blvd., Lakeland, FL 33805, 813–688–5612 ETA CONTROL NUMBER—6/223239 ACTION—ACCEPTED	FL	12/07/94
Fe A. Hanvivatpong, Ultimate Care, Inc., 131 South Federal Highway Suite 4, Boca Raton, FL 33432, 407–496–7993. ETA CONTROL NUMBER—6/223243 ACTION—ACCEPTED	FL	12/07/94
Mr. Joseph O'Grady, O'Grady-Peyton, International, 470 Atlantic Avenue, Boston, MA 02210, 617–482–5655 ETA CONTROL NUMBER—6/223483 ACTION—ACCEPTED	MA	12/07/94
Mr. Claude Harbarger, St. Dominic-Jackson Memorial Hosp., 969 Lakeland Drive, Jackson, MS 39216–4699, 601–364–6734. ETA CONTROL NUMBER—6/223240 ACTION—ACCEPTED	MS	12/07/94
Mr. Phillip L. Coppage, Healthsouth Dallas Rehab Institute, 9713 Harry Hines Blvd., Dallas, TX 75220–5498, 214–358–6000. ETA CONTROL NUMBER—6/223484 ACTION—ACCEPTED	TX	12/07/94
Mr. Wendell H. Baker, Jr., Matagorda County Hospital District, 1115 Avenue G, Bay City, TX 77414, 409–245–6383 ETA CONTROL NUMBER—6/223350 ACTION—ACCEPTED	TX	12/07/94
Mr. John Mims, McAllen Medical Center—UHS, 301 West Expressway 83, McAllen, TX 78503, 210–632–4000 ETA CONTROL NUMBER—6/223245 ACTION—ACCEPTED	TX	12/07/94
Ms. Pam Kennedy, Panola Nursing Home, 501 Cottage Road, Carthage, TX 75633, 903–693–7141	TX	12/07/94

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued

[Form ETA–9029]

CEO-name/facility name/address	State	Action date
ETA CONTROL NUMBER—6/223241 ACTION—ACCEPTED		
Mr. David Buchmueller, Providence Memorial Hospital, 2001 North Oregon, El Paso, TX 79902, 915–546–2810	TX	12/07/94
ETA CONTROL NUMBER—6/223482 ACTION—ACCEPTED		
Ms. Berneice Hill, Terrell Care Center, 204 West Nash Street, Terrell, TX 75160, 214–563–7668	TX	12/07/94
ETA CONTROL NUMBER—6/223309 ACTION—ACCEPTED		
Mr. Harry C. McClain, Jr., Wilson County Memorial Hospital, 1301 Hospital Blvd., Floresville, TX 78114, 210–393–3122.	TX	12/07/94
ETA CONTROL NUMBER—6/223485 ACTION—ACCEPTED		
ETA REGION 6 12/12/94 TO 12/18/94		
Mr. William J. Byron, Good Samaritan Medical Center, P.O. Box 3166, West Palm Beach, FL 33402, 407–655–5511	FL	12/14/94
ETA CONTROL NUMBER—6/223643 ACTION—ACCEPTED		
Ms. Anne L. Goodge, Royal Oak Nursing Center, 37300 Royal Oak Lane, Dade City, FL 33525, 904–567–3122	FL	12/14/94
ETA CONTROL NUMBER—6/223502 ACTION—ACCEPTED		
Mr. Paul Metts, Shands Teaching Hospital/Clinics, 1600 SW. Archer Road, Gainesville, FL 32610, 904–395–0441	FL	12/15/94
ETA CONTROL NUMBER—6/224153 ACTION—ACCEPTED		
Mr. Jack Campo, Staff Builders Home Health Agency, 9342 S. Federal Highway, Port St. Lucie, FL 34952, 407–878–8820.	FL	12/14/94
ETA CONTROL NUMBER—6/223504 ACTION—ACCEPTED		
Joy King, Toccoa Nursing Center, P.O. Box 1129 Falls Road, Toccoa, GA 30577, 706–886–8491	GA	12/14/94
ETA CONTROL NUMBER—6/223554 ACTION—ACCEPTED		
Ms. Barbara R. Cale, Chowan Hospital, Inc., P.O. Box 629, Edenton, NC 27932, 919–482–6277	NC	12/14/94
ETA CONTROL NUMBER—6/223593 ACTION—ACCEPTED		
H. Paul Schrank, IHS of Charlotte at Hawthorne, 333 Hawthorne Lane, Charlotte, NC 28204, 704–372–1270	NC	12/14/94
ETA CONTROL NUMBER—6/223553 ACTION—ACCEPTED		
Mr. Raymond L. Champ, Wake Medical Center, P.O. Box 14465, Raleigh, NC 27620–4465, 919–250–8138	NC	12/14/94
ETA CONTROL NUMBER—6/223617 ACTION—ACCEPTED		
Ray Barton III, St. Joseph Healthcare System, P.O. Box 25555, 601 Grand Avenue NE., Albuquerque, NM 87125, 505–884–8000.	NM	12/14/94
ETA CONTROL NUMBER—6/223555 ACTION—ACCEPTED		
Mr. Erik Stumpff, Cinderella Realty, Inc., P.O. Box 1517, 1100 Oakridge Drive, Durant, OK 74702, 405–924–3244 ...	OK	12/14/94
ETA CONTROL NUMBER—6/223638 ACTION—ACCEPTED		
Mr. Erik Stumpff, Four Seasons Nursing Ctr./Durant, P.O. Box 1517, 1212 Four Seasons Drive, Durant, OK 74702, 405–924–1302.	OK	12/14/94
ETA CONTROL NUMBER—6/223639 ACTION—ACCEPTED		
Mr. Erik Stumpff, Madill Care Facility, Inc., P.O. Box 848, Hwy 99 South, Madill, OK 73446, 405–795–2100	OK	12/14/94
ETA CONTROL NUMBER—6/223637 ACTION—ACCEPTED		
Mr. Erik Stumpff, Marietta Care Facility, Inc., P.O. Box 40, 401 Medical Drive, Marietta, OK 73448, 405–276–3318 ...	OK	12/14/94
ETA CONTROL NUMBER—6/223635 ACTION—ACCEPTED		
Mr. Erik Stumpff, Tishomingo Care Facility, Inc., P.O. Box 127, 607 S. Byrd, Tishomingo, OK 73460, 405–371–2317	OK	12/14/94
ETA CONTROL NUMBER—6/223636 ACTION—ACCEPTED		
Sabra L. Keels, Sumter Dialysis Center, 214 W. Hampton Avenue, Sumter, SC 29150, 803–775–7374	SC	12/14/94
ETA CONTROL NUMBER—6/223574 ACTION—ACCEPTED		
Mr. James L. Whitis, Guadalupe Valley Rehab & Nursing Ctr., 1210 Eastwood Drive, Seguin, TX 78155, 210–379–9328.	TX	12/14/94
ETA CONTROL NUMBER—6/223573 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Heritage Country Manor, 505 North FM 1417, Sherman, TX 75090, 903–893–1483	TX	12/14/94
ETA CONTROL NUMBER—6/223633 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Heritage Estates, 201 Sycamore School Road, Fort Worth, TX 76134, 817–293–7610	TX	12/14/94
ETA CONTROL NUMBER—6/223630 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Heritage Forest Lane, 9009 Forest Lane, Dallas, TX 75243, 214–783–1771	TX	12/14/94
ETA CONTROL NUMBER—6/223632 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Heritage Gardens, 2135 North Denton Drive, Carrollton, TX 75006, 214–242–0666	TX	12/14/94
ETA CONTROL NUMBER—6/223629 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Heritage Longview, 112 Ruthlyn Drive, Longview, TX 75601, 903–753–8611	TX	12/14/94
ETA CONTROL NUMBER—6/223628 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Heritage Manor Canton, 901 West College Street, Canton, TX 75103, 903–567–4169	TX	12/14/94
ETA CONTROL NUMBER—6/223631 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Heritage Manor Plano, 1620 Coit Road, Plano, TX 75075, 214–596–7930	TX	12/14/94
ETA CONTROL NUMBER—6/223624 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Heritage Oaks, 1112 Gibbins Road, Arlington, TX 76011, 817–261–6881	TX	12/14/94
ETA CONTROL NUMBER—6/223627 ACTION—ACCEPTED		
Ms. Peggy Urton Cave, Heritage Park, 3208 Thunderbird Lane, Plano, TX 75075, 214–422–2214	TX	12/14/94
ETA CONTROL NUMBER—6/223626 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Heritage Place, 825 West Kearney, Mesquite, TX 75149, 214–688–7668	TX	12/14/94
ETA CONTROL NUMBER—6/223625 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Heritage Village, 1111 Rockingham Drive, Richardson, TX 75080, 214–231–8833	TX	12/14/94
ETA CONTROL NUMBER—6/223623 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Heritage Western Hills, 8001 Western Hills Road, Fort Worth, TX 76108, 817–246–4953	TX	12/14/94

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued

[Form ETA–9029]

CEO-name/facility name/address	State	Action date
ETA CONTROL NUMBER—6/223619 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Horizion Nursing Center-Mt. Pleasa, 2003 North Edwards, Mt. Pleasant, TX 75455, 903–572–5511.	TX	12/14/94
ETA CONTROL NUMBER—6/223622 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Horizon Assisted Living, 2007 North Edwards, Mt. Pleasant, TX 75455, 903–572–8123	TX	12/14/94
ETA CONTROL NUMBER—6/223634 ACTION—ACCEPTED		
Mr. Don Ciulla, North Texas Medical Center, 1800 North Graves Street, McKinney, TX 75069, 214–548–3000	TX	12/14/94
ETA CONTROL NUMBER—6/223642 ACTION—ACCEPTED		
Ms. Merlita A. Velasquez, Nursing Resource, Inc., 10927 Mayfield Road, Houston, TX 77043, 713–468–7374	TX	12/14/94
ETA CONTROL NUMBER—6/223640 ACTION—ACCEPTED		
Sr. Elizabeth Dubicka, St. Francis Nursing Home, 630 W. Woodlawn, San Antonio, TX 78212, 210–736–3177	TX	12/14/94
ETA CONTROL NUMBER—6/223572 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Sun Valley Health Care Center, 2204 Pease Street, Harlingen, TX 78550, 210–425–2812	TX	12/14/94
ETA CONTROL NUMBER—6/223621 ACTION—ACCEPTED		
Mr. Neal M. Elliott, The Village at Valley Inn, 1040 FM 802, Brownsville, TX 78521, 210–546–7378	TX	12/14/94
ETA CONTROL NUMBER—6/223620 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Winterhaven, 6534 Steubner-Airline, Houston, TX 77091, 713–692–5317	TX	12/14/94
ETA CONTROL NUMBER—6/223618 ACTION—ACCEPTED		
ETA REGION 6 12/26/94 TO 01/01/95		
Mr. Stuart Ricker, Old Court Nursing Center, 163 Stratford Court Suite 205, Winston-Salem, NC 27103, 410–922–3200.	NC	12/29/94
ETA CONTROL NUMBER—6/223728 ACTION—ACCEPTED		
Ms. Vicki Ohlemeier, Sierra Health Center-Pilot Point, 208 N. Prairie, Pilot Point, TX 76258, 817–686–5507	TX	12/29/94
ETA CONTROL NUMBER—6/223726 ACTION—ACCEPTED		
Ariel Malixi, The Genesis Rehabilitation System, 8831 Long Point, Suite 101, Houston, TX 77055, 713–465–4231	TX	12/30/94
ETA CONTROL NUMBER—6/223850 ACTION—ACCEPTED		
Mr. Bob S. Ellzey, Val Verde County Hospital District, 801 Bedell Avenue, Del Rio, TX 78840, 210–775–8566	TX	12/29/94
ETA CONTROL NUMBER—6/223879 ACTION—ACCEPTED		

[FR Doc. 95–2966 Filed 2–6–95; 8:45 am]

BILLING CODE 4510–30–P

LEGAL SERVICES CORPORATION

Funding Availability for Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of Requests for Proposals.

SUMMARY: The Legal Services Corporation (LSC or Corporation) is accepting applications for its twelfth consecutive Law School Civil Clinical Program (LSCCP) grant competition. For academic year 1995–96, Congress has appropriated $1.435 million for law school clinics. The purpose of this grant competition is to expand relationships between legal services programs and law schools in meeting the challenges of equal access to justice.

All grants will be awarded pursuant to the authority conferred on LSC by Sections 1006(a)(1)(B) and 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended (LSC Act). Grant funds for the 1995–96 LSCCP will be distributed on a one-time, non-recurring basis. Grant awards will be made in amounts of up to $100,000; however, LSC may consider larger grants under exceptional circumstances. Grant terms will be for a period of one year and grant activities must commence by September 30, 1995.

DATES: Grant proposals must be received by the Office of Program Services by 5:00 p.m. (EST) on March 10, 1995.

ADDRESSES: Law School Civil Clinical Program, Office of Program Services, Attention: Janice P. White, Legal Services Corporation, 750 First Street, NE, 11th Floor, Washington, DC 20002–4250.

FOR APPLICATIONS OR FURTHER INFORMATION CONTACT: Janice P. White, Office of Program Services, (202) 336–8924.

SUPPLEMENTARY INFORMATION: Since 1984, the Corporation has conducted a law school clinical grant competition. LSC believes that new and innovative collaborative approaches must be developed to meet the challenges of equal access to justice in the 1990's.

The broad goals of the 1995–96 LSCCP are to:

1. Increase collaboration between law schools and legal services programs;

2. Encourage law schools to become more involved in addressing the legal problems of the poor;

3. Develop among law students an awareness of legal issues affecting low-income people and appropriate advocacy skills to address those issues;

4. Encourage law students to pursue careers in legal services and other public interest areas; and

5. Assist legal services programs, through summer fellowships, in identifying potential legal services attorneys.

The 1995–96 LSCCP will be administered under two categories: (1) Legal Services Summer Fellowships; and (2) Innovative Clinical Programs.

Under the Legal Services Summer Fellowships category, law students will be placed in a legal services program for a summer with appropriate training and supervision, while also receiving academic credit or fulfilling law school pro bono requirements. Special consideration will be given to rural programs; programs serving an underserved or special population; programs with a low number of minority staff attorneys; programs that have an existing collaborative effort with a local law school clinic; and programs that will develop a collaborative relationship with local law school clinics, in furtherance of the grant application.

LSC recognizes that many ideas could improve the law school's relationship with the legal services community, but may not fit in the above category. Thus, under the Innovative Clinical Programs Category, the Corporation encourages new and innovative approaches to legal services delivery that are not currently being provided by law school clinics or legal services programs. These innovative projects must show a close collaboration between the law school clinic and the legal services program. Such programs could be on either a local, state or national level. In addition, under this category, LSC is soliciting applications from law schools with an established mandatory pro bono program or seeking a substantial expansion of its voluntary pro bono program.

Eligibility: (1) All law schools and consortia of law schools that are currently accredited by the American Bar Association or accredited for purposes of bar admission by the state bar associations of the states in which the law schools are located are eligible to apply; (2) any LSC-funded legal services program is eligible to apply; and (3) any 501(c)(3) organization with the capability to oversee a summer fellowship program is eligible to apply.

No 1995–96 LSCCP grant funds, in any category, may be used to fund conferences or research projects. This limitation does not restrict funds being used for research related to representation or advocacy on behalf of eligible clients. The application should demonstrate that existing law school or legal services program support for law school clinical efforts will be continued, and that any LSC funds granted will be used solely for new or expanded operations.

Awards Process

Grant proposals will be carefully evaluated by an advisory panel of peer reviewers from the law school community, the legal services community, the client community and LSC staff. Awards will be based on the merit of the proposal and the extent to which it meets the goals of the LSCCP. An applicant may submit a grant proposal for one category only.

1. Proposed Collaboration

The applicant should detail the proposed working relationship between the law school clinic and the legal services program that will be involved in the project. If such collaboration is not an aspect of the proposal, the applicant should detail the efforts that were made to secure such collaboration and why they were unsuccessful.

2. Project Goals and Objectives

The applicant should set forth the project's goals and objectives, which will be reviewed in terms of the quality of the proposed project, evidence of the client need to be served, and the long-term benefits to the organization and the legal services community.

3. Applicant's Capability to Accomplish Objectives

The applicant should detail its structure and staffing, past history with similar activities, and other work on behalf of the low-income individuals. Qualifications and experience of project participants and staff should be disclosed. A timetable for implementation of the project should also be included.

4. Community Involvement and Support

The applicant should state how the proposed activity will complement existing legal services delivery provided in its area. The extent to which a cooperative effort exists among law schools, legal services programs, community groups, local courts, and bar associations should be described. Current letters of support or other evidence of support may be included with the proposal.

5. Project Feasibility

The applicant should address the reasonableness of the proposed costs in terms of the benefits to be derived and the relationship to the project's overall goals.

Dated: February 2, 1995.

Leslie Q. Russell,

Assistant to the Director, Office of Program Services.

[FR Doc. 95–3040 Filed 2–6–95; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

February 1, 1995.

Pursuant to the provisions of the Federal Advisory Committee Act (Public L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on February 16–17, 1995.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on February 16–17, 1995, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on February 16, 1995, will be as follows:

8:30–9:00 a.m. Coffee for Council Members—Room 527

Committee Meetings

(Open to the Public) Policy Discussion

9:00–10:00 a.m. Education Programs—Room M–14
Public Programs—Room 415
Research Programs—Room M07
Challenge Grants/Preservation and Access & Interdivisional Technology—Room 315
Federal-State Partnership—Room 507

10:00 a.m. until Adjourned. (Closed to the Public) Discussion of specific grant applications before the Council

The morning session on February 17, 1995, will convene at 10:00 a.m., in the 1st Floor Council Room, M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members will be served from 10:00–10:30 a.m.)

Minutes of the Previous Meeting

Reports

A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Budget Reports
E. Legislative Report/Reauthorization
F. Committee Reports on Policy and General Matters
G. 1. Overview
2. Education Programs
3. Research Programs
4. Challenge Grants/Preservation and Access & Interdivisional Technology
5. Public Programs
6. Federal-State Partnership
7. Jefferson Lecture

(The meeting will be closed to the public at this point.)

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. David C. Fisher, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 95–3007 Filed 2–6–95; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

DOE/NSF Nuclear Science Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: DOE/NSF Nuclear Science Advisory Committee.

Date and Time: February 24, 1995 from 8:30 a.m. to 7:00 p.m., February 25, 1995 from 8:30 a.m. to 4:00 p.m.

Place: Arlington Renaissance Hotel, Gallery II, 950 North Stafford Street, Arlington, VA 22203.

Type of Meeting: Open.

Contact Person: John W. Lightbody, Program Director for Nuclear Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 306–1890.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda

February 24, 1995

- Discussion of Budgets and Status of DOE and NSF Nuclear Physics Programs (D. Hendrie, DOE; J. Lightbody, NSF)
- Presentation of Preliminary Subcommittee Report regarding Additional Capital Equipment for the RHIC Facility (C. Gelbke)
- Reports of Town Meetings of the Division of Nuclear Physics of the American Physical Society (by conveners)

February 25, 1995

- Discussion of Town Meeting Reports
- Progress Reports of the Long Range Plan Working Groups (LRPWG)
- Discussion of process and plans for full LRPWG Meeting
- Public Comment (*)

(*) Persons wishing to speak should make arrangements through the Contact Person identified above.

Dated: February 2, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–2947 Filed 2–6–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–352 and 50–353]

Philadelphia Electric Company; Limerick Generating Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering two actions: (1) Issuance of an exemption from the requirements of 10 CFR 50, Appendix J, and (2) an amendment to Facility Operating License Nos. NPF–39 and NPF–85, issued to Philadelphia Electric Company (the licensee), for operation of the Limerick Generating Station (LGS), Units 1 and 2, located in Montgomery County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant (1) an exemption from 10 CFR Part 50, Appendix J, Sections II.H.4, III.C.2, and III.C.3, and (2) an amendment to change the Technical Specifications (TS) for the Limerick Generating Station (LGS), Units 1 and 2, in conjunction with the removal of the main steam isolation valve (MSIV) leakage control system (LCS) and the proposed use of an alternate leakage pathway.

10 CFR Part 50, Appendix J, Sections II.H.4 and III.C.2 require leak rate testing of MSIVs at the calculated peak containment pressure related to the design basis accident, and Section III.C.3 requires that the measured MSIV leak rates be included in the combined local leak rate test results. The proposed deletion of the MSIV LCS and proposed use of an alternate leakage pathway affects the description of an existing exemption (NUREG–0991, and its Supplement 3), which allows the leak rate testing of the MSIVs at a reduced pressure and allows exclusion of the measured MSIV leakage from the combined local leak rate test results.

The proposed TS amendment would permit an increase in the allowable MSIV leakage rate from 11.5 standard cubic feet per hour (scfh) to 100 scfh for any one MSIV and a combined maximum pathway leakage rate of 200 scfh for all four main steam lines, and would delete TS requirements for the currently installed MSIV LSC, because the proposed system removal makes the TS inapplicable.

The proposed action for the TS amendments is in accordance with the licensee's application for amendment dated January 14, 1994, as supplemented by letters dated August 1, October 25, December 13, and December 22, 1994; and the proposed action for the exemption is in accordance with the letter dated December 22, 1994.

The Need for the Proposed Action

The proposed exemption is similar to the current exemption from 10 CFR Part 50, Appendix J, Sections II.H.4 and III.C.2. The exemption is needed since the design of the MSIVs is such that testing in the reverse direction tends to unseat the value and would result in a meaningless test. The total observed MSIV leak rate resulting from a leakage test where two MSIVs on one steam line are tested utilizing a reduced pressure (22 psig) will continue to be assigned to the penetration. The proposed exemption is also similar to the current exemption from 10 CFR Part 50, Appendix J, Section III.C.3. The licensee proposes that the MSIV leakage rate will continue to be accounted for separately in the radiological site analysis in accordance with the existing exemption. However, the existing exemption from 10 CFR Part 50, Appendix J, Section III.C.3 will not be applicable when the MSIV LCS is replaced with an Alternate Treatment Path (ATP) (main steam lines and condenser).

The proposed action regarding the TS amendment will reduce the need for repairs of the MSIVs, resolve concerns associated with the current LCS performance capability at high MSIV leakage rates, and provide an effective method for dealing with a potential MSIV leakage during a postulated loss-of-coolant accident (LOCA). Many boiling water reactors (BWRs) have difficulty meeting their MSIV leakage rate limits. Extensive repair, rework, and retesting efforts have negative effects on the outage costs and schedules, as well as significant impact on the licensee's as low as is reasonably achievable (ALARA) radiological exposure programs. The alternatives proposed by the licensee to deal with MSIV leakage make use of components (main steam lines and condenser) that are expected to remain intact and serviceable following a design basis LOCA.

Enviroinmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed actions related to the granting of an exemption

from 10 CFR Part 50, Appendix J, Section 11.H.4, III.C.2, and III.C.3, and for the TS changes proposed by the licensee, and concludes that the proposed actions will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Regarding the exemption, the MSIV leakage, along with the containment leakage is used to calculate the maximum radiological consequences of a design basis accident. Section 15.6.5 of the LGS Updated Final Safety Analysis Report (UFSAR) identifies that standard and conservative assumptions have been used to calculate the offsite and control room doses, including the doses due to MSIV leakage, which could potentially result from a postulated LOCA. Further, the control room and offsite doses resulting from a postulated LOCA have recently been recalculated using currently accepted assumptions and methods. These analyses have demonstrated that the total leakage rate of 200 scfh results in dose exposures for the control room and offsite that remain within the requirements of 10 CFR Part 100 for offsite doses and 10 CFR Part 50, Appendix A, for the control room doses.

Regarding the TS change, deletion of the MSIV LCS will reduce the overall occupational dose exposures and reduce the generation of low level radioactive waste due to the elimination of maintenance and surveillance activities associated with the system. The dose exposure associated with deleting the system will satisfy the ALARA requirements, and will be less than the dose which would result from maintenance and surveillance activities associated with the present system, if utilized for the remainder of the plant life. Thus, radiological releases will not differ significantly from those determined previously, and the proposed amendment does not otherwise affect facility radiological effluent or occupational exposures.

Therefore, there will not be a significant increase in the types and amounts of any effluent that may be released offsite and, as such, the proposed amendment does not alter any initial conditions assumed for the design basis accidents previously evaluated and the alternate system is capable of mitigating the design basis accidents.

Furthermore, the proposed exemption will not result in a significant increase to the LOCA doses previously evaluated against offsite and main control room dose limits contained in 10 CFR Part 100 and 10 CFR Part 50, Appendix A, General Design Criteria 19.

With regard to potential nonradiological impacts, the proposed actions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed actions.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed actions, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed actions, the staff considered denial of the proposed actions. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the LGS, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the Pennsylvania State official regarding the environmental impact of the proposed actions. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed actions will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed actions.

For further details with respect to the proposed actions, see the licensee's letter dated January 14, 1994, as supplemented by letters dated August 1, October 25, December 13, and December 22, 1994 (two submittals), which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Dated at Rockville, Maryland, this 1st day of February 1995.

For the Nuclear Regulatory Commission.

Frank Rinaldi,

Acting Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulations.

[FR Doc. 95–2956 Filed 2–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–424 and 50–425]

Georgia Power Company, et al.; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Georgia Power Company, et al. (the licensee) to withdraw its January 22, 1993, application and August 6, 1993, supplement for proposed amendments to Facility Operating License Nos. NPF–68 and NPF–81 for the Vogle Electric Generating Plant, Unit Nos. 1 and 2, located in Burke County, Georgia.

The proposed amendments would have revised the Technical Specifications to clarify and add requirements regarding the automatic load sequencers.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on March 31, 1993 (58 FR 16860). However, by letter dated December 29, 1994, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated January 22, 1993, as supplemented August 6, 1993, and the licensee's letter dated December 29, 1994, which withdrew the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia.

Dated at Rockville, Maryland, this 24th day of January 1995.

For the Nuclear Regulatory Commission.

Lois L. Wheeler,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–2957 Filed 2–6–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Policy Letter on Subcontracting Plans for Companies Supplying Commercial Items

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: The Office of Federal Procurement Policy (OFPP) is requesting comments on a proposed policy letter on subcontracting plans for companies supplying commercial items.

SUMMARY: Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) requires that each contract that exceeds $500,000 ($1 million in the case of construction), and that offers subcontracting opportunities, include a requirement that the apparent successful offeror negotiate a subcontracting plan which shall become a material part of the contract. These requirements have been implemented by prior OFPP Policy Letters and subsequent promulgation in the Federal Acquisition Regulation (FAR).

Sections 8104 and 8203 of the Federal Acquisition Streamlining Act of 1994 (FASA), Public Law 103–355, establish a preference for the acquisition of commercial items. In establishing this preference, Congress expressed concern that implementing policies ease the burden of government-unique requirements for companies supplying commercial items. In response to this concern, the policy on subcontracting plans is being revised to reduce the burden of government-unique requirements on contractors that supply commercial items.

This proposed Policy Letter focuses on contracts and subcontracts for ''commercial items'' as defined in section 8001 of FASA. Annual, commercial company-wide, division-wide, or plant-wide, subcontracting plans that relate to a company's commercial and noncommercial production are authorized for:

(a) Prime contracts for commercial items, or

(b) Subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

In addition, the proposed Policy Letter states that commercial company-wide plans, when authorized under the Policy Letter, shall be the preferred method of compliance with the requirements of section 8(d) of the Small Business Act. The policy letter reinforces that these provisions for subcontracting plans for commercial item contractors do not in any way relieve contracting officers, prime contractors or subcontractors of their responsibilities for assuring that small, small disadvantaged, and women-owned small businesses have the maximum practicable opportunity to participate in contracts awarded by Federal agencies.

COMMENT DATE: Comments must be received on or before April 10, 1995.

ADDRESSES: Comments should be submitted to William Coleman, Deputy Administrator, Office of Federal Procurement Policy, New Executive Office Building, Room 9013, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: William Coleman, Deputy Administrator, 202–395–3503.

Steven Kelman,

Administrator.

Policy Letter 95–

To The Heads of Executive Departments and Establishments

Subject: Subcontracting Plans for Companies Supplying Commercial Items

1. *Purpose.* The purpose of this Policy Letter is to establish policies on the requirement for subcontracting plans for companies supplying commercial items.

2. *Authority.* This Policy Letter is issued pursuant to section 6 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 405.

3. *Background.* Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) requires that each contract that exceeds $500,000 ($1 million in the case of construction), and that offers subcontracting opportunities, include a requirement that the apparent successful offeror negotiate a subcontracting plan which shall become a material part of the contract. The requirement for subcontracting plans does not apply to small businesses. The above requirements have been implemented by OFPP Policy Letter 80–2 ''Regulatory Guidance on Section 211 of Public Law 95–507'' dated April 29, 1980, and Supplement No. 1 dated May 29, 1981, and further implemented in part 19 of the Federal Acquisition Regulation (FAR). That Policy Letter specifically authorized the use of a company-wide annual subcontracting plan that relates to the contractor's commercial and noncommercial production when the government is acquiring a commercial product.

Sections 8104 and 8203 of the Federal Acquisition Streamlining Act of 1994 (FASA), Public Law 103–355, establish a preference for the acquisition of commercial items by the Department of Defense and civilian agencies. In establishing this preference, Congress expressed concern that implementing policies ease the burden of government-unique requirements for companies supplying commercial items. The Conference Report (H.R. 103–712) recognizes the unique circumstance faced by commercial contractors and the specific authority already provided in regulation and policy for company-wide plans rather than contract-by-contract plans.

The report cites OFPP Policy Letter 80–2, FAR 52.219–9(g), and 519.704(b) of the General Services Administration Acquisition Regulation which provide express authority for company-wide, division-wide or plant-wide plans. The Report states:

Because *contractors and subcontractors* offering commercial items tend to rely on their existing network of suppliers rather than entering new subcontracts to fill government orders, the requirements applicable to the company-wide subcontracting plans of commercial companies differ from the requirements applicable to individual subcontracting plans of noncommercial companies. See e.g. sections 519.704(c)(2), 519.705–5 and 519.705–6(b) of the GSA FAR Supplement. For example, a single company-wide plan authorized by these regulations is likely to address subcontracting opportunities at both the prime contract and subcontract levels, obviating the need for the filing of individual contract-by-contract or subcontract-by-subcontract plans. Title VIII of the bill is not intended to require any changes to such practices.'' (emphasis added)

In response to this concern, the policy on subcontracting plans is being revised to reduce the burdens of government-unique requirements on contractors that supply commercial items.

4. *Policy.* The following policy applies to contracts and subcontracts for ''commercial items'' as defined in section 8001 of FASA.

(1) It is a fundamental policy of the Federal Government that a fair proportion of its contracts be placed with small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, and small businesses owned and controlled by women and that such businesses participate in subcontracting under government prime contracts.

(2) When the requirements for a subcontracting plan under section 8(d) of the Small Business Act apply, annual, commercial company-wide, division-wide, or plant-wide subcontracting plans that relate to a company's commercial and noncommercial production are authorized for:

(a) Prime contracts for commercial items, or

(b) Subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

(3) Furthermore, it is the policy of the United States Government that commercial company-wide plans, when authorized under this Policy Letter, shall be the preferred method of compliance with the requirements of section 8(d) of the Small Business Act. In all solicitations expected to offer subcontracting opportunities which trigger the requirements for a subcontracting plan, the Government shall inform prospective offerors of the opportunity for themselves and/or their subcontractors to develop commercial company-wide plans if they are supplying commercial items. This would apply whether or not the prime contractor is supplying a commercial item.

(4) This policy is in addition to the existing policies cited in paragraph 3 of this Policy Letter.

(5) These provisions for subcontracting plans for commercial item contractors do not in any way relieve contracting officers, prime contractors or subcontractors of their responsibilities for assuring that small, small disadvantaged and women-owned small businesses have the maximum practicable opportunity to participate in contracts awarded by Federal agencies.

5. *Responsibilities.* The Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 210 days from the date this Policy Letter is published in the **Federal Register**. Promulgation of final regulations within the 210-day period shall be considered issuance in a ''timely manner'' as prescribed in 41 U.S.C. 405(b).

6. *Information Contact.* Questions regarding this Policy Letter should be directed to William Coleman, Deputy Administrator, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503, telephone 202–395–3503, facsimile 202–395–5105.

7. *Judicial Review.* This Policy Letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any persons. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning Federal contracting. Thus, this Policy Letter is not intended, and should not be construed, to create any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this Policy Letter.

8. *Effective Date.* The Policy Letter is effective 30 days after the date of issuance.

Steven Kelman,

Administrator.

[FR Doc. 95–2912 Filed 2–6–95; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Request for Comments Concerning Foreign Government Discrimination in Procurement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for public comments.

SUMMARY: This notice requests written submissions from the public concerning discrimination against U.S. products and services by foreign governments in their procurement practices. This information will be used in compiling the annual report on government procurement specified by Section 305 of the Trade Agreements Act of 1979 (Trade Agreements Act), as amended by Title VII of the Omnibus Trade and Competitiveness Act of 1988 and Title III, Section 341 of the Uruguay Round Agreements Act of 1994 (19 U.S.C. 2515).

Section 305 of the Trade Agreements Act requires the President to submit an annual report on the extent to which foreign countries discriminate against U.S. products or services in making government procurement. Section 341 of the Uruguay Round Agreements Act specifies that the report also contain information about countries which employ nontransparent procurement procedures or fail to maintain effective prohibitions on bribery and other corrupt practices. Specifically, the President is required to identify any countries that:

(a) Are signatories to the GATT Agreement on Government Procurement (Agreement) and are not in compliance with the requirements of the Agreement;

(b) Are signatories to the Agreement; are in compliance with the Agreement, but maintain a significant and persistent pattern or practice of discrimination in the government procurement of products or services from the United States not covered by the Agreement, which results in identifiable harm to U.S. business; and whose products or services are acquired in significant amounts by the U.S. Government; or

(c) Are not Signatories to the Agreement and maintain a significant and persistent pattern or practice of discrimination in government procurement of products or services from the United States, which results in identifiable harm to U.S. business, and whose products or services are acquired in significant amounts by the U.S. Government; or

(d) Are not Signatories to the Agreement and fail to apply transparent and competitive procedures to its government procurement equivalent to those in the Agreement and whose products and services are acquired in significant amounts by the U.S. Government; or

(e) Are not Signatories to the Agreement and fail to maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement and whose products and services are acquired in significant amounts by the U.S. Government.

The functions vested in the President under Section 305 of the Trade Agreements Act were delegated to the United States Trade Representative (USTR) pursuant to Section 4–101 of Executive Order 12661 (54 FR 779).

DATES: Submissions containing the information described below must be received on or before March 1, 1995.

ADDRESSES: Comments must be submitted to the Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20506, and must include not less than twenty (20) copies. Submissions will be available for public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6. Any business confidential material must be clearly marked as such at the top of the cover page or letter and each succeeding page and must be accompanied by a nonconfidential summary.

FOR FURTHER INFORMATION CONTACT: Elena Bryan (202–395–5097) or Mark Linscott (202–395–3063), Office of GATT Affairs, or Laura B. Sherman (202–395–3150), Office of the General Counsel, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, D.C. 20506.

SUPPLEMENTARY INFORMATION: Section 305 of the Trade Agreements Act requires an annual report to be submitted no later than April 30, 1995 to the appropriate Committees of the House of Representatives and the Senate. The USTR is required to request consultations with any countries identified in the report to remedy the procurement practices cited in the report.

USTR invites submissions from interested parties concerning foreign government procurement practices that should be considered in developing the annual report. Pursuant to Section 305(d)(5) of the Trade Agreements Act, submissions are sought from any interested parties in the United States and in countries that are signatories to the Agreement, as well as in other foreign countries whose products or services are acquired in significant amounts by the U.S. Government.

Each submission should provide, in order, the following general information: (1) The party submitting the information; (2) the foreign country or countries that are the subject of the submission and the entities of each subject country's government whose practices are being cited, and (3) the U.S. products or services that are affected by the non-compliance or discrimination.

Each submission should also provide specific information on the particular

problem: (1) Non-compliance with the GATT Agreement on Government Procurement; (2) the type of discrimination encountered, including information regarding the date and nature of affected procurement(s); (3) policies or practices which are discriminatory, not transparent or anti-competitive (where possible, include copies of discriminatory laws, policies or regulations), and (4) the extent to which the problem has impeded the ability of U.S. suppliers to participate in procurements on terms comparable to those available to suppliers of the country in question when they are seeking to sell goods or services to the U.S. Government; (5) examples of failure to maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement.

Finally, each submission should: (1) If applicable, identify provisions of the GATT Government Procurement Agreement which are not being observed by the country identified or describe how the country identified has maintained a significant and persistent pattern or practice of discrimination in government procurement of non-Code-Covered goods or services; (2) identify the specific impact of the discriminatory policy or practice on U.S. businesses (including an estimate of the value of market opportunities lost and, if any, the cost of preparing bids which are rejected during the course of a procurement evaluation for discriminatory reasons), and (3) describe the extent to which the products or services of the country identified are acquired in significant amounts by the U.S. Government.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 95–2977 Filed 2–6–95; 8:45 am]

BILLING CODE 3110–01–P

[Docket No. 301–92]

Determination of Action Concerning the People's Republic of China's Protection of Intellectual Property and Provision of Market Access to Persons Who Rely on Intellectual Property Protection

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determination pursuant to sections 301 and 304 of the Trade Act of 1974, as amended (Trade Act), 19 U.S.C. 2414.

SUMMARY: Pursuant to section 304(a)(1)(A)(ii) of the Trade Act, the United States Trade Representative (USTR) has determined that certain acts, policies and practices of the Chinese government with respect to the enforcement of intellectual property rights and the provision of market access to persons who rely on intellectual property protection are unreasonable and constitute a burden or restriction on U.S. commerce. Pursuant to section 304(a)(1)(B) and section 301(b), the USTR has determined that trade action is appropriate and that sanctions are appropriate. The sanctions will take the form of increasing duties on products listed in the attached Annex originating in China to 100 percent ad valorem.

EFFECTIVE DATE: USTR's determination as to actionability and the specific action to be taken was made on February 4, 1995. The increased duties will be assessed upon all products of China identified in the Annex to this notice that are entered, or withdrawn from warehouse for consumption, on or after February 26, 1995.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20606.

FOR FURTHER INFORMATION CONTACT: Deborah Lehr, Director for China and Mongolian Affairs (202) 395–5050, Joseph Papovich, Deputy Assistant USTR for Intellectual Property (202) 395–6864, or Thomas Robertson, Assistant General Counsel (202) 395–6800.

SUPPLEMENTARY INFORMATION: On June 30, 1994, China was identified as a priority foreign country under the ''special 301'' provisions of the Trade Act for its failure to enforce intellectual property rights or to provide fair and equitable market access to persons who rely on intellectual property protection. On the same day, the USTR initiated an investigation of those acts, policies and practices of China that were the basis for its identification as a priority foreign country. See 59 FR 35558 (July 12, 1994).

The effectiveness of China's enforcement regime is hampered by, among other things, internally inconsistent laws; a lack of transparency in the enforcement structure; a lack of protection for existing works; gaps in responsibility in the enforcement structure; a lack of consistent application of the laws throughout the central, provincial and local governments; a lack of funding, training and education; possible conflicts of interest; burdensome and discriminatory agency requirements that restrict foreign access to trademark protection; overly-broad compulsory licensing provisions; a failure of enforcement authorities to coordinate; and the absence of an effective border control mechanism.

In the area of market access, the most serious problems with the Chinese system are found in the areas of audio-visual products, sound recordings, and published written materials. Particular concerns include a hidden system of internal quotas, a lack of transparency, a lack of consistency in application, monopoly control over the importation and distribution of products embodying intellectual property, and a prohibition on the production or distribution of products embodying intellectual property that is not related to the content of those products.

Extension of Investigation, Proposed Determinations, and Public Comment

On January 5, 1995, the USTR published a notice that the six-month statutory deadline for the close of this investigation had been extended until February 4, 1995, in light of the complex and complicated nature of the issues involved. See 60 FR 1829, 1830 (January 5, 1995). In that notice, the USTR also published a proposed determination of action and request for public comment concerning the proposed action. The USTR proposed to determine that China's failure to enforce intellectual property laws or to provide market access to persons who rely on intellectual property protection is unreasonable and discriminatory and constitutes a burden or restriction on U.S. commerce. If that determination were finally made, the USTR also proposed to increase duties on certain products of China in an amount equivalent to the damaged caused by the Chinese acts, policies and practices which formed the basis of the investigation. The USTR published, as an annex to the notice, a list of products from which specific products could be selected for the imposition of increased duties.

In response to the January 5, 1995, **Federal Register** notice, the USTR and the section 301 Committee receive approximately 198 sets of written comments and heard the oral testimony of 53 witnesses at public hearings held on January 24–25, 1995. The comments primarily focused on the appropriateness of subjecting the products listed in the proposed retaliation list to an increase in duties, the levels at which duties on particular products should be set, and the degree to which an increase in duties on particular products might have an adverse effect on U.S. consumers, workers and industries.

The United States estimates that the damage caused by China's failure to provide adequate intellectual property protection or market access for persons who rely on intellectual property protection is at least $1.08 billion on an annual basis. The USTR has directed the section 301 Committee to examine the effect on U.S. commerce of the export of infringing products from China to third countries.

Determination and Action

Numerous meetings have been held with the Chinese Government on these issues since the initiation of this investigation. While China has indicated it will take some action to address U.S. concerns, issues remain unresolved. Consequently, pursuant to section 304(a)(1) of the Trade Act, the USTR has determined (1) that China's acts, policies and practices which formed the basis of the investigation are unreasonable and discriminatory and constitute a burden or restriction on U.S. commerce, and (2) that trade action is appropriate. Pursuant to section 301(b) and 301(c), the USTR has decided to increase duties to 100 percent ad valorem upon goods described in the Annex to this notice that are of Chinese origin. These products were selected in light of the comments submitted to the section 301 Committee in response to the January 5, 1995, notice and the testimony presented at the public hearing held on January 24–25, 1995.

Accordingly, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after February 26, 1995, the Harmonized Tariff Schedule of the United States (HTS) is hereby modified by inserting the provisions listed in the Annex to this notice in numerical sequence in subchapter III of chapter 99, with the content of the new subheadings and superior text set forth in the HTS columns designated ''Heading/Subheading'', ''Article Description'', and ''Rate of Duty General'', respectively. The amount of trade affected by this action is equivalent to the value of the burden or restriction on U.S. commerce by the Chinese practices that formed the basis of the investigation.

Irving A. Williamson,

Chairman, Section 301 Committee.

BILLING CODE 3190–01–M

ANNEX

Articles the product of the People's Republic of China:

9903.50.01	Confections or sweetmeats, ready for consumption, put up for retail sale (provided for in subheading 1704.90.20)	100%
9903.50.02	Mushrooms, other than straw mushrooms, in containers each holding not more than 255 g, other than whole (including buttons) or sliced (provided in subheading 2003.10.00)	100%
9903.50.03	Citric acid (provided in subheading 2918.14.00)	100%
9903.50.04	Sacks and bags (including cones) of polymers of ethylene, with a side exceeding 75 mm in length, other than reclosable sacks and bags with integral extruded closure (provided in subheading 3923.21.00)	100%
9903.50.05	Picture frames and other household and toilet articles of plastics, (provided in subheading 3924.90.20 or 3924.90.55)	100%
9903.50.06	Cards, not punched, suitable for use as, or in making, jacquard cards; Jacquard cards and jacquard heads for power-driven weaving machines, and parts thereof; and Transparent sheeting of plastics containing 30 percent or more by weight of lead (all the foregoing provided for in subheading 3926.90.94)	100%
9903.50.07	Articles of plastics and articles of other materials of headings 3901 to 3914 (excluding miniature star bows of polypropylene and "pull bows" of polypropylene, the foregoing suitable for use on gift packages or in decorative applications, laboratory ware or reflective triangular signs for road use) (provided for in subheading 3926.90.98)	100%
9903.50.08	Surgical and medical gloves of vulcanized rubber other than hard rubber (provided for in subheading 4015.11.00)	100%
9903.50.09	Trunks, suitcases, and vanity cases with outer surface of leather, of composition leather, or of patent leather, (provided for in subheading 4202.11.00)	100%
9903.50.10	Cases, boxes, bags and similar containers, with outer surface of leather, or composition leather or of patent leather (excluding golf, travel, sports and similar bags) (provided for in subheading 4202.91.00)	100%
9903.50.11	Wooden frames for paintings, photographs, mirrors, or similar objects (provided for in heading 4414.00.00)	100%
9903.50.12	Statuettes and other ornaments, of wood (provided for in subheading 4420.10.00)	100%

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Articles the product of the People's Republic of China (con.):

9903.50.13 Jewelry boxes, silverware chests, microscope cases, tool or utensil cases and similar boxes, cases and chests, all the foregoing of wood, lined with textile fabrics (provided for in subheading 4420.90.65).....100%

9903.50.14 Sacks and bags, including cones, having a base width of less than 40 cm, other than shipping sacks and multiwall bags but including grocer's bags (provided for in subheading 4819.40.00).....100%

9903.50.15 Greeting cards (provided for in subheading 4909.00.40).....100%

9903.50.16 Gloves, mittens and mitts, knitted or crocheted, containing 70 percent or more by weight of silk or silk waste (provided in 6116.99.75).....100%

9903.50.17 Handkerchiefs, containing 70 percent or more by weight of silk or silk waste (provided for in subheading 6213.10.10).....100%

9903.50.18 Shawls, scarves, mufflers, mantillas, veils and the like, containing 70 percent or more by weight of silk or silk waste (provided for in subheading 6214.10.10).....100%

9903.50.19 Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather (other than house slippers, work footwear or tennis shoes, basketball shoes and the like), for misses, valued over $2.50/pair (provided for in subheading 6403.99.90).....100%

9903.50.20 Sports footwear, tennis shoes, basketball shoes, gym shoes, training shoes and the like, with outer soles of rubber or plastics and uppers of textiles and having uppers of which over 50 percent of the external surface area (including any leather accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is leather; all the foregoing goods for women (provided for in subheading 6404.11.20).....100%

9903.50.21 Articles of jewelry and parts thereof, of precious metal other than silver, whether or not plated or clad with precious metal, not elsewhere specified or included (provided for in subheading 7113.19.50).....100%

9903.50.22 Kitchen ware (except teakettles) of stainless steel (provided for in subheading 7323.93.00).....100%

9903.50.23 Articles of copper, except brass plumbing goods, not elsewhere specified or included (provided for in subheading 7419.99.50).....100%

9903.50.24 Announce and record telephone answering machines (provided for in subheading 8520.20.00).....100%

9903.50.25 Cellular radio telephones designed for installation in motor vehicles (provided for in subheading 8525.20.60).....100%

ANNEX
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Articles the product of the People's Republic of China (con.):

9903.50.26	Bicycles having both wheels not exceeding 55 cm in diameter (provided for in 8712.00.15)	100%
9903.50.27	Wrist watches (other than those of heading 9101), battery powered, with mechanical display only, having no jewels or only one jewel in the movement, not elsewhere specified or included (provided for in subheading 9102.11.45)	100%
9903.50.28	Metal furniture, other than household furniture, not elsewhere specified or included (provided for in subheading 9403.20.00)	100%
9903.50.29	Furniture parts of metal, not elsewhere specified or included (provided for in subheading 9403.90.80)	100%
9903.50.30	Non-electrical lamps and lighting fittings, not elsewhere specified or included (provided for in subheading 9405.50.40)	100%
9903.50.31	Surf boards, and other water-sport equipment, other than water skis; parts and accessories thereof, not elsewhere specified or included (provided for in subheading 9506.29.00)	100%
9903.50.32	Articles and equipment for sports or outdoor games, and parts and accessories thereof, not elsewhere specified or included (provided for in subheading 9506.99.60)	100%
9903.50.33	Fishing rods (provided for in subheading 9507.10.00)	100%

[FR Doc. 95–3129 Filed 2–6–95; 8:45 am]
BILLING CODE 3190–01–C

Notice of Meeting of the Investment and Services Policy Advisory Committee

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the February 13, 1995 meeting of the Investment and Services Policy Advisory Committee will be held from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 12:30 p.m. The meeting will be open to the public from 12:30 to 2:00 p.m.

SUMMARY: The investment and Services Policy Advisory Committee will hold a meeting on February 13, 1995 from 10:00 a.m. to 2:00 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this portion of the meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 10:00 a.m. to 12:30 p.m. when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for February 13, 1995, unless otherwise notified.

ADDRESSES: The meeting will be held at the Sheraton-Carlton Hotel located at 16th and K streets, NW., Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Michaelle Burstin, Director of Public Liaison, Office of the United States Trade Representative, (202) 395–6120.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95–2978 Filed 2–6–95; 8:45 am]

BILLING CODE 3190–01–M

POSTAL RATE COMMISSION

Notice of Commission Visit

February 2, 1995.

Notice is hereby given that on February 7 and 8, 1995, members of the Commission and certain advisory staff personnel will visit the mail processing facilities of the U.S. Postal Service in Tampa, Tarpon Springs, and Clearwater, Florida. Visits will also take place at Val-Pak Direct Marketing in Largo, Florida, and Time-Warner in Tampa, Florida. In addition, members of the Commission and certain advisory staff personnel will meet with representatives of Response Media in St. Petersburg, Florida.

A report of the visits will be on file in the Commission's Docket Room. For further information contact Margaret P. Crenshaw, Secretary of the Commission, at 202–789–6840.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 95–2989 Filed 2–6–95; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33–7131]

Safe Harbor for Forward-Looking Statements

AGENCY: Securities and Exchange Commission.

ACTION: Publication of agenda for hearings.

SUMMARY: In Release No. 33–7101 (October 13, 1994) (the ''Concept Release''), the Securities and Exchange Commission (the ''Commission'') announced that it would hold public hearings in Washington, DC concerning the safe harbor for forward-looking statements (set forth in Rule 175 under the Securities Act of 1933 (the ''Securities Act''), Rule 3B–6 under the Securities Exchange Act of 1934 (''Exchange Act''), Rule 103A under the Public Utility Holding Company Act of 1935 (the ''Public Utility Holding Company Act'') and Rule 0–11 under the Trust Indenture Act of 1939 (the ''Trust Indenture Act''), Also, in Release No. 33–7125 (December 22, 1994), the Commission announced that it would hold additional hearings on this topic in San Francisco, California. In connection with those hearings, the Commission is hereby publishing a tentative schedule of appearances and certain procedures that will be followed.

DATES: As noted in the foregoing releases, hearings will commence in Washington, DC on February 13, 1995 at 10:00 a.m. Hearings will commence in San Francisco, California on February 16, 1995 at 10:00 a.m.

ADDRESSES: The Washington, DC hearings will be held in Room 1C30 of the Commission's headquarters building at 450 Fifth Street, NW., in Washington, DC 20549. The San Francisco, California hearings will be held in the California Public Utility Commission Auditorium, 505 Van Ness Avenue, San Francisco, California 94102. Three copies of the written text of the oral statement should be submitted to the Commission's headquarters, at the addressed listed above, at least five days in advance of each hearing.

FOR FURTHER INFORMATION CONTACT: Kevin C. Bruce or Andrew A. Gerber, Attorney-Advisers in the Division of Corporation Finance or Amy Bowerman Freed, Deputy Chief Counsel, Division of Corporation Finance at (202) 942–2900.

SUPPLEMENTARY INFORMATION: The public hearings concern the effectiveness of the safe harbor for forward-looking statements, as set forth in Rule 175 under the Securities Act, Rule 3b–6 under the Exchange Act, Rule 103A under the Public Utility Holding Company Act and Rule 0–11 under the Trust Indenture Act. At the conclusion of these hearings, the Commission will determine whether it is necessary or appropriate in the public interest or for the protection of investors to propose amendments to its rules and regulations.

I. Introduction

As noted in the Concept Release, the Commission is interested in obtaining the views of the public on a variety of issues pertaining to the safe harbor. The Commission expects that each witness will deliver a brief statement. Following that testimony, members of the Commission and its staff may pose questions to each witness concerning his or her testimony as well as other matters raised in the Concept Release.

II. Schedule of Appearances

The Commission has designated Jonathan G. Katz, Secretary, as the hearing officer of the Commission. The Commission will issue orders designating additional hearing officers as necessary. The schedules of appearances for both hearings are presented below.

A. The Washington Hearings

Monday, February 13, 1995

10:00 am: Secretary Robert B. Reich—United States Department of Labor

11:00 am:

Bespeaks Caution Proposal

Professor John C. Coffee, Jr.—Columbia University in the City of New York School of Law

Heightened Definition Proposal

Mr. James P. Melican—Chairman,

National Association of Manufacturers Corporate Finance and Management Committee, Executive Vice President Legal and External Affairs, International Paper

Seasoned Issuer Proposal

Mr. Christopher J. Murphy III, Chairman, Association of Publicly Traded Companies, to be accompanied by Mr. Brian T. Borders, President, Association of Publicly Traded Companies

Reasonable Basis In Fact Proposal

National Association of Securities and Commercial Law Attorneys—[witness to be named].

Opt-in Proposal

Harvey Pitt, Esquire—Fried, Frank, Harris, Shriver & Jacobson

Disimplication Theory

Professor Joseph Grundfest, Stanford University School of Law

1:00 pm: Break
1:30 pm: Professor Joel Seligman, University of Michigan Law School, Carl Schneider, Esq., Wolf Block Schorr & Solis-Cohen, Securities Registration Standing Committee of the Association of the Bar of the City of New York—[witness to be named]
2:00 pm: North American Securities Administrators Association—[witness to be named]
2:30 pm: New York Stock Exchange [witness to be named], American Stock Exchange—Mr. James F. Duffy, Executive Vice President and General Counsel, National Association of Securities Dealers—Mr. Joseph R. Hardiman, President and Chief Executive Officer.
3:15 pm: Bell Atlantic Corporation, Mr. P. Alan Bulliner, Vice President, Corporate Secretary and Counsel, MCI Corporation, Mr. John R. Worthington, Senior Vice President and General Counsel, Legent Corporation, Mr. John Burton, President, Storage Technology Corporation, Richard Bland, Esq., Deputy General Counsel
4:00 pm: American Institute of Certified Public Accountants—Mr. Phillip B. Chenok, President and Richard Miller Esq., General Counsel, Price Waterhouse LLP, Mr. Arthur Siegel, Vice Chairman, Audit and Business Advisory Services, to be accompanied by Andrew J. Pincus Esq., Mayer, Brown and Platt
4:45 pm: United Brotherhood of Carpenters, Mr. Edward Durking, Director Special Programs Department, International Brotherhood of Teamsters, Mr. Bartlett Nayor, National Coordinator Office of Corporate Affairs
5:15 pm: State of Connecticut, Christopher Burnham, Treasurer

Tuesday, February 14, 1995

10:00 am: American Electronics Association—[witnesses to be named], Manufacturers Alliance, Mr. Francis W. Homan, Jr., Vice President and Secretary, Business Software Alliance—[witness to be named], Software Publishers Association—[witness to be named]
11:00 am: Business Roundtable—Mr. John A Georges, Chairman of the Corporate Governance Task Force and Chairman and CEO of International Paper, to be accompanied by Joseph McLaughlin, Esquire, Brown & Wood
11:30 am: National Venture Capitalists Association
11:45 am: Association for Investment Management and Research, Mr. Tom Moore, CFA, Chair, Corporate Information Committee and Senior Vice President, State Street Research and Management Co., National Investor Relations Institute, Mr. Louis M. Thompson, Jr., President and CEO
12:20 pm: University of Michigan School of Business Administration, Douglas Skinner The Conference Board, Dr. Carolyn Brancato, Research Director, Corporate Governance

B. The San Francisco Hearings

Thursday, February 16, 1995

10:00 am: Disimplication Theory Professor Joseph Grundfest, Stanford University School of Law

Seasoned Issuer Proposal

Mr. George Kadonada, Vice-Chairman, Association of Publicly Traded Companies, to be accompanied by Mr. Brian T. Borders, President, Association of Publicly Traded Companies

Reasonable Basis in Fact Proposal

National Association of Securities and Commercial Law Attorneys—(witness to be named later), Bruce Alan Mann, Esquire, Morrison & Foerster
11:30 am: Software Publishers Association—(witness to be named), Software Industry Coalition(witness to be named), ITAA—Douglas C. Jerger, Vice-President American Software Association
12:30 pm: Break
1:30 pm: California Public Employees' Retirement System, Ms. Kayla J. Gillan, Assistant General Counsel
2:00 pm: Western Association of Venture Capitalists, Mr. Authur Patterson, Accel Partners, Mr. Douglas Carlisle, Menlo Ventures, Mr. Philip Gianos, InterWest Partners
2:45 pm: Hewlett-Packard, Robert P. Wayman, Executive Vice President Finance and Administration/Chief Financial Officer
3:00 pm: Sybase, Inc., Michael Engelhardt, Vice President of External Affairs
3:15 pm: Motorola—(witness to be named)
3:30 pm: BankAmerica, Michael J. Halloran, Executive Vice President and General Counsel

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[Release No. 34–35310; File No. SR–Amex–95–01]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by American Stock Exchange, Inc. Relating to an Extension of Its Pilot Program Which Permits Specialists To Grant Stops in a Minimum Fractional Change Market

January 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 11, 1995, the American Stock Exchange, Inc. (''Amex'') or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex requests a four month extension of a pilot program which amended Exchange Rule 109 to permit a specialist, upon request, to grant stops in a minimum fractional change market.[3] The text of the proposed rule

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] The Amex received approval to amend Rule 109, on a pilot basis, in Securities Exchange Act Release No. 30603 (April 17, 1992), 57 FR 15340 (April 27, 1992) (File No. SR–Amex–91–05) (''1992 Approval Order''). The Commission subsequently extended the Amex's pilot program in Securities Exchange Act Release Nos. 32185 (April 21, 1993), 58 FR 25681 (April 27, 1993) (File No. SR–Amex–93–10) (''April 1993 Approval Order''); 32664 (July 21, 1993), 58 FR 40171 (July 27, 1993) (File No. SR–Amex–93–22) (''July 1993 Approval Order''); and

change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 21 1994, the Commission extended its pilot approval of amendments to Exchange Rule 109 until March 21, 1995.[4] The amendments permit a specialist, upon request, to grant a stop [5] in a minimum fractional change market [6] for any order of 2,000 shares or less, up to a total of 5,000 shares for all stopped orders, provided there is an order imbalance, without obtaining prior Floor Official approval. A Floor Official, however, must authorize a greater order size or aggregate share threshold.

During the course of the pilot program, the Exchange has closely monitored compliance with the rule's requirements; analyzed the impact on orders on the specialist's book resulting from the execution of stopped orders at a price that is better than the stop price; and reviewed market depth in a stock when a stop is granted in a minimum fractional change market. The Exchange believes that the amendments to Rule 109 have provided a benefit to investors by providing an opportunity for price improvement, while increasing market depth and continuity without adversely affecting orders on the specialist's book. The Exchange's findings in this regard have been forwarded to the Commission under separate cover.

The Exchange is therefore proposing a four month extension of the pilot program which amended Rule 109.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendments to Rule 109 are consistent with these objectives in that they are designed to allow stops, in minimum fractional change markets, under limited circumstances that provide for the possibility of price improvement to customers whose orders are granted stops.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 Amex. All submissions should refer to File No. SR–Amex–95–01 and should be submitted by February 28, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) [7] and Section 11(b) [8] of the Act. The Commission believes that the amendments to Rule 109 should further the objectives of Section 6(b)(5) and Section 11(b) through pilot program procedures designed to allow stops, in minimum fractional change markets, under limited circumstances that provide the possibility of price improvement to customers whose orders are granted stops.[9]

In its orders approving the pilot procedures,[10] the Commission asked the Amex to study the effects of stopping stock in a minimum fractional change market. Specifically, the Commission requested information on (1) the percentage of stopped orders executed at the stop price, versus the percentage of such orders that received a better price; (2) whether limit orders on the specialist's book were bypassed due to the execution of stopped orders at a better price (and, to this end, the Commission requested that the Amex conduct a one-day review of all book orders in the ten stocks receiving the greatest number of stops); (3) market depth, including a comparison of the size of stopped orders to the size of the opposite side of the quote and to any quote size imbalance, and an analysis of the ratio of the size of the bid to the size of the offer; and (4) specialist compliance with the pilot program's procedures.

The Exchange has submitted to the Commission several monitoring reports regarding the amendments to Rule 109. The Commission believes that, although these monitoring reports provide certain useful information concerning the operation of the pilot program, the Commission must conduct further

33791 (March 21, 1994), 59 FR 14432 (March 28, 1994) (File No. SR–Amex–93–47) (''1994 Approval Order''). Commission approval of these amendments to Rule 109 expires on March 21, 1995. The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program to continue without interruption. See letter from Linda Tarr, Special Counsel, Legal & Regulatory Policy Division, Amex, to Glen Barrentine, Senior Counsel, Division of Market Regulation, SEC, dated January 31, 1995.

[4] See 1994 Approval Order, *supra,* Note 3.

[5] When a specialist agrees to a floor broker's request to ''stop'' an order, the specialist is obligated to execute the order at the best bid or offer, or better if obtainable. See Amex Rule 109(a).

[6] Amex Rule 127 sets forth the minimum fractional changes for securities traded on the Exchange.

[7] 15 U.S.C. 78f (1988).

[8] 15 U.S.C. 78k (1988).

[9] For a description of Amex procedures for stopping stock in minimum fractional change markets, and of the Commission's rationale for approving those procedures on a pilot basis, see 1992 Approval Order, *supra,* note 3. The discussion in the aforementioned order is incorporated by reference into this order.

[10] See *supra,* note 3.

analysis of the Amex data and, in particular, of Rule 109's impact on limit orders on the specialist's book, before it can consider permanent approval thereof. To allow the Commission fairly and comprehensively to evaluate the Amex's use of its pilot procedures, without compromising the benefit that investors might receive under Rule 109, as amended, the Commission believes that it is reasonable to extend the pilot program until July 21, 1995.

First, the Amex's latest monitoring report indicates that approximately half of orders stopped in minimum fractional change markets received price improvement. The Commission, therefore, believes that the pilot procedures provide a benefit to certain investors by offering the possibility of price improvement to customers whose orders are granted stops in minimum fractional change markets. According to the Amex report, moreover, nearly all stopped orders were for 2,000 shares or less. In this respect, the amendments to Rule 109 should mainly affect small public customer orders, which the Commission envisioned could most benefit from professional handling by the specialist.

Second, the Amex states that the amendments to Rule 109 have not adversely affected customer limit orders existing on the specialist's book.[11] This conclusion is based on the Exchange's review of limit orders on the opposite side of the market at the time a stop was granted pursuant to this pilot program. As part of its one-day review of the ten stocks receiving the greatest number of stops, the Amex determined how often book orders which might have been entitled to an execution had the order not been stopped, in fact, were executed at their limit price by the close of the day's trading.[12] In addition to aggregated data, the Amex provided a detailed breakdown of the disposition of each order.

The Commission historically has been concerned that book orders may get bypassed when stock is stopped, especially in a minimum fractional change market.[13] Based on the Amex's prior experience, the Commission did not have sufficient grounds to conclude that this long-standing concern had been alleviated. The Commission acknowledges, however, that Amex's recent monitoring reports provide new information on this aspect of the pilot program. As a result, the Commission finds that additional time is necessary for the Commission to review such information and to ensure that Rule 109, as amended, does not harm public customers with limit orders on the specialist's book.

In terms of market depth, the Amex's monitoring report suggests that stock tends to be stopped in minimum fractional change markets where there is a significant disparity (in both absolute and relative terms) between the number of shares bid for and the number of shares offered.[14] That report also suggests that, given the depth of the opposite side of the market, orders affected by the Rule 109 pilot tend to be relatively small.[15] The Amex repeatedly has stated, both to the Commission [16] and to its members,[17] that specialists can only stop stock in a minimum fractional changed market when (1) an imbalance exists on the opposite side of the market and (2) such imbalance is of sufficient size to suggest the likelihood of price improvement.[18]

In the Commission's opinion, the Amex data generally supports its conclusions regarding market depth. The Commission continues to believe that the requirement of a sufficient market imbalance is a critical aspect of the pilot program.[19] When properly applied, such a requirement should help the Amex ensure that stops are only granted in a minimum fractional change market when the benefit (*i.e.*, price improvement) to orders being stopped far exceeds the potential of harm to orders on the specialist's book.[20]

Finally, the Amex report describes its efforts regarding compliance with the pilot procedures. To alleviate confusion about how to evidence Floor Official approval (which, as noted above, a specialist must obtain to stop any order for more than 2,000 shares, or a total of more than 5,00 shares for all stopped orders), the Exchange has developed new manual and automated reports, which serve as a written audit trail for surveillance purposes. As a result, the Commission believes that the Amex has sufficient means to determine whether a specialist complied with the amendments' order size and aggregate share thresholds and, if not, whether Floor Official approval was obtained for larger parameters. The Commission also notes the Amex's ongoing effort to keep its specialists properly informed about the pilot program's requirements. In this context, the Amex has distributed Information Circulars,[21] and held continuing educational sessions on the pilot program and its requirements for stopping stock in minimum fractional change markets. The Commission would expect the Amex to take appropriate action in response to any instance of specialist non-compliance with Rule 109's procedures.

During the pilot extension, the Commission requests that the Exchange continue to monitor the effects of stopping stock in a minimum fractional change market and to provide additional information where appropriate. Moreover, if the Exchange determines to request permanent approval of the pilot program or an extension thereof beyond July 21, 1995, the Amex should submit to the Commission a proposed rule change by April 1, 1995.

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[11] When stock is stopped, book orders on the opposite side of the market that are entitled to immediate execution lose their priority. If the stopped order then receives an improved price, limit orders at the stop price are bypassed and, if the market turns away from that limit, may never be executed.

As for book orders on the same side of the market as the stopped stock, the Commission believes that Rule 109's requirements make it unlikely that these limit orders would not be executed. Under the Amex's pilot program, an order can be stopped only if a substantial imbalance exists on the opposite side of the market. See *infra*, text accompanying notes 14–20. In those circumstances, the stock would probably trade away from the large imbalance, resulting in execution of orders on the book.

[12] Beyond the one-day review, the Amex could make this determination only for those stocks in which the electronic display book had been implemented. For other stocks, the Amex determined how often an equivalent volume (*i.e.*, the same number of shares as the stopped order) was executed at the opposite side's limit price by the close of the day's trading.

[13] *See, e.g.*, SEC, Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt. 2 (1963).

[14] There is a direct relationship between such a quote size imbalance and the likelihood of price improvement. A large imbalance on one side of the market suggests that subsequent transactions will take place on the other side. In those circumstances, it could be appropriate to grant a stop, since the delay might allow the specialist to execute the order at a better price for the customer.

[15] A relatively large order might begin to counteract the pressure the imbalance on the opposite side of the market is putting on the stock's price. Accordingly, it might not be as appropriate to stop such an order.

[16] See letter from Claire P. McGrath, Senior counsel, Legal & Regulatory Policy Division, Amex, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated January 6, 1992 (Amendment No. 1 to File No. SR–Amex–91–05). Amendment No. 1 formally incorporated the requirement that the indicia of market depth discussed below must, without exception, be satisfied before a specialist is permitted to stop stock in a minimum fractional change market.

[17] See Amex Information Circular Nos. 92–74 (April 24, 1992) and 93–333 (April 7, 1993).

[18] For further discussion of the relationship between quote size imbalance and the likelihood of price improvement, see *supra* note 14.

[19] In extending a comparable pilot program on the New York Stock Exchange, the Commission placed similar emphasis on the critical nature of the sufficient size standard when stopping stock in minimum fractional change markets. See Securities Exchange Act Release No. 33791 (March 21, 1994), 59 FR 14437 (March 28, 1994) (File No. SR–NYSE–94–06).

[20] See *supra*, text accompanying notes 11–13.

[21] See *supra*, note 17.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[22]

It is therefore ordered, pursuant to Section 19(b)(2),[23] that the proposed rule change (SR–Amex–95–01) is hereby approved until July 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–2971 Filed 2–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35300; File No. SR–CBOE–94–46]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Amendments to the Minor Rule Violation Fine Plan

January 31, 1995.

On November 21, 1994, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain provisions of CBOE Rule 17.50, ''Imposition of Fines for Minor Rule Violations.''

Notice of the proposed rule change appeared in the **Federal Register** on December 5, 1993.[3] No comments were received on the proposal.[4]

The CBOE proposes to amend CBOE Rule 17.50 to (1) extend the ''lookback period'' for determining certain sanctions; (2) limit the number of transactions for which a member may request verification; (3) clarify appeal procedures; (4) provide for the waiver of certain fees for appeals; (5) conform procedures for requests for review under CBOE Rule 17.50 with other CBOE rules; and (6) clarify certain provisions of the rule.

Specifically, the Exchange proposes to (1) amend CBOE Rule 17.50(g)(4) to extend from nine to 18 months the ''lookback period'' for failure to submit accurate trade information pursuant to CBOE Rule 6.51, ''Reporting Duties;'' and (2) amend CBOE Rule 17.50(g)(5) to create an 18-month ''lookback period'' for failure to submit trade information to the price reporter pursuant to CBOE Rule 6.51. The Exchange also proposes to amend CBOE Rule 17.50(g)(6) to provide that the maximum fine authorized under the Exchange's trading and decorum policies may be imposed for a first or second offense if warranted under the circumstances in the view of the Floor Officials Committee.

The CBOE proposes to amend Exchange Rule 17.50, Interpretation and Policy .03 to impose a cap on the number of transactions during a particular month for which a member fined more than twice in an 18-month period for failure to submit accurate trade information or failure to submit trade information to the price reporter may request verification. Under Interpretation and Policy .03, as amended, a member fined more than twice in an 18-month period may request verification of the greater of 50 transactions during a month or 10% of the number of transactions deemed not to be in compliance with CBOE Rule 6.51.

The CBOE also proposes several amendments to revise the procedures applicable to the appeal and review of fines imposed under CBOE Rule 17.50. First, the CBOE proposes to amend Exchange Rule 17.50(c)(1) to state explicitly the rights of members fined under the rule. The CBOE also proposes to add paragraph (d)(1) to clarify the procedures applicable to appeals from fines imposed for trading conduct and decorum violations to note that, among other things, a person fined for such violations may contest the Exchange's determination by filing a written application with the Secretary of the Exchange pursuant to CBOE Rule 19.2, ''Submission of Application to Exchange,'' and that a hearing, if requested, will be conducted in accordance with the provisions of CBOE Rules 19.3, ''Procedure Following Applications for Hearing,'' and 19.4, ''Hearing.'' Under paragraph (d)(2), the Appeals Committee may waive the forum fee if the Appeals Committee finds that the person charged is guilty of one or more of the rule violations alleged and the sole disciplinary sanction imposed by the Appeals Committee is a fine which is less than the total fine initially imposed by the Exchange.

In addition, the CBOE proposes to amend CBOE Rule 17.50(c) to provide the Exchange's Business Conduct Committee (''BCC'')[5] and the Appeals Committee with the discretion to waive the forum fee provided for if the applicable committee finds that the person charged is guilty of one or more of the rule violations alleged and the sole disciplinary sanction imposed is a fine which is less than the total fine initially imposed by the Exchange. The CBOE believes that this amendment will lead to a more equitable resolution of certain appeals under CBOE Rule 17.50 in situations where the committees believe that a waiver of the forum fee is warranted; such situations arise, for example, when a fine is reduced on appeal.

The CBOE also proposes to amend CBOE Rule 17.50(c)(3) and to add (d)(3) to make the procedures applicable to requests by the Board of Directors (''Board'') for review by the Board of determinations of the Appeals Committee under CBOE Rule 17.50 consistent with the procedures applicable to similar requests regarding other decisions of these committee as provided in CBOE Rules 17.10(c) and 19.5(a).

Finally, the CBOE proposes a nonsubstantive change to clarify CBOE Rule 17.50(g)(1), ''Violation of position limit rules,'' by deleting a potentially confusing reference to CBOE Rule 24.4, ''Position Limits for Broad-Based Index Options.'' Currently, CBOE Rule 17.50(g)(1), which applies to violations of all of the Exchange's position limit rules, only specifically references CBOE

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[22] No comments were received in connection with the proposed rule change which implemented these procedures. See 1992 Approval Order, *supra,* note 3.

[23] 15 U.S.C. 78s(b)(2) (1988).

[24] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1998).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35014 (November 28, 1994), 59 FR 62429 (December 5, 1994).

[4] On January 10, 1995, the CBOE amended its proposal to provide that fines imposed pursuant to CBOE Rule 17.50(b)(7) are subject to review by the Exchange's Appeals Committee. *See* Letter from Arthur B. Reinstein, Attorney, CBOE, to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission, dated January 9, 1995 (''Amendment No. 1''). CBOE Rule 17.50(g)(7) establishes a fine schedule for failures to submit trade data on the trade date. *See* order approving File No. SR–CBOE–94–50.

[5] The BCC has decision-making authority concerning possible violations within the disciplinary jurisdiction of the Exchange. The BCC reviews CBOE staff investigatory reports and issues statements of charges, accepts or rejects offers of settlement and letters of consent, holds hearings and conducts summary proceedings, serves written decisions on the parties to proceedings, and, when appropriate, imposes sanctions, including expulsions, suspensions, fines, censures, and other fitting sanctions.

Rules 4.11, ''Position Limits,'' and 24.4(a), and does not specifically reference the other CBOE rules which determine compliance with CBOE Rule 4.11, the Exchange's general rule governing position limits.[6] Although the CBOE states that this is not technically incorrect—because all position limit violations, no matter what type of option they relate to, are violations of CBOE Rule 4.11—the current references are potentially confusing. Therefore, to eliminate potential confusion, the CBOE proposes to delete the reference to CBOE Rule 24.4(a), so that CBOE Rule 17.50(g)(1), as amended, will refer only to CBOE Rule 4.11.

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(1) and 6(b)(7), in particular, in that it enhances the effectiveness and fairness of the Exchange's disciplinary procedures.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)(5), 6(b)(6), and 6(b)(7).[7] Section 6(b)(6) of the Act requires that the rules of the Exchange provides that its members be appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the Exchange's rules. As noted above, the CBOE proposes to amend CBOE Rule 17.50 to (1) extend to 18 months the ''lookback period'' for failure to submit accurate trade information pursuant to CBOE Rule 6.51;[8] (2) create an 18-month ''lookback period'' for failure to submit trade information to the price reporter pursuant to CBOE Rule 6.51;[9] and (3) provide that the maximum fine authorized under the Exchange's trading and decorum policies may be imposed for a first or second offense if the Floor Officials Committee believes that such action is warranted. The Commission believes that these amendments to CBOE Rule 17.50 will provide for prompt, effective and appropriate discipline of CBOE Rule 6.51 and of the Exchange's trading and decorum policies.

In addition, the Commission notes that the current fine schedules provided in CBOE 17.50 for violations of CBOE rule 6.51 are graduated to account for repeat offenders and that allowing the Exchange to create 18-month ''lookback periods'' is consistent with the existing framework of graduated fines and may increase the CBOE's ability to deter repeat offenders. By encouraging market makers and floor brokers to submit accurate trade information and to submit information to the price reporter, the proposal should enhance the accuracy of the CBOE's audit trails and, in turn, protect investors and the public interest by helping the CBOE to enforce compliance by its members with the federal securities laws and the CBOE's rules.

The Commission also believes that it is reasonable for the CBOE to amend CBOE Rule 17.50, Interpretation and Policy .03 to limit the number of transactions during a month for which a member fined more than twice during an 18-month period under CBOE Rule 17.50(g)(4) or (g)(5) may request verification of the fine. Specifically, under the proposal, if a member receives three or more such fines during an 18-month period he will be permitted to request verification of the greater of 50 transactions or 10% of the number of transactions deemed not to be in compliance with CBOE Rule 17.50(g)(4) or 17.50(g)(5). The proposed cap will apply separately to fines imposed under CBOE Rules 17.50(g)(4) and 17.50(g)(5).

The Commission believes that the proposal to amend CBOE Rule 17.50, Interpretation and Policy .03 to limit the number of transactions during a particular month for which a member may request verification strikes a reasonable balance between providing CBOE members with a reasonable opportunity to request verification of fines imposed for failure to submit accurate trade information or failure to submit trade information to the price reporter and limiting the administrative burden associated with verification of the transactions. In this regard, the CBOE states that the majority of verification requests involve the review of between 30 and 150 transactions and that the Exchange has had to devote an increasing amount of CBOE staff time and resources to processing the verification requests. According to the CBOE, the proposed cap will affect a small percentage of the members requesting verification and will materially reduce the total number of transactions that will be reviewed by the Exchange's surveillance staff.

At the same time, the Commission believes that the proposed amendment to CBOE Rule 17.50, Interpretation and Policy .03 does not compromise members' rights to fair procedures in CBOE disciplinary proceedings. Specifically, the Commission notes that the limit on verification requests does not apply to members who receive less than three fines for violations of either CBOE Rule 17.50(g)(4) or 17.50(g)(5) during an 18-month period and that the proposal limits, but does not eliminate, a member's ability to request verification of transactions during a particular month. In addition, the Commission notes that a member fined under CBOE Rule 17.50 may contest the fine imposed pursuant to CBOE Rule 17.50 through the submission of a written answer as provided in CBOE Rule 17.5, ''Answer,'' when the matter will become subject to review by the Exchange's BCC.[10]

The Commission believes that it is reasonable for the CBOE to amend CBOE Rule 17.509c)(1) to state explicitly the right of members fined under CBOE Rule 17.50, including members who receive fines exceeding $2,500 for trading conduct and decorum policy violations, to contest the Exchange's determination by filing an answer under CBOE Rule 17.5. In addition, the Commission believes that it is reasonable for the Exchange to add paragraph (d) to CBOE Rule 17.50, which specifies the procedures applicable to appeals of trading conduct and decorum policy violation fines not exceeding $2,500 imposed pursuant to CBOE Rule 17.50(g)(6) and fines imposed pursuant to CBOE Rule 27.50(g)(7).[11]

The Commission believes that the amendments to CBOE Rule 17.50(c) and addition of paragraph (d) clarify the appeal procedures available to members fined under CBOE Rule 17.50, thereby helping to ensure that the Exchange provides fair procedures for the disciplining of members, consistent with Section 6(b)(7) of the Act. The Commission believes that right to appeal sanctions imposed under CBOE Rule 17.50 will help to safeguard the procedural rights of sanctioned persons while preserving the Exchange's ability to adjudicate minor rule violations in a timely and efficient manner through the process established in CBOE Rule 17.50.

In addition, the Commission believes that it is reasonable for the Exchange to amend its rules to provide BCC and the

[6] Other CBOE position limit rules which establish ways to determine compliance with CBOE Rule 4.11 with respect to particular types of options include CBOE Rule 24.A, ''Position Limits for Industry Options,'' CBOE Rule A.7, ''Position Limits'' (Flexible Exchange Options), CBOE Rule 21.3, ''Position Limits'' (Treasury Bonds and Notes), and CBOE Rule 23.3, ''Position Limits'' (interest rate options).

[7] 15 U.S.C. 78f(b)(5), (6), and (7) (1988).

[8] *See* CBOE Rule 17.50(g)(4).

[9] *See* CBOE Rule 17.50(g)(5).

[10] See CBOE Rule 17.50(c).

[11] See Amendment No. 1, *supra* note 4.

Appeals Committee with the discretion to waive the forum fee established in CBOE Rule 17.50 if the BCC or the Appeals Committee determines that the person charged is guilty of one or more of the rule violations alleged and the sole disciplinary sanction imposed by the BCC or the Appeals Committee is a fine which is less than the total fine initially imposed for the violation. By allowing the BCC and the Appeals Committee to waive the forum fees, the Commission believes that the proposal should enhance the fairness of the CBOE 's disciplinary system and help to ensure that appropriate and equitable discipline is imposed under CBOE Rule 17.50.

The Commission believes that it is reasonable for the Exchange to amend CBOE Rule 17.50 to provide that the Exchange department which commenced an action under CBOE Rule 17.50, the person charged, the President of the Exchange, and the Board may require a review by the Board of any determination of the Appeals Committee under CBOE Rule 17.50 by proceeding in the manner provided in CBOE Rule 19.5, ''Review.'' The Commission notes that the provision is similar to the current CBOE rule governing requests for review of BCC determinations.

Finally, the Commission believes that the CBOE's proposal to make nonsubstantive changes to CBOE Rule 17.50(g)(1) is consistent with the Act because it is designed to clarify the rule.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to establish procedures applicable to appeals of fines imposed pursuant to CBOE Rule 17.50(g)(7). By providing members with a means to appeal such fines, the Commission believes that the procedures set forth in Amendment No. 1 should help to ensure that fines are imposed fairly under CBOE Rule 17.50(g)(7). Accordingly, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 on an accelerated basis.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–CBOE–94–46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–2907 Filed 2–6–95; 8:45 am]

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[12] 15 U.S.C. 78s(b)(2) (1982).

[13] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35314; File No. SR–NASD–94–10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Procedures for Large and Complex Arbitration Cases

February 1, 1995.

On January 31, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'')[1] a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2], and Rule 19b–4 thereunder.[3] The rule change amends the Code of Arbitration Procedure (''Code'')[4] by amending Part III, Sections 43[5] and 44[6] and adding new Section 46 to provide procedures for large and complex arbitration cases as a one year pilot program.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 34998, Nov. 22, 1994) and by publication in the **Federal Register** (59 FR 61010, Nov. 29, 1994). Two comment letters were received.[7] This order approves the proposed rule change.

I. Background

The Code governs arbitration of any dispute arising out of or in connection with the business of any NASD member, or arising out of the employment or termination of employment of associated persons with a member, other than disputes involving the insurance business of any member which is also an insurance company, if the dispute is: (1) Between or among members; (2) between or among members and associated persons; (3) between or among members of associated persons and public customers, or others; or (4) between or among members, registered clearing agencies with which the NASD has entered into an agreement to use the NASD's arbitration facilities and procedures, and participants, pledges or other persons using the facilities of a registered clearing agency.[8]

The Code contains specialized procedures for certain categories of cases. Part II of the Code[9] contains procedures applicable solely to industry and clearing controversies. Section 13 of the Code[10] contains certain specialized procedures applicable to controversies involving public customers and associated persons or members if these controversies involve a dollar amount not exceeding $10,000.

The NASD submitted this rule change because it believes that certain large and complex cases may require special management beyond that currently afforded by the Code. Therefore, the NASD is adding new Section 46 to the Code setting forth procedures for handling and managing large and complex cases. In part, some of the procedures contain certain features of rules adopted by the American Arbitration Association (''AAA'') for processing large and complex cases. Section 46 also contains certain features of the arbitration rules of the National Futures Association. Many of the procedures in Section 46 also are provided elsewhere in the Code; however, the NASD believes that grouping these procedures together in a

[1] The NASD initially submitted the proposed rule change on February 15, 1994. Amendment No. 1, submitted on October 12, 1994, clarified various aspects of the proposed rule change, altered the manner in which arbitrators are selected to a panel and altered the disclosures required with respect to unsuccessful settlement discussions. Amendment No. 2, submitted on November 18, 1994, amended proposed Section 46(g) to clarify that arbitrators may, at their own initiative, issue an award accompanied by a statement of reasons or basis of award and that parties may specifically agree to require arbitrators to issue a statement of reasons when they issue an award. Amendment No. 3, submitted on December 12, 1994, and Amendment No. 4 were minor technical amendments. See Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark Barracca, Branch Chief, Over-the-Counter Regulation, SEC (December 9, 1994) (available in Commission's Public Reference Room); Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark Barracca, Branch Chief, Over-the-Counter Regulation, SEC (January 31, 1994) (available in Commission's Public Reference Room).

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4.

[4] NASD Manual, Code of Arbitration Procedure, (CCH) ¶¶ 3701 *et. seq.*

[5] NASD Manual, Code of Arbitration Procedure, Part III, Sec. 43 (CCH) ¶ 3743.

[6] NASD Manual, Code of Arbitration Procedure, Part III, Sec. 44 (CCH) ¶ 3744.

[7] See letter from Cliff Palefsky, Esq., Chairman, Securities Industry Arbitration Committee, National Employment Lawyers Association (''NELA''), to Jonathan G. Katz, Secretary, SEC, dated December 12, 1994 (''NELA Letter''); letter from Seth E. Lipner, Esq., Deutsch & Lipner, to Jonathan G. Katz, Secretary, SEC, dated December 22, 1994 (''Lipner Letter'').

[8] NASD Manual, Code of Arbitration Procedure, Part I, Sec. 1 (CCH) ¶ 3701.

[9] NASD Manual, Code of Arbitration Procedure, Part II, Secs. 8–11 (CCH) ¶ 3708–3711.

[10] NASD Manual, Code of Arbitration Procedure, Part III, Sec. 13 (CCH) ¶ 3713.

single section serves to emphasize the utility of these procedures for large and complex cases.

The NASD stated that the procedures are intended to encourage the parties to come to an agreement on the rules that will govern the disposition of the matter. Under new Section 46, all cases that are eligible for the procedures contained in that Section will be scheduled for an administrative conference in order to determine whether the parties can agree on ways in which the case should be administered. Beyond the mandatory administrative conference, however, all parties to an eligible matter must agree to continue with a proceeding under the provisions of Section 46; otherwise, the Code provisions generally applicable to arbitration matters will govern the proceeding. The NASD stated that most of the provisions of the proposed rules will allow the parties to adopt an alternative procedure of their own creation if they can agree on such procedures.

Section 46 includes procedures for an administrative conference, the appointment of arbitrators, and a preliminary hearing. The provisions of the rule change are described in more detail below.

Finally, the rule change is a one year pilot program. It will remain in effect for cases filed within one year from the date of effectiveness (ninety days after the date of this order) unless the NASD Board of Governors authorizes and the Commission approves its modification or extension. During the pilot program the NASD will monitor the implementation and utility of the rule change in order to determine whether to add it permanently to the Code.

II. Substantive Provisions

A. Fees

Sections 43 and 44 of the Code, which specify the schedule of fees for customer disputes and industry disputes, respectively, have been amended to add subsections specifying that the fees and deposits for matters submitted for arbitration under the large and complex case rules shall be the fees and deposits otherwise specified for claims over $5,000,000. As discussed further below in Section D., parties may be assessed additional fees to compensate arbitrators. Parties may condition their acceptance of the large and complex case rules on an agreement with the NASD governing these fees.

B. Applicability

Section 46(a) specifies that the procedures for large and complex cases will be applicable to disputes, claims or controversies (''eligible matters'') in which the claim or counterclaim is at least $1 million, including punitive or exemplary damages, but exclusive of interest costs or fees, or in other cases in which the parties agree that the matter should be subject to the procedures. This provision permits parties with claims of less than $1 million to have their matter heard pursuant to these procedures if, in their judgment, it would be advantageous to do so.

Section 46(a) requires an eligible matter to be scheduled for an administrative conference. As noted above, unless all parties agree, the large and complex case rules will not govern arbitration of the matter following the administrative conference. The procedures for an administrative conference, discussed in detail below, bring the parties together to consider the various issues involved in managing the matter and to determine if any agreement can be reached on such issues. If the parties fail to agree on procedures, they are not required to continue under the large and complex case rules; the rules are not intended to apply to cases if a party does not wish for them to apply. In order to assist parties in deciding whether to proceed under the large and complex case rules, the NASD will provide all parties with an educational pamphlet.[11] The pamphlet will discuss issues that parties should address in a written document prior to submitting a matter for resolution under the large and complex case rules, including, among other issues, arbitrator selection and compensation, discovery and whether an award will include a statement of reasons. Thus, the rule change does not permit a selection of the large and complex case rules in a predispute arbitration agreement. Rather, it specifically provides that any agreement to proceed under such rules will be made at or after an administrative conference.

If all parties agree to continue the proceedings under the large and complex case rules, Subsection (a) provides that the agreement becomes binding on the parties once the last arbitrator is appointed. This requirement reflects the NASD's view that parties devote substantial resources to formulate procedures to govern a particular matter. In addition, substantial effort and commitment is required to appoint arbitrators. A party could be severely disadvantaged if it devoted time and resources to arbitrating a matter under the large and complex case rules, only to confront unilateral rejection of the agreed-upon procedures later in the process.

In this regard, the NASD has stated that if, at any point after such an agreement under Section 46 (a)(2) and (a)(3) becomes binding, a member of the NASD or an associated person refuses to proceed with the arbitration of the matter and, instead seeks to dismiss the action and refile it in court, another arbitration forum, or with the NASD as an ordinary arbitration action, the NASD would regard this action as a violation of the member's obligation to arbitrate such matters under the Code subjecting the member of associated person to potential disciplinary action. Further, the NASD has stated that any failure by any party to proceed after the agreement becomes binding may be addressed under various provisions of the Code which permit the arbitrators to issue orders, penalize parties and make awards without the attendance or participation of a party.[12]

C. Administrative Conference

Section 46(b) provides for an administrative conference of the parties to an eligible matter to discuss, among other things, the claim and amount in dispute, arbitrator preferences, procedures, discovery, scheduling and settlement. In its filing with the Commission, the NASD indicated that this provision is intended to bring the parties together to air and discuss all issues related to the arbitration, to exchange information on procedural and scheduling matters, and to reach agreement on as many procedural and scheduling issues as possible in order to facilitate the orderly and expeditious resolution of the matter. The filing notes that if it becomes apparent that one or more parties are not amenable to proceeding under the large and complex case rules, the administrative conference will have served its purpose and the matter may proceed under the other provisions of the Code.

The NASD expects that parties will have reviewed the NASD's pamphlet before the administrative conference. Among the topics to be addressed in the pamphlet are the issues that parties should address in a written agreement under Section 46 (a)(2) and (a)(3) prior to submitting a matter for resolution under the large and complex case rules,

[11] See letter dated October 12, 1994, to Mark Barracca, Esq., Branch Chief, SEC, from Suzanne E. Rothwell, Associate General Counsel, NASD (''NASD Letter'').

[12] See *e.g.*, NASD Manual, Code of Arbitration Procedure, Part III, Secs. 29, 32, 33 and 35 (CCH) ¶¶3729, 3732, 3733 and 3735.

including: (1) Arbitrator selection; (2) additional fees for arbitrator compensation; (3) whether the parties will use the prehearing discovery rules included in these large and complex case rules, whether they will use the prehearing discovery rules elsewhere in the Code, or some other prehearing procedures; and (4) whether the parties are contracting for the arbitrators to provide a written statement of reasons. The pamphlet also will disclose that, if the parties fail to address any of these issues, the issues may need to be resolved by the arbitration department or the arbitrators, as appropriate under the assignment of responsibilities under the large and complex case rules and other Code provisions. The pamphlet also will highlight the fact that a significant feature of the large and complex rules is that arbitrators are authorized to dismiss the case, or any part of it, on the written submissions of the parties without any oral hearing.

D. Appointment of Arbitrators

Section 46(c) provides for the appointment of a panel of three arbitrators to hear eligible matters. At least one arbitrator must be an attorney.

The NASD intends to establish a pool of separately qualified arbitrators to hear many of the cases under the large and complex case rules.[13] The NASD also indicated that it will also draw from its regular pool of arbitrators as necessary to fill panels for eligible matters. Moreover, in order to attract arbitrators to serve on panels hearing eligible matters, Section 46 contains a mechanism to provide additional compensation for those arbitrators. Section 46(c)(4) provides that prior to the selection of the arbitrators, the parties may agree to pay, and that the Director of Arbitration has discretion to assess, compensation to be paid to the arbitrators by the parties in addition to the honorarium specified by the Board of Governors. The additional compensation would reflect the magnitude and complexity of the matter arbitrated under the alternate large and complex case rules. Under the provision, the amount of any such additional compensation also must be decided before the selection of the arbitrators. Section 46(a)(4) requires parties to pay arbitrator fees prior to the first hearing or the next scheduled hearing, as applicable.

Under the procedures established by the NASD, the staff member assigned to conduct the administrative conference must discuss the availability of arbitrators with the parties at the administrative conference and obtain the agreement of the parties on how to proceed if availability is a problem. The parties may, for instance, make further proceedings under the large and complex case rules contingent upon the availability of specially qualified arbitrators or upon specific compensation arrangements.

Finally, while the rules contemplate that eligible matters will be heard by panels of three arbitrators, at least one of whom is an attorney, Section 46(c)(1) permits the parties to agree to submit a matter to a single mutually acceptable arbitrator.

A panel may be appointed in one of three ways: (1) Pursuant to the usual procedures in Section 19 of the Code, if the parties cannot agree on another method; (2) pursuant to a procedure set forth in Section 46(c)(3); or (3) pursuant to a procedure agreed to by the parties.

The procedure set forth in Section 46(c)(3) provides that each party simultaneously will be provided with two lists of arbitrators: the first list will be composed of securities industry arbitrators and the second list will be composed of public arbitrators. The lists will include certain biographical information, with other information available on request. Within 20 days of the transmittal of these lists, each party may challenge peremptorily or for cause any or all arbitrators on the lists and must rank the remaining arbitrators on its lists in order of preference with ''one'' (1) indicating the most preferred arbitrator. Any party failing to challenge, rank and return the lists will be considered to have accepted all listed arbitrators.

After receiving the lists from the parties the Director of Arbitration will prepare two consolidated lists (one of public arbitrators and one of industry arbitrators) of the arbitrators by combining the parties' lists of acceptable arbitrators and consolidating the rankings. Under the provision, this is accomplished by preparing a combined list composed solely of those arbitrators acceptable to all parties and then adding the number rankings assigned by each party together to achieve a consolidated rank.

	Party A	Party B	Consolidated rank
Arbitrator #1	1	3	4
Arbitrator #2	3	2	5
Arbitrator #3	4	1	5
Arbitrator #4	2	5	7
Arbitrator #5	5	4	9

In order to ensure that a panel has at least one attorney, the Director will extend the first invitations to the highest ranking attorneys on either list. If each attorney accepts, the NASD will select the attorney who received a higher ranking from a party. Once an attorney has been named to the panel, the Director will continue to extend invitations to arbitrators in the order of their consolidated rank until the panel has been filed by the required number of public and industry arbitrators. Under the provision, if a panel cannot be appointed from the consolidated lists, the remainder of the panel will be appointed under the regular arbitration provision in Section 19 of the Code.

Finally, pursuant to Section 46(c)(3)(E), if a challenge for cause is successful after the appointment of the panel is complete, Section 46(c)(3)(E) permits the Director of Arbitration to reopen the selection process at the point where the last arbitrator was appointed and continue the process as through the challenged arbitrator had never been appointed.

E. Preliminary Hearing

Section 46(d) provides that the arbitrators will convene a preliminary hearing promptly following the appointment of the panel. Once the arbitrators convene the preliminary hearing, the Director of Arbitration will appoint a single arbitrator to preside over the preliminary hearing and the presiding arbitrator will have the power to act on behalf of the panel on any appropriate matter arising before or after the preliminary hearing. The presiding arbitrator will also have unlimited discretion to refer any such matter to the full panel for consideration. Matters which may be brought to the presiding arbitrator for resolution include: stipulations as to uncontested facts, exchanging and premarking exhibits to be offered at the hearing, and the schedule, form, scope and use of sworn statements and depositions. In addition, the presiding arbitrator may consider any other matter ripe for resolution at the prehearing stage, including encouraging medication or other non-adjudicative resolution of the matter.

[13] The NASD has indicated that it intends to identify arbitrators qualified to preside over such cases on the basis of training, experience, varied knowledge and expertise. Qualifications for inclusion in the pool may be based on, among others, the following factors: (1) Attendance and successful completion of course(s) relating to large and complex cases; (2) experience and regular service as an arbitrator; (3) knowledge or expertise in the subject matter or technical aspects of the dispute; (4) length of service as an Association arbitrator; and (5) professional and business expertise.

F. Settlement of Eligible Matters

Section 46(e) also provides for the parties to give arbitrators information about their settlement efforts. The provision states that if an eligible matter is not settled prior to the first hearing date, the parties must submit either a joint statement or individual statements to the arbitrators, setting out a record of the dates and duration of any discussions and the fact that the discussions did not result in settlement, but must not include any statement disclosing the dollar value of any settlement offer or proposal discussed by the parties. The NASD indicated that this subsection is included because it might provide arbitrators with additional information concerning the issues in dispute. The prohibition against disclosing dollar amounts discussed is intended to avoid suggesting dollar values for any award ultimately made by the arbitrators.

G. Management of Proceedings

Section 46(f) sets out general and specific powers granted to the arbitrators to enable them to manage the proceedings. The arbitrators may, without limitation, delegate their powers under subsection (f) to a single arbitrator to be exercised either in the preliminary hearing or at any other time prior to the hearing. The large and complex case rules specifically permit arbitrators to rule on dispositive motions, such as motions to dismiss on any grounds, including the applicability of a statute of limitations, or motions for summary judgment on specific issues such as liability or damages, or on the whole matter. As noted above, the pamphlet will highlight this provision so that parties may determine whether they wish to utilize the large and complex case rules or whether they wish to agree specifically to amend the panel's ability to rule on dispositive motions.

A significant difference between the large and complex case rules and the rules for other cases administered under current Code provisions concerns the prehearing procedures, or ''discovery'' process. The large and complex case rules rely to a significant extent on the parties to bargain for setting the scope of discovery. Absent a specific agreement by the parties in the agreement under Section 46 (a)(2) and (a)(3) to proceed under these rules, parties are to use the procedures in Section 46(f). These procedures differ from the present Code in that depositions and interrogatories are intended to be limited to determining and preserving testimony and facts relevant to the determination of the matter, not for conducting discovery.[14] Further, interrogatories are limited to twenty questions, including parts and subparts. The pamphlet will highlight these and other differences between discovery under the large and complex case rules and discovery under current provisions of the Code and will advise parties that they may agree to modify the discovery rules contained in Section 46(f).

Finally, Section 46(f) authorizes arbitrators to conduct special proceedings as necessary to resolve any such matters before them. Special proceedings may take any form specified by the arbitrators, and may be conducted in person, via teleconference, on written submissions alone, or by any other method.

H. Form Award

Section 46(g) specifies that the award in an eligible proceeding shall be in the form prescribed in Section 41 of the Code. Arbitrators may at their own initiative issue an award that is accompanied by a statement of reasons or basis of the award. Although not specifically addressed by Section 41, it has been the position of the NASD that arbitrators are permitted under that Section to issue a statement of reasons or basis for the award and arbitrators have issued such statements in many cases.

In addition, the Section provides for arbitrators to issue a statement of reasons or basis of the award if the parties specifically so agree. Accordingly, even in situations where the arbitrators would not otherwise issue a statement accompanying the award, the arbitrators would nonetheless do so where all of the parties have specifically agreed that a statement of the reasons or basis of the award should accompany the award.

I. Sunset Provision

Section 46(h) of the proposed rule change specifies that the large and complex cases rules will remain in effect for one year following the effective date, unless the Board of Governors authorizes their modification or extension.[15]

[14] By contrast, Section 32 of the Code provides that an arbitrator may ''issue subpoenas, direct appearances of witnesses and production of documents, set deadlines for compliance, and issue any other ruling which will expedite the arbitration proceedings.'' NASD Manual, Code of Arbitration Procedure, Part III, Sec. 32 (CCH) ¶ 3732.

[15] Any such modification or extension must be filed as a proposed rule change with the Commission pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder.

III. Comment Letters

The Lipner Letter states that there were both positive and negative aspects to the large and complex case rules, and recommended certain changes to the rule change to enhance the equitable nature of the arbitration process. NELA's comments were limited to the arbitration of employment disputes. NELA opposes the rule change in the context of employment disputes. As a general matter, NELA objects not only to the proposed rule change but to mandatory arbitration of complex employment.[16] The NELA Letter states that employment disputes typically turn on legal issues rather than factual issues. NELA believes that it is inappropriate for a panel composed of a majority of non-lawyers to decide these issues. Furthermore, the NELA Letter states that arbitration does not provide the opportunity for the development of employment law. The Commission believes that, whatever the merit of these arguments, they are not germane to the instant rule change.

The NELA Letter also states that the large and complex case rules ''are clearly designed to give the defendants all of the advantages of litigation in defending the cases while fatally disadvantaging the party with the burden of proof.'' As noted above, parties will be able to modify all provisions of Section 46 with an agreement under Section 46 (a))(2) and (a)(3) (other than the mandatory administrative hearing), and if parties do not agree upon procedures to govern the matter, than Section 46 will not govern the arbitration of the matter.

The NELA Letter also objects to the level of fees imposed upon large and complex cases. The NELA Letter states that the level of fees is exorbitant given that the employee does not have the option of going to court. The Commission notes that Section 46(a)(4) grants the Director of Arbitration the

[16] The Commission approved a proposed rule change to Sections 1, 8 and 9 of the Code in 1993 that provides that disputes, claims, or controversies arising out of the employment or termination of employment of an associated person are eligible for submission to arbitration. *See* Securities Exchange Act Release No. 32802 (Aug. 25, 1993), 58 FR 45932 (Aug. 31, 1993). That proposed rule change was prompted by two court decisions interpreting the Code so as not to cover employment disputes. The California Court of Appeals held that Section 8 of the Code did not cover employment disputes, but only covered disputes arising out of or in connection with business transactions. *Higgins* v. *Superior Court of Los Angeles County*, 1 Cal. Rptr. 2d 57 (1992). The Seventh Circuit concluded that the NASD Code of Arbitration as then drafted, did not require the arbitration of employment disputes between an NASD member and its associated person. *Farrand* v. *Lutheran Brotherhood*, 993 F.2d 1253 (7th Cir. 1993). NELA did not comment on that proposed rule change.

authority to waive forum fees and grants the arbitrators the discretion to apportion all fees and charges assessed on the parties other than hearing session deposits.

The Lipner Letter objects to Section 46(b)(8)(C), which provides that one purpose of the administrative conference is to develop a statement of the legal authorities related to the matters in dispute to be brought to the attention of the arbitrators. The Lipner Letter views this provision as transforming the arbitration process into one that is more akin to litigation. The Commission believes that this provision recognizes that legal issues are argued routinely in arbitration and that this provision may assist parties in formulating and assessing the strength of their claims. It is a reasonable approach for the NASD to adopt.

Both the NELA Letter and the Lipner Letter object to Section 46(f)(3), which permits arbitrators to rule on dispositive motions, such as motions to dismiss on any grounds, including the applicability of a statute of limitations, or motions for summary judgment. Both commenters argue that permitting such motions and the attendant legal briefing is inconsistent with the nature of the arbitration process. The Commission believes that parties should be cognizant of this feature of the large and complex case rules before they agree to arbitrate pursuant to the large and complex case rules. The Commission believes that the pamphlet will alert parties to this provision. As noted above, parties will be able to modify this provision under an agreement under Section 46 (a)(2) and (a)(3), and, if no agreement is reached, then the large and complex arbitration rules will not govern the arbitration of the matter.

The NELA Letter objects to Section 46(f)(2), which limits depositions and interrogatories to determining and preserving testimony and facts relevant to the determination of the matter, rather than for conducting discovery. NELA believes that not permitting depositions for discovery is a significant disadvantage to employees and causes the arbitration process to be skewed in favor of employers. The Commission is not unmindful of the concerns expressed by NELA. However, the Commission believes that parties may either modify these procedures through the agreement reached under Section 46 (a)(2) and (a)(3) to permit depositions for purposes of discovery, or failing agreement, may arbitrate in accordance with the rules governing arbitration elsewhere in the Code. Moreover, experience with this provision of the pilot rules can be evaluated in the event that the NASD determines to propose these rules for permanent inclusion in the Code. The Commission also intends to monitor cases arbitrated under the large and complex case rules to determine whether parties are being disadvantaged by the limited scope of discovery.

IV. Discussion and Findings

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[17] because it may encourage the arbitration of large and complex cases in a manner consistent with the objective of a just, efficient and cost-effective resolution of those cases, and will provide parties with the flexibility to formulate their own procedures. The flexibility will serve the public interest by permitting parties to tailor arbitration proceedings in a manner which enhances their ability to pursue their claims.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, the File No. SR–NASD–94–10 be, and hereby is approved for a one year period beginning May 2, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[17] U.S.C. 78o–3.

[Release No. 34–35301; File No. SR–NYSE–95–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Domestic Listing Standards

January 31, 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 January 18, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing amendments to its domestic listing standards. These listing standards are contained in Paragraph 102.01 of the Exchange's *Listed Company Manual*. The text of the proposed rule change is available at the Office of the Secretary, NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to create alternatives for two existing Exchange listing standards and to amend two additional standards. According to the Exchange, the NYSE already has, and intends to maintain, the highest listing requirements among U.S. markets. Current listing requirements measure, among other things, demonstrated earning power and shareholder distribution, as well as tangible net worth and market capitalization of publicly-held shares. The rule change would provide alternatives to the existing demonstrated earning power and shareholder distribution tests. In addition, the proposal would increase the existing requirements for tangible net worth and public market capitalization.

Demonstrated Earning Power

Under the Exchange's demonstrated earning power standard, the existing requirement calls for:

Demonstrated earning power—income before federal income taxes and under competitive conditions:	
Latest fiscal year	$2,500,000
Each of the preceding two fiscal years	$2,000,000

or	
Demonstrated earning power—income before federal income taxes and under competitive conditions:	
Aggregate for last three fiscal years together with	$6,500,000
A minimum in most recent fiscal year (All three years must be profitable)	$4,500,000

The NYSE believes that there are substantial companies, in some cases multi-billion dollar enterprises, that do not manage their business on the basis of reported income. In order to provide an opportunity for these companies to list, the Exchange is proposing an alternate demonstrated earning power test for companies with a market capitalization of not less than $500 million *and* revenues of not less than $200 million in the most recent fiscal year. These companies would be in a position to qualify for listing under an alternate listing standard based on net income adjusted for the cash effects of investing or financing cash flows.

The proposed standard would call for aggregate adjusted net income of not less than $25 million for the last three years, with each year showing a positive amount. Reported net income (before preferred dividends) would be adjusted, under the new standard, to remove the effects of all items whose cash effects are ''investing'' or ''financing'' cash flows as determined pursuant to Paragraph 28(b) of the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 95, ''Statement of Cash Flows'' (depreciation, amortization of good will and gains or losses on sales of property, plant and equipment are examples of such items). The adjustment to net income with respect to the cash effects of (1) discontinued operations, (2) the cumulative effect of an accounting change, (3) an extraordinary item or (4) the gain or loss on extinguishment of debt would be limited to the amount charged or credited in determining net income for the period.

Shareholder Distribution

The Exchange's current shareholder distribution requirement calls for a minimum of:

Number of holders of 100 shares or more or of a unit of trading if less than 100 shares	2,000
or	
Total stockholders together with	2,200
Average monthly trading volume (For most recent six months)	100,000

The proposed rule change would add a distribution standard for companies whose shares are very actively traded as an alternative to the existing shareholder distribution tests. Under the new alternative standard, a company with average monthly share trading volume of 1 million shares (for the most recent 12 months) could qualify for listing with 500 total shareholders. The Exchange believes that a company with this demonstrated level of trading activity would be appropriate for trading in the Exchange's agency-auction market as long as there are at least 500 shareholders.

Market Value and Net Tangible Assets

In addition to the two alternate standards proposed above, the Exchange is proposing to increase the existing requirements for both aggregate market value of publicly-held shares and net tangible assets from the current $18 million to $40 million. These requirements previously were adjusted in 1984. The NYSE views the increase in these standards as appropriately reflecting the attributes of the kinds of companies that the Exchange wants to attract, and expects that such standards would help to maintain the quality of the NYSE list.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and 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 proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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 other 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 NYSE. All submissions should refer to File No. SR–NYSE 95–01 and should be submitted by February 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–2906 Filed 2–6–95; 8:45 am]

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[Release No. 34–35309; File No. SR–NYSE–95–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval To Proposed Rule Change by New York Stock Exchange, Inc. Relating to an Extension of its Pilot Program for Stopping Stock Under Amendments to Rule 116.30

January 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 7s(b)(1), notice is hereby given that on January 18, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organizations. 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 proposed rule change consists of a request to extend amendments to Rule 116.30, with respect to the ability of specialists to stop stock in minimum variation markets, for four months until July 21, 1995.[1] The text of the proposed rule change is available at the Office of the Secretary, NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the effectiveness of amendments to Exchange Rule 116.30, which permit a specialist to grant a stop in a minimum variation market. The practice of ''stopping'' stock by specialists on the Exchange refers to a guarantee by the specialist that an order the specialist receives will be executed at no worse a price than the contra-side price in the market when the specialist receives the order, with the understanding that the order may in fact receive a better price.

Formerly, Exchange Rule 116.30 permitted a specialist to stop stock only when the quotation spread was at least twice the minimum variation (*i.e.*, for most stock, at least a ¼ point), with the specialist then being required to narrow the quotation spread by making a bid or offer, as appropriate, on behalf of the order that is being stopped.

For three years, on March 21, 1991, March 16, 1992, and March 22, 1993, the Commission approved, on a one-year pilot basis each time, amendments to the rule which permit a specialist to stop stock in a minimum variation market (generally referred to as an ''⅛th point market'').[2] The Exchange sought these amendments on the grounds that many orders would receive an improved price if stopping stock in ⅛th point markets were permitted. The amendments to Rule 116.30 permit a specialist, upon request, to stop individual orders of 2,000 shares or less, up to an aggregate of 5,000 shares when multiple orders are stopped in an ⅛th point market. A specialist may stop an order pursuant to a specified larger order size threshold, or a specified larger aggregate share threshold, after obtaining Floor Official approval.

On February 12, 1992, the Exchange requested that the Commission grant permanent approval to the amendments to Rule 116.30.[3] At that time, the Commission staff requested that the Exchange extend the pilot for an additional year to allow the Commission more time to consider the Exchange's request to make the amendments to Rule 116.30 permanent. At the request of Commission staff, the Exchange again filed for an extension of the rule's provisions, this time until March 21, 1995.[4] In its approval order, the Commission asked the Exchange to submit a fourth monitoring report on the stopping stock pilot and to submit a proposed rule change regarding Rule 116.30 by December 31, 1984. The monitoring report has been submitted to the Commission under separate cover. The Commission has asked the Exchange to file for a four month extension of the amendments to Rule 116.30 so that the Commission may evaluate the fourth monitoring report prior to determining if it will grant permanent approval to the amendments. The Exchange believes that the results obtained by its monitoring effort during the pilot period show that the amendments to Rule 116.30 enable specialists to better serve investors through the ability to offer price improvement to stopped orders, while having relatively little adverse impact on other orders on the book.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest. The amendments to Rule 116.30 are consistent with these objectives in that they permit the Exchange to better serve its customers by enabling specialists to execute customer orders at improved prices.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

[1] The NYSE received approval to amend Rule 116.30, on a pilot basis, in Securities Exchange Act Release No. 28999 (March 21, 1991), 56 FR 12964 (March 28, 1991) (File No. SR–NYSE–90–48) (''1991 Approval Order''). The Commission subsequently extended the NYSE's pilot program in Securities Exchange Act Release Nos. 30482 (March 16, 1992), 57 FR 10198 (March 24, 1992) (File No. SR–NYSE–92–02) (''1992 Approval Order''); 32031 (March 22, 1993), 58 FR 16563 (March 29, 1993) (File No. SR–NYSE–93–18) (''1993 Approval Order''); and 33792 (March 21, 1994), 59 FR 14437 (March 28, 1994) (File No. SR–NYSE–94–06) (''1994 Approval Order''). Commission approval of these amendments to Rule 116.30 expires on March 21, 1995. The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program to continue without interruption. *See* letter from James E. Buck, Senior Vice President and Corporate Secretary, NYSE, to Glen Barrentine, Senior Counsel, Division of Market Regulation, SEC, dated January 31, 1995.

[2] *See* 1991, 1992 and 1993 Approval Orders, *supra*, note 1.

[3] *See* File No. SR–NYSE–93–11.

[4] *See* 1994 Approval Order, *supra*, note 1.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–95–02 and should be submitted by February 28, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5)[5] and Section 11(b)[6] of the Act. The Commission believes that the amendments to Rule 116.30 should further the objectives of Section 6(b)(5) and Section 11(b) through pilot program procedures designed to allow stops, in minimum variation markets, under limited circumstances that provide the possibility of price improvement to customers whose orders are granted stops.[7]

In its orders approving the pilot procedures,[8] the Commission asked the NYSE to study the effects of stopping stock in a minimum variation market. Specifically, the Commission requested information on (1) the percentage of stopped orders executed at the stop price, versus the percentage of such orders that received a better price; (2) market depth, including a comparison of the size of stopped orders to the size of the opposite side of the quote and to any quote size imbalance, and an analysis of the ratio of the size of the bid to the size of the offer; (3) whether limit orders on the specialist's book were bypassed due to the execution of stopped orders at a better price (and, to this end, the Commission requested that the NYSE conduct a one-day review of all book orders in three of the ten stocks receiving the greatest number of stops); and (4) specialist compliance with the pilot program's procedures.

The Exchange has submitted to the Commission four monitoring reports regarding the amendments to Rule 116.30. The Commission believes that, although these monitoring reports provide certain useful information concerning the operation of the pilot program, the Commission must conduct further analysis of the NYSE data and, in particular, of Rule 116.30's impact on limit orders on the specialist's book before it can consider permanent approval thereof. To allow the Commission fairly and comprehensively to evaluate the NYSE's use of its pilot procedures, without compromising the benefit that investors might receive under Rule 116.30, as amended, the Commission believes that it is reasonable to extend the pilot program until July 21, 1995.

First, the NYSE's latest monitoring report indicates that approximately half of eligible orders (*i.e.,* orders for 200 shares of less) stopped in minimum variation markets received price improvement. The Commission, therefore, believes that the pilot procedures provide a benefit to certain investors by offering the possibility of price improvement to customers whose orders are granted stops in minimum variation markets. According to the NYSE report, moreover, virtually all stopped orders were for 2,000 shares of less. In this respect, the amendments to Rule 116.30 should mainly affect small public customer orders, which the Commission envisioned could most benefit from professional handling by the specialist.

Second, in terms of market depth, the NYSE's monitoring report suggests that stock tends to be stopped in minimum variation markets where there is a significant disparity (in both absolute and relative terms) between the number of shares bid for and the number offered.[9] That report also suggests that, given the depth of the opposite side of the market, orders affected by the Rule 116.30 pilot tend to be relatively small.[10] For a substantial majority of stops granted, the size of the stopped order was less than, or equal to, 25% of the size of the opposite side quote.

In the Commission's opinion, the NYSE data generally supports its conclusion that the imbalances on the opposite side of the market from the stopped orders were of sufficient size to suggest the likelihood of price improvement to customers.[11] The Commission continues to believe that the requirement of a sufficient market imbalance is a critical aspect of the pilot program.[12] When properly applied, such a requirement should help the NYSE ensure that stops are only granted in a minimum variation market when the benefit (*i.e.,* price improvement) to orders being stopped far exceeds the potential for harm to orders on the specialist's book.[13]

Third, the NYSE states that the amendments to Rule 116.30 have relatively little adverse impact on other orders on the specialist's book.[14] This

[5] 15 U.S.C. 78f (1988).

[6] 15 U.S.C. 78k (1988).

[7] For a description of NYSE procedures for stopping stock in minimum variation markets, and of the Commission's rationale for approving those procedures on a pilot basis, *see* 1991 Approval Order, *supra,* note 1. The discussion in the aforementioned order is incorporated by reference into this order.

[8] *See supra,* note 1.

[9] As part of its initial proposed rule change, the NYSE provided the following example illustrating the relationship between quote size imbalance and the likelihood of price improvement: Assume that the market for a given stock is quoted 30 to 30⅛, with 1,000 shares bid for and 20,000 shares offered. The large imbalance on the offer side of the market suggests that subsequent transactions will be on the bid side. Accordingly, the NYSE states that it might be appropriate to stop a market order to buy, since the delay might allow the specialist to execute the buyer's order at a lower price. After granting such a stop, the specialist would be required to increase his quote by the size of the stopped buy order, thereby adding depth to the bid side of the market.

[10] A relatively large order might begin to counteract the pressure the imbalance on the opposite side of the market is putting on the stock's price. Accordingly, it might not be as appropriate to stop such an order.

[11] The NYSE has stated, both to the Commission and to its members, the specialists should only stop stock in a minimum variation market when an imbalance exists on the opposite side of the market and such imbalance is of sufficient size to suggest the likelihood of price improvement. *See, e.g.,* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Mary N. Revell, Branch Chief, Division of Market Regulation, SEC, dated December 27, 1990; NYSE information memo #1809, dated September 12, 1991.

[12] For a discussion of the relationship between quote size imbalance and the likelihood of price improvement, *see supra,* note 9.

In extending a comparable pilot program by the American stock Exchange, the Commission placed similar emphasis on the critical nature of the sufficient size standard when stopping stock in minimum variation markets. *See* Securities Exchange Act Release No. 33791 (March 21, 1994), 59 FR 14432 (March 28, 1994) (File No. SR–Amex–93–47).

[13] *See infra,* text accompanying notes 14–15.

[14] When stock is stopped, book orders on the opposite side of the market that are entitled to immediate execution lose their priority. If the stopped order then receives an improved price, limit orders at the stop price are bypassed and, if the market turns away from that limit, may never be executed.

As for book orders on the same side of the market as the stopped stock, the Commission believes that Rule 116.30's requirements make it unlikely that these limit orders would not be executed. Under the NYSE pilot program, an order can be stopped only

conclusion is based, in large part, on the Exchange's one-day review of limit orders against which orders were stopped pursuant to this pilot program. As part of this review, which focused on three of the ten stocks receiving the greatest number of stops, the NYSE determined how often such book orders were executed at their limit price by the close of the day's trading. In addition to aggregated data, the Exchange provided a detailed breakdown of the disposition of each order.

The Commission has historically been concerned that book orders get bypassed when stock is stopped, especially in a minimum variation market.[15] Based on the NYSE's prior experience, the Commission did not have sufficient grounds to conclude that this long-standing concern had been alleviated. The Commission acknowledges, however, that the fourth monitoring report proves new information on this aspect of the pilot program. As a result, the Commission finds that additional time is necessary for the Commission to review such information and to ensure that Rule 116.30, as amended, does not harm public customers with limit orders on the specialist's book.

Finally, the NYSE report describes its compliance efforts (*e.g.*, automated surveillance, review of Floor Official records, information memos, continuing education). The Commission believes that these programs provide specialists with adequate notice of their responsibilities. Similarly, the Exchange has sufficient means to determine whether a specialist complied with the amendments' order size and aggregate share thresholds and, if not, whether Floor Official approval was obtained for larger parameters. The Commission would expect the NYSE to take appropriate action in response to any instance of specialist non-compliance with the pilot procedures. In considering permanent approval of the amendments to Rule 116.30, the Commission would place great, weight on the Exchange's record in compliance matters.

During the pilot extension, the Commission requests that the Exchange continue to monitor the effects of stopping stock in a minimum variation market and to provide additional information where appropriate. Moreover, if the Exchange determines to request permanent approval of the pilot program or an extension thereof beyond July 21, 1995, the NYSE should submit to the Commission a proposed rule change by April 1, 1995.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[16]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSE–95–02) is approved for a four month period ending on July 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

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if a substantial imbalance exists on the opposite side of the market. *See supra*, notes 9–13 and accompanying text. In those circumstances, the stock would probably trade away from the large imbalance, resulting in execution of orders on the book.

[15] *See, e.g.*, SEC. Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt. 2 (1963).

[16] No comments were received in connection with the proposed rule change which implemented these procedures. *See* 1991 Approval Order, *supra*, note 1.

[17] 15 U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–35313; File No. SR–PCC–94–01]

Self-Regulatory Organizations; Pacific Clearing Corporation; Notice of Filing of a Proposed Rule Change Amending Certain Provisions of the PCC's Rules, Participant Agreement, and Clearing Fund Agreement

February 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 28, 1994, the Pacific Clearing Corporation (''PCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by PCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCC proposes to correct certain typographical errors in its rules and to clarify certain provisions regarding post capital in its standard participant agreement and clearing fund agreement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The primary purpose of PCC's proposed rule change is to correct typographical errors to certain provisions of PCC's rules and to clarify certain provisions of its standard participant agreement and clearing fund agreement relating to specialist post capital.

Specifically, PCC proposes to correct typographical errors to the Table of Contents; PCC Rule 1.2(f), defining the term ''long position''; PCC Rules 2.1(c) and 2.1(d), addressing membership qualifications and approval; and PCC Rule 9.3(c)(iii) addressing specialist post termination procedures. In addition, PCC proposes to amend PCC Rule 5.2 to clarify that any reductions to excess post capital or a member's clearing fund deposit cannot be made for amounts that would reduce the member's post capital or clearing fund deposit below the minimum requirement.

With respect to the participant agreement, PCC proposes to amend certain paragraphs relating to post capital. Paragraph 3.1(e)(iii) will be amended to clarify that it refers to the monitoring of post capital rather than net capital as it currently states. Paragraph 4.5 of the participant agreement will be amended so that post capital is distinguished from net capital. Net capital, which is specified by PSE Rule 2.1 and Rule 15c3–1 of the Act, remains constant for a firm regardless of the number of specialist posts it operates. In contrast, post capital varies because it represents the amount of capital required to be maintained by a firm based on the number of specialists

posts it operates. Paragraph 4.9 of the participant agreement is to be modified to clarify that reductions to excess post capital and to the clearing fund deposit cannot be made in amounts that would reduce these sums below their respective minimum requirements. Paragraph 4.9 of the participant agreement also is being modified to clarify that losses on a trial balance are due on the fifteenth day of the month following the month for which the trial balance was issued.

Similarly, with regard to the clearing fund agreement, PCC proposes to clarify that the minimum contribution, as defined in paragraph 5 of the clearing fund agreement, made by a member firm backing a specialist post will be applied towards meeting the post capital requirement. Currently, the clearing fund agreement states that contributions are to be credited towards the net capital requirement.

PCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to PCC. The technical corrections to PCC's rules will clarify PCC's rules thereby advancing the prompt and accurate clearance and settlement securities transactions. In addition, the clarifications regarding specialist post capital and net capital will assist PCC in safeguarding the securities and funds which are in PCC's custody or control or for which PCC is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

PCC believes that no burden will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Statements were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of PCC. All submissions should refer to File No. SR–PCC–94–01 and should be submitted by February 28, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–2973 Filed 2–6–95; 8:45 am]

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[Release No. 34–35299; File No. SR–PTC–95–07]

Self-Regulatory Organizations; Participants Trust Company; Order Approving on an Accelerated Basis a Proposed Rule Change Establishing a Daily Penalty Fee Applicable to Late Funding of Shortfalls in Participants' Mandatory Deposits to the Participants Fund

January 31, 1995.

On December 14, 1994, the Participants Trust Company (''PTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–PTC–94–07) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] The proposed rule change establishes a daily penalty fee applicable to late funding of shortfalls in participants' mandatory deposits to the participants fund. On December 16, 1994, PTC filed Amendment No. 1 to the proposed rule change.[2] On January 5, 1995, PTC filed Amendment No. 2 to the proposed rule change.[3] The Commission published notice of the proposed rule change in the **Federal Register** on January 9, 1995.[4] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

I. Description

Pursuant to Rule 2 of Article V of PTC's rules, PTC maintains a participants fund to secure obligations of participants and limited purpose participants to PTC and to provide PTC with an additional source of cash collateral to meet its temporary financing needs. Each participant is required to maintain a mandatory deposit in the participants fund which is calculated as a percentage of its average gross debits over the previous month's three major settlement days. The mandatory deposit is subject to a minimum of $1 million and a maximum of $10 million. A limited purpose participant is required to maintain a lower mandatory deposit because of the limited nature of its activity in the depository. At least $150 thousand of the mandatory deposit must be made in cash. The remainder may be made in cash or United States Treasury obligations with a remaining maturity of one year or less.

The adequacy of each participant's mandatory deposit is evaluated monthly based on the prior month's activity. Participants are notified of any shortfall and required to fund the deficiency within five business days. The securities portion of the mandatory deposit is marked-to-market weekly, and participants are required to fund any deficiency in this portion within two business days.

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[2] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Amendment No. 1 modified the filing by providing that it be considered pursuant to Section 19(b)(2) of the Act rather than pursuant to Section 19(b)(3)(A) of the Act and by eliminating text inadvertently placed in the proposed rule change as originally filed. Letter from Carol A. Jameson, Assistant Vice President and Assistant Counsel, PTC, to Jonathan G. Katz, Secretary, Commission (December 15, 1994.)

[3] Amendment No. 2 modified the filing by requesting accelerated approval of the proposed rule change and by clarifying the right of a participant to appeal the imposition of the penalty fee pursuant to PTC's rules. Letter from Carol A. Jameson, Assistant Vice President and Assistant Counsel, PTC, to Jonathan G. Katz, Secretary, Commission (January 3, 1995).

[4] Securities Exchange Act Release No. 35182 (December 30, 1994), 60 FR 2416.

Pursuant to Rule 3 of Article VI of PTC's rules, the proposed rule change establishes a daily penalty fee for a participant's failure to fund a shortfall in its mandatory deposit to the participants fund by the required date. The daily penalty fee is the greater of (i) $200 or (ii) an amount calculated at an annual rate equal to the daily average Fed Funds rate plus 250 basis points (2.5%) on the outstanding balance of the shortfall in the mandatory deposit to the participants fund.

II. Discussion

The Commission believes that the proposed rule change is consistent with Section 17A of the Act[5] and in particular with Section 17A(b)(3)(G) of the Act.[6] Section 17A(b)(3)(G) requires, among other things, that the rules of a clearing agency provide that its participants be appropriately disciplined for violation of any provision of the clearing agency's rules by fine or any other fitting sanction. The Commission believes that PTC's proposal to establish a daily penalty fee applicable to a participant's failure to fund on a timely basis a shortfall in its mandatory deposit to the participants fund is consistent with this obligation.

Because PTC maintains the participants fund to secret the obligations of participants and limited purpose participants to PTC, and other participants, late funding of a deficiency in a participant's mandatory deposit to the participants fund increases the risk of loss of PTC and its participants. In addition, late funding of a deficiency in a participant's mandatory deposit to the participants fund reduces an additional source of cash collateral which is available to PTC to meet temporary financing needs such as the payment of principal and interest. For these reasons, the Commission believes it is important that participants make timely funding of shortfalls and that the proposed penalty fee will encourage such funding.

In the event that a participant is assessed a penalty, PTC's rules, consistent with Section 17A(b)(3)(H),[7] provide participants with an opportunity to appeal the assessment of the penalty and to explain any mitigating circumstances. The penalty will not become effective until the period for filing an appeal has lapsed and will be automatically stayed during the pendency of any appeal. The Board of Directors also may reduce or remit a fine imposed by the President or a Vice President regardless of whether an appeal is made.[8] The Commission believes that PTC's appeal process will provide participants with a fair opportunity to be heard.

PTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirthieth day after the date of publication of notice of filing. In order to assure that PTC can implement the penalty fee beginning February 1, 1995, it is necessary that PTC receive the appropriate approval in advance of that date. The Commission, therefore, finds sufficient cause to accelerate approval of this proposal.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, in particular with Section 17A of the Act, and with the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–PTC–94–07) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

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[5] 15 U.S.C. 79q–1 (1988).

[6] 15 U.S.C. 78q–1(b)(3)(G) (1988).

[7] Section 17A(b)(3)(H) of the Act requires, among other things, that the rules of a clearing agency provide a fair procedure with respect to the disciplining of participants.

[8] See PTC Rules, Article VI, Rules 3 and 7.

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30–3(a)(12).

[Release No. 34–35308; File No. SR–PHLX–94–69]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a One Year Pilot Program for the Trading, Comparison, Clearing, Settling, Listing, and Delisting of Municipal Securities

January 31, 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 December 20, 1994, the Philadelphia Stock Exchange, Inc. (''PHLX'' or Exchange'') filed with the Securities and Exchange Commission (''SEC'' or Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend its rules to establish a one year pilot program allowing the Exchange to list and trade municipal securities. Specifically, the PHLX proposes to (1) amend PHLX Rules 132, ''Dealings Outside the Exchange in Securities Dealt in on the Exchange,'' 501, ''Specialist Appointment,'' 803, ''Criteria for Listing—Tier I,'' and 810, ''Suspension and Delisting Policies Based on Exchange Findings;'' and (2) add PHLX Rule 309, ''Municipal Securities,'' to provide requirements for trading, comparison, settlement, clearing and listing and delisting of municipal securities.

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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend PHLX Rules 132, 501, 803 and 810 and to add PHLX Rule 309 to initiate a one year pilot program for trading, comparison, clearance, settlement and listing and delisting of municipal securities. Under proposed PHLX Rule 803(c)(5), a municipal issuer may list municipal securities having an aggregate market value and principal amount of at least twenty million dollars ($20,000,000) provided there are at least one hundred (100) public beneficial holders and the issue is rated as investment grade by at least one nationally recognized rating service.

Proposed PHLX Rule 810(d) requires the delisting of the debt securities of a non-listed issuer when the issue no longer has at least a market value or principal amount outstanding of at least half a million dollars ($500,000), fails to be held by at least fifty (50) public

beneficial owners of record or is no longer investment grade rated by at least one nationally recognized rating service.[1]

The Exchange proposes to assign any municipal security it lists to a specialist[2] and to trade municipal securities in accordance with all PHLX regulations otherwise applicable to the trading of securities on the equities trading floor of the Exchange, except that pursuant to proposed PHLX Rule 132(d)(17) municipal securities shall be exempt from the provisions of the Exchange's off-board trading rule. Under proposed PHLX Rule 309, municipal securities will be compared, settled and cleared in accordance with the applicable regulations of the MSRB. The PHLX believes that Exchange listing of municipal securities will allow public investors to have an alternative to the over-the-counter market to trade municipal debt securities.

The PHLX states that the proposed rule change is based on Section 6(b)(5) of the Act in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other 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 PHLX consents, the Commission will:

(A) By order approve such 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–94–69 and should be submitted by February 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–2969 Filed 2–6–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Although the PHLX believes that proposed PHLX Rule 810(d) will apply primarily to municipal securities, it may also apply to the debt of issuers whose equities are not listed on the Exchange. Telephone conversation between Murray L. Ross, Secretary, PHLX, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation, Commission, on January 20, 1995.

[2] In this regard, the Exchange intends to require specialist units applying for appointment and registration in municipal securities to be in compliance with the Municipal Securities Rulemaking Board (''MSRB'') G–3 regulations regarding municipal securities principals and representatives. The National Association of Securities Dealers (''NASD'') has authority to enforce MSRB rules for listed municipal securities. The PHLX enforcement in this regard will not preempt or limit in any manner the NASD's authority to act in this area.

[3] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35305; File No. SR–PHLX–94–61]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Floor Procedure Advice F–8, Failure To Comply With an Exchange Inquiry

January 31, 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 21, 1994, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] 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

Currently, Advice F–8 requires Exchange members to comply promptly with any request for information made by the Exchange's Market Surveillance Department in connection with any investigation within the Exchange's disciplinary jurisdiction. The Exchange proposes to amend Advice F–8 to require members to comply with Exchange requests for information in connection with any regulatory inquiry, investigation, or examination relating to the Exchange's disciplinary jurisdiction or regulatory obligations. The PHLX also proposes to amend the Advice to require that information requested by the Exchange's Examinations Department be received within two business days from the date of the original request in order to satisfy the prompt compliance requirement of Advice F–8. Finally, the PHLX proposes to amend Advice F–8 to reduce the fine for a first violation of the Advice from $500 to $200, and to provide that each additional request for information not furnished within the allotted time period may be considered as a separate occurrence for purposes of the Advice's fine schedule.[2] The text of

[1] On November 30, 1994, the PHLX amended its proposal to clarify that the proposed two-day period for compliance with Exchange Examinations Department requests would apply, for example, to requests for books and records, rather than to requests for financial information, which are governed by PHLX Rule 703(e). See Letter from Edith Hallahan, Special Counsel, PHLX, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated November 30, 1994 (''November 30 Letter''). On January 31, 1995, the PHLX amended its proposal to delete references to foreign currency option (''FCO'') participants and participant organizations in Floor Procedure Advice (''Advice'') F–8, ''Failure to Comply with an Exchange Inquiry.'' See Letter from Edith Hallahan, Special Counsel, Regulatory Services, PHLX, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated January 30, 1995 (''January 30 Letter''). However, Advice F–8 continues to apply to FCO participants and participant organizations. Specifically, the PHLX notes in its January 30 Letter that PHLX Rule 13, ''Foreign Currency Options Participant'' provides that FCO participants are subject to the provisions of the Exchange's rules that are applicable to a member of the Exchange and each reference to a member of the Exchange in the PHLX's rules is deemed to pertain also to FCO participants.

[2] Under the Advice F–8's fine schedule, as amended, the Exchange will impose a fine of $200 for the first occurrence, $1,000 for the second occurrence, $2,500 for the third occurrence, and a

the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Advice F–8 requires cooperation with requests for information made by the Exchange's Market Surveillance Department and contains a fine schedule for violations. The Advice is administered under the Exchange's minor rule violation enforcement and reporting plan (''minor rule plan''),[3] which the PHLX also proposes to amend. Advice F–8 serves as an important tool in the Exchange's effort to conduct investigations expeditiously, requiring members to respond promptly to such requests. Prompt compliance with Market Surveillance requests is currently defined as ten business days. This Advice was adopted in order to expedite the Exchange's investigation process by enabling the Exchange to summarily reprimand any failure to respond to such requests.[4]

The PHLX proposes to extend the requirements of Advice F–8 to include Examinations Department requests, for which compliance will be required within two business days, as well as other regulatory inquiries. The purpose of this change is to facilitate the Exchange's ability to promptly collect regulatory information, with the deterrent of a preset fine schedule.

With respect to the fine schedule accompanying Advice F–8, the proposed language regarding separate occurrences is intended to deter delays in compliance with an Exchange request by counting a repeat request for information as a separate occurrence. If each successive request for the same information is treated as a separate occurrence and thus as a successive violation subject to the next highest fine, the Exchange believes that prompt compliance is encouraged. The PHLX also proposes to reduce the fine for a first occurrence from $500 to $200 to reflect the potential for increased application of such fines.

The Exchange believes that the proposed changes to Advice F–8 are consistent with the types of provisions currently included in the Exchange's minor rule plan. Moreover, extending the requirements of Advice F–8 regarding prompt compliance with Exchange inquiries to include Examinations Department and other regulatory requests should enhance the Exchange's ability to meet its regulatory obligations expeditiously. For example, under Advice F–8, as amended, a member will be required to comply with an Examinations Department request for books and records within two business days from the date of the original request.[5]

For the above reasons, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general and, in particular with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest, by bolstering the Exchange's ability to receive certain information from its members promptly.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either received or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of 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 reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such 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. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–2970 Filed 2–6–95; 8:45 am]

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sanction discretionary with the Exchange's Business Conduct Committee for the fourth and subsequent occurrences.

[3] The PHLX's minor rule plan, codified in PHLX Rule 970, contains floor procedure advices with accompanying fine schedules. Rule 19d–1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 19d–1(c)(1) requires prompt filing with the Commission of any final disciplinary action. However, minor rule violations not exceeding $2,500 are deemded not final, thereby permitting periodic, as opposed to immediate, reporting.

[4] See Securities Exchange Act Release No. 26899 (June 7, 1989), 54 FR 25526 (June 15, 1989) (order approving File No. SR–PHLX–89–20).

[5] See November 30 Letter, *supra* note 1.

[6] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35302; File No. SR–Phlx–94–77]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to the Imposition of an Approved Lessor's Initiation Fee and a Requirement That Approved Lessors Pledge to Abide by the By-Laws and Rules

January 31, 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 January 11, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On January 26, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change, which is also described below.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its By-Laws, Article XII, Section 12–8 by adding a new paragraph (e), which would impose an approved lessor's initiation fee of $1,500.00 and a requirement that approved lessors pledge to abide by the Phlx By-Laws and Rules. The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

By-Laws Article XII, Section 12–8(e)

An initiation fee of one thousand five hundred dollars shall be paid to the Corporation by a person or entity upon registration as an approved lessor. Additionally, no registration as an approved lessor shall become effective or entitle such person or entity to the privileges thereof, until such person or a designated representative of such entity has pledged to abide by the By-Laws as they have or shall from time to time amended, and by all rules and regulations adopted pursuant to the By-Laws.

The Exchange also submits a proposed rule change amending the Schedule of Fees and Charges to conform to the change in the By-Laws with respect to the initiation fee. The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

Initiation Fee:

The Phlx requires an initiation fee of $1,500 to be paid by a new member, [or] participant *or an approved lessor.* A lapse in membership or participation for six months or more will necessitate the payment of the initiation fee subsequent to reapplication.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed amendment to Article XII, Section 12–8 of the Exchange's By-Laws would add a new paragraph (e) imposing an approved lessor's[3] initiation fee of $1,500.00 and a requirement that approved lessors pledge to abide by the By-Laws and Rules of the Exchange. The Exchange is also amending the Schedule of Fees and Charges to conform to the change in the By-Laws with respect to the initiation fee. The Exchange will require that an approved lessor pay the initiation fee upon registration.

The Board of Governors undertook the amendment to the By-Laws to codify the practice of having approved lessors pledge to abide by the By-Laws and Rules of the Exchange.[4] The proposed fee amendments to the By-Laws and the Schedule of Fees and Charges are intended to equalize the treatment of new purchasers of equitable title to Phlx memberships and foreign currency options participations.[5]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees, and other charges amongst its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

With respect to the proposed By-Laws change, the Exchange solicited comments from its memberships by Circular 94–109, dated July 21, 1994. After receiving no written comments on this matter, the Exchange's Board of Governors approved the amendment to the By-Laws for submission to the Commission.

No written comments were solicited or received with respect to the fee change in the Schedule of Fees and Charges.

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 other 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.

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[1] *See* letter from Murray L. Ross, Secretary, Phlx, to Sharon Lawson, Assistant Director, SEC, dated January 26, 1995. Amendment No. 1 proposes to amend the Schedule of Fees and Charges to reflect the imposition of an approved lessor's initiation fee.

[2] Appendix A of the Schedule of Fees and Charges has also been amended to indicate that the initiation fee will be imposed on ''Members, Participants and Approved Lessors.''

[3] The term ''approved lessor'' means a lessor approved by the Exchange under its By-Laws and Rules. *See Philadelphia Stock Exchange Guide,* By-Laws, Article I, Section 1–1(h), (CCH) ¶ 1001. A ''lessor'' is a holder of equitable title to a membership in the Exchange, including a former member of the Exchange, who has leased legal title to his membership to a lessee and has retained equitable title to such membership, *See Philadelphia Stock Exchange Guide,* By-Laws, Article I, Section 1–1(f), (CCH) ¶ 1001.

[4] The By-Laws already impose this requirement on members. *See Philadelphia Stock Exchange Guide,* By-Laws, Article XII, Section 12–9, (CCH) ¶ 1284.

[5] The Exchange does not require members who lease their memberships to a lessee to register as ''approved lessors.'' Accordingly, the proposed rule change would not impose an additional initiation fee on such members. Conversation with Murray L. Ross, Secretary, Phlx, and Jennifer Choi, Attorney, SEC, dated January 19, 1995.

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–94–77 and should be submitted by February 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–2905 Filed 2–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35306; File No. SR–Phlx–94–23]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Inter-Currency Spread Priority

January 31, 1995.

On August 1, 1994, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to allow spread priority for eligible spreads between two different foreign currency options (''FCOs'').

Notice of the proposed rule change was published for comment and appeared in the **Federal Register** on December 7, 1994.[3] No comments were received on the proposal. This order approves the proposal.

I. Description of the Proposal

The purpose of this proposal is to amend the current definition of spread order contained in Rule 1066(f)(1) to include transactions involving options in two different foreign currencies (''inter-currency spread'') and to extend the spread priority principles to inter-currency spread orders.

Rule 1066(f)(1) currently defines a spread as an order to buy a stated number of option contracts and to sell the same number of option contracts, in a different series of the same class of options. The Exchange proposes to extend this definition by adopting Rule 1066(f)(1)(A), Inter-Currency Spread Order, as a subcategory of spread order.[4] Furthermore, the Exchange proposes to adopt Rule 1033(i), Inter-Currency Spread Priority, in order to extend the current spread priority principles to inter-currency spreads. As a result, an inter-currency spread involving any two FCOs, American-[5] or European-style[6] expiration, and any expiration date (regular, month-end, or long-term) will not be eligible for spread priority treatment, as described below. Inter-currency spread priority pursuant to the proposed rule change would not, however, be available for cross-rate, cash/spot, or the Exchange's customized FCOs.

Inter-currency spreads are currently executed as contingency orders pursuant to Phlx Rule 1066. For example, an FCO floor broker would quote a French franc market as well as a Swiss franc market, in each respective trading crowd; then, the floor broker would announce ''99 bid for 99 Sep 99 French franc calls if I can sell 99 Dec 99 Swiss franc puts at 99.'' However, each component of the spread must be bid/offered individually, which, according to the Exchange, generally means that each component is executed at a price better than the established bid/offer. In addition, the Exchange believes that because each leg must be executed between the established market, such contingency orders are more likely to be broken up by market interest in one leg, such that the end result may be a different number of contracts for each leg.

The Phlx's current priority rule, Rule 1033(d), allows a spread order (which includes a spread involving only one foreign currency) to be executed as a single transaction at a total net debit or credit with one contra-side. Furthermore, an eligible spread can be afforded priority as long as the net credit/debit improves the established market for the spread, provided, however, that at least one option leg is executed at a better price than the established market for that option and no option leg is executed outside of the established market for that option. The same principles apply to three-way, ratio, and multi-spread transactions in foreign currency.[7]

The Exchange believes that extending priority treatment to inter-currency spreads is appropriate for several reasons. First, the Exchange believes that spread priority for inter-currency spreads will facilitate a more simplified procedure for the execution of such orders. In this context, Phlx notes that the execution of inter-currency spreads as contingency orders may present a logistical problem given that floor brokers must, in exercising due diligence, shuttle between two trading crowds or, to prevent a trade from occurring while the floor broker is in the second crowd, utilize two floor brokers to execute such an order. Second, inter-currency spreads provide a trading strategy for FCO market participants based on the interplay between the currencies of two countries, similar to the advantages and opportunities associated with cross-rate FCOs.[8] The Exchange believes that the availability of such strategies should enhance liquidity in existing FCOs. Finally, the Exchange believes that the requirement in proposed Phlx Rule 1033(i) that each leg os an inter-currency spread be executed at or within the market for the individual leg, and that at least one leg be executed at a price which improves the established market, will benefit investors. The Exchange states that this requirement is also consistent with Phlx Rule 118 which provides that when a bid/offer is clearly established, no bid/offer outside that price shall be established.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] *See* Securities Exchange Act Release No. 35023 (November 29, 1994), 59 FR 63149.

[4] Proposed Phlx Rule 1066(f)(1)(A) defines Inter-Currency Spread Order in the following manner: In the case of foreign currency options, a spread order may consist of an order to buy a stated number of option contracts in one foreign currency and to sell the same number of option contracts in a different foreign currency option.

[5] An American-style option is one that can be exercised at any time prior to expiration of the option.

[6] A European-style option is one that can only be exercised during a specified period immediately prior to expiration of the option.

[7] *See* Securities Exchange Act Release No. 34015 (November 29, 1994).

[8] A cross-rate currency option is an option to purchase or sell a foreign currency at an exercise price that is denominated in another foreign currency. The exercise price, therefore, represents an exchange rate between two foreign currencies.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[9] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, and dealers.

The Commission believes that allowing inter-currency spread orders to attain spread priority is appropriate for several reasons. First, because the FCO market is dominated by institutional and corporate investors, the preemption of public customer limit orders (a concern of the Commission in the context of equity and index options), is unlikely. In this regard, the Commission notes that the proposed changes are applicable solely to the FCO market, which is dominated by institutions and sophisticated corporate investors. This is in part due to the complex nature of the instruments and the tremendous size of the underlying currency markets.

Second, because inter-currency spreads are currently executed as contingency orders, and therefore more susceptible to non-execution, the Commission believes granting priority to such orders will facilitate their execution and, therefore, may lead to more efficient quotes and tighter spreads.

Third, the priority principles applicable to inter-currency spreads mirror the priority rules currently in place for regular FCO spread orders. As a result, an inter-currency spread may be executed at a total net credit/debit with one other participant, provided at least one leg of the spread is executed at a better price than the established bid or offer for that contract and that no option leg is executed at a price outside of the established bid or offer for that option contract. Accordingly, the Commission believes that this change will allow institutional and corporate investors to better utilize sophisticated trading techniques involving FCOs for hedging and risk management purposes without altering the existing priority principles.

Finally, because the proposed definition limits an inter-currency spread to a maximum of two foreign currencies, the Commission notes that the logistical problems and confusion attendant to the execution of orders involving three or more foreign currencies will be avoided.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Phlx–94–23) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–2908 Filed 2–6–95; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78f(b)(5) (1982).

[10] 15 U.S.C. 78s(b)(2) (1982).

[11] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–20875; File No. 812–9142]

First SunAmerica Life Insurance Company, et al.

February 1, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or the ''Commission'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: First SunAmerica Life Insurance Company (''First SunAmerica''), FS Variable Annuity Account Two (''Separate Account''), and Vista Broker-Dealer Services, Inc. (''Vista'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 26(a) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of mortality, expense risk, and distribution expense charges from the assets of the Separate Account under certain variable annuity contracts (''Contracts'') funded through the Separate Account and under materially similar contracts (''future contracts'') funded in the future through the Separate Account, and from the assets of any other separate account (''future separate accounts'') established in the future by First SunAmerica in connection with the issuance of contracts that are materially similar to the Contracts. [1]

FILING DATE: The Application was filed on August 3, 1994, and amended on November 22, 1994, and December 20, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on February 27, 1995, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants c/o Mark J. Mackey, Esq., Routier, Mackey and Johnson, P.C., 1700 K Street, NW., Suite 1003, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, or Wendy Finck Friedlander, Deputy Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. First SunAmerica is a stock life insurance company organized under the laws of the State of New York. On May 24, 1994, First SunAmerica established the Separate Account to fund variable annuity contracts. The Separate Account is registered under the 1940 Act as a unit investment trust. The Separate Account and each of its portfolios are administered and accounted for as part of the general business for First SunAmerica, but the income, gains and losses of each portfolio are credited to or charged against the assets held in that portfolio in accordance with the terms of the Contracts, without regard to other income, gains and losses of any other portfolio or arising out of any other business First SunAmerica may conduct.

2. Vista is a broker-dealer registered under the Securities Exchange Act of 1934, and is the distributor for the Contracts.

3. The Contracts provide for accumulation of contract values and payments of annuity benefits on a fixed and variable basis. The Contracts are

[1] Applicants have agreed to amend this application during the notice period to reflect that the future contracts and contracts issued by future separate accounts relying on the exemptive relief requested here shall be materially similar to the Contracts.

available for retirement plans that do not qualify for the special federal tax advantages available under the Internal Revenue Code (''non-qualified plans'') and for retirement plans that do qualify for the federal tax advantages available under the Internal Revenue Code (''qualified plans''). Purchase payments under the Contracts may be made to the general account of First SunAmerica under the Contract's fixed account option (''Fixed Account''), to the Separate Account, or allocated among them. The minimum initial purchase payment for a Contract is $5,000 for non-qualified plans ($2,000 for qualified plans). Additional purchase payments may be made in amounts of at least $250 ($100 in the case of an automatic payment plan).

4. Initially, the Contracts will be funded through six portfolios of the Separate Account. Each portfolio invests in assets in the shares of one of six available series of Mutual Fund Variable Annuity Trust (''Trust''): the Growth and Income Portfolio; the Capital Growth Portfolio; the International Equity Portfolio; the Assist Allocation Portfolio; the U.S. Treasury Income Portfolio; and the Money Market Portfolio. The Trust is register under the 1940 Act as a diversified, open-end, management investment company. Additional underlying funds may become available in the future.

5. If the Contract owner dies during the accumulation period, a death benefit will be payable to the beneficiary upon receipt by First SunAmercia of due proof of death. The death benefit is reduced by the premium tax incurred by First SunAmerica, if any. If the Contract owner is younger than age 70 at the date of Contract issue, the death benefit is equal to the greatest of: (i) The total dollar amount of purchase payments made prior to the death of the Contract owner, reduced by any partial withdrawals and partial annuitizations; (ii) the Contract value at the end of the valuation period during which due proof of death (and an election of the type of payment to the beneficiary) is received by First SunAmerica; or (iii) the Contract value at that anniversary of the Contract issue date preceding the date of death—increased by any purchase payments made and reduced by any partial withdrawals and partial annuitizations since that anniversary—which yields the greatest result. If the Contract owner was at least age 70 on the Contract issue date, the death benefit will equal (ii) above.

6. An annual contract administration charge of $30 is charged against each Contract. The amount of this charge is guaranteed and cannot be increased. This charge reimburses First SunAmerica for expenses incurred in establishing and maintaining records relating to a Contract. The contract administration charge will be assessed on each anniversary of the Contract date that occurs on or prior to the annuity date. In the event that a total surrender of Contract value is made, the charge will be assessed as of the date of surrender without proration. This charge is not assessed during the annuity period. The contract administration charge is at cost with no margin included for profit.

7. During the accumulation period, amounts allocated to the Separate Account may be transferred among the portfolios and/or the Fixed Account. Both before and after the annuity date, Contract values may be transferred from the Separate Account to the Fixed Account. The first fifteen transactions effecting such transfers in any Contract year are permitted without the imposition of a transfer fee. A transfer fee of $25 is assessed on the sixteenth and each subsequent transaction within the Contract year. This fee will be deducted from Contract values that remain in the portfolio (or, where applicable, the Fixed Account) from which the transfer was made. If such remaining Contract value is insufficient to pay the transfer fee, then the fee will be deducted from transferred Contract values. The transfer is at cost with no anticipation of profit.

8. Although there is a free withdrawal amount that applies to the first withdrawal during a contract year after the first, a contingent deferred sales charge (the ''Withdrawal Charge'') may be imposed upon certain withdrawals. Withdrawal Charges will vary in amount depending upon the contribution year of the purchase payment at the time of withdrawal. The Withdrawal Charge is deducted from remaining Contract value so that the actual reduction in Contract value as a result of the withdrawal will be greater than the withdrawal amount requested and paid. So that all withdrawals are allocated to purchase payments to which the lowest Withdrawal Charge (if any) applies, withdrawals will be allocated first to investment income, if any, which generally may be withdrawn free of Withdrawal Charge, and then to purchase payments on a first-in, first-out basis.

9. Earnings in a Contract owner's account, and purchase payments no longer subject to the Withdrawal Charge, may be withdrawn at any time free of the Withdrawal Charge. There also may be a free withdrawal amount for the first withdrawal during a Contract year after the first Contract year. The additional free withdrawal amount is equal to 10% of purchase payments made more than one year before the date of withdrawal that remain subject to the Withdrawal Charge and that have not previously been withdrawn, less earnings in the Contract owner's account.

10. Any amounts withdrawn that exceed the limits described about may be subject to a Withdrawal Charge in accordance with the table shown below.

WITHDRAWAL CHARGE TABLE

Contribution year [2]	Applicable withdrawal charge percentage
Zero	6
First	6
Second	5
Third	4
Fourth	3
Fifth	2
Sixth	1
Seventh and later	0

[2] Applicants represent that, with respect to a given purchase payment, a contribution year is a year starting from the date of the purchase payment in one calender year and ending on the anniversary of such date in the succeeding calendar years. The contribution year in which a purchase payment is made is ''contribution year zero,'' and subsequent contribution years are successively numbered.

The Withdrawal Charge may be reduced or waived in certain circumstances, as described in the prospectus for the Contracts.

11. First SunAmerica deducts a distribution expense charge from each portfolio of the Separate Account during each valuation period that is equal, on an annual basis, to 0.15% of the net asset value of each portfolio. This charge is designed to compensate First SunAmerica for assuming the risk that the cost of distributing the Contracts will exceed the revenues from the Withdrawal Charge. In no event will this charge be increased. The distribution expense charge is assessed during both the accumulation period and the annuity period; it is not applied to Contract values allocated to the Fixed Account.

12. Annuity payments will not be affected by the mortality experience (death rate) of (i) persons receiving such payments or (ii) the general population. The annuity rates may not be changed under the Contract. First SunAmerica deducts a mortality risk charge from the Separate Account for assuming the risks that: (i) The life expectancy of an annuitant will be greater than that assumed in the guaranteed annuity purchase rates; (ii) the Withdrawal

Charge may be waived in the event of the death of the owner; and (iii) the death benefit must be provided before the annuity date. The charge is deducted from each portfolio of the Separate Account during each valuation period at an annual rate of 0.90% of the net asset value of each portfolio. If the mortality risk charge is insufficient to cover the actual costs of assuming the mortality risks, First SunAmerica will bear the loss; if the charge proves more than sufficient, the excess will be a gain to First SunAmerica. To the extent First SunAmerica realizes any gain, those amounts may be used at its discretion—including to offset losses experienced when the mortality risk charge is insufficient. The mortality risk charge may not be increased under the Contract.

13. First SunAmerica bears the risk that the contract administration charge will be insufficient to cover the cost of administering the Contracts. For assuming this expense risk, First SunAmerica deducts an expense risk charge form the Separate Account during each valuation period at an annual rate of 0.35% of the net asset value of each portfolio. If the expense risk charge is insufficient to cover the actual cost of administering the Contracts, First SunAmerica will bear the loss; if the charge is more than sufficient, the excess will be a gain to First SunAmerica. To the extent First SunAmerica realizes any gain, those amounts may be used at its discretion—including to offset losses when the expense risk charge is insufficient. The expense risk charge may not be increased under the Contract.

14. Applicants represent that the aggregate amount of any Withdrawal Charges imposed and distribution expense charges paid will never exceed 9% of purchase payments previously made, and that First SunAmerica will monitor each owner's account for the purpose of ensuring that this limitation is not exceeded. Applicants undertake to include in the prospectus forming part of the registration statement for the Contracts statements describing the purpose of the distribution expense charge, and statements that the staff of the Commission deems such charge to constitute a deferred sales charge. Applicants undertake to abide by the representations and undertaking set forth in this paragraph relating to the distribution expense charge in connection with any future contracts, as well as materially similar contracts funded through future separate accounts, relying on the requested order.

Applicants' Legal Analysis

1. Applicants hereby request that the Commission, under Section 6(c) of the 1940 Act, grant exemptions from Section 26(a)(2) and 27(a)(2) thereof to the extent necessary to permit the deduction of mortality and expense risk charges and a distribution expense charge: (i) From the Separate Account under the Contracts and under any future contracts; and (ii) from the assets of any future separate accounts which offer contracts materially similar to the Contracts.

2. Pursuant to Section 6(c) of the Act, the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act or from any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Sections 26(a)(2) and 27(c)(2) of the 1940 Act require, among other things, that all payments received under a periodic payment plan certificate sold by a registered unit investment trust, any depositor thereof or underwriter therefor, be held by a qualified bank as trustee or custodian, under arrangements which prohibit any payment to the depositor or principal underwriter except for the payment of a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services.

4. Applicants believe that extending the requested relief to the future contracts, as well as to materially similar contracts funded through future separate accounts, is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants submit that such an order would promote competitiveness in the variable annuity contract market by eliminating the need for First SunAmerica to file redundant exemptive applications, thereby reducing First SunAmerica's administrative expenses and maximizing the efficient use of First SunAmerica's resources. The delay and expense involved in having to seek exemptive relief repeatedly would impair the First SunAmerica's ability effectively to take advantage of business opportunities as they arise. Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. Applicants submit that if First SunAmerica were required repeatedly to seek exemptive relief with respect to the issues addressed in this application, investors would not receive any benefit or additional protection thereby.

5. Applicants assert that the aggregate of the mortality and expense risk charges, 1.25%, is reasonable in relation to the risks assumed by First SunAmerica under the Contracts and reasonable in amount, as determined by industry practice with respect to comparable annuity products. Applicants state that these determinations are based on their analysis of publicly available information about similar industry practices, taking into consideration such factors as current charge levels and benefits provided, the existence of expense charge guarantees, and guaranteed annuity rates. First SunAmerica undertakes to maintain at its home office, and make available to the Commission upon request, a memorandum detailing the methodology used in making these determinations.

6. Similarly, before relying on any exemptive relief granted herein with respect to any future contracts or any materially similar contracts funded through future separate accounts, Applicants will determine that the mortality and expense risk charges under any such contracts will be reasonable in relation to the risks assumed by First SunAmerica and reasonable in amount, as determined by industry practice with respect to comparable annuity products. First SunAmerica will maintain at its home office, and make available to the Commission upon request, a memorandum detailing the methodology used in making these determinations.

7. First SunAmerica submits that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and its investors. First SunAmerica represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis for such conclusion. Similarly, before relying on any exemptive relief granted herein with respect to any future contracts or to any materially similar contracts issued by future separate accounts, Applicants will determine that there is a reasonable likelihood that the distribution financing arrangement will benefit the Separate Account (or

future separate accounts) and its (or their) investors. First SunAmerica will maintain and make available to the Commission upon request a memorandum setting forth the basis for such determination.

8. First SunAmerica further represents that the assets of the Separate Account and any future separate accounts that rely on the requested order will be invested only in management investment companies that undertake, in the event they should adopt a plan for financing distribution expenses pursuant to Rule 12b-1 under the 1940 Act, to have such plan formulated and approved by their board of directors, the majority of whom are not ''interested persons'' of the management investment company within the meaning of Section 2(a)(19) of the 1940 Act.

Conclusion

Applicants submit that for the reasons and upon the facts set forth above, the exemptions from Sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of mortality, expense risk, and distribution expense charges from the assets of the Separate Account under the Contracts and under any future contracts, and from the assets of any future separate accounts offering contracts which are materially similar to the Contracts, meet the statutory standards of Section 6(c) of the 1940 Act. Accordingly, the Applicants assert that the requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–2975 Filed 2–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20873; No. 812–8854]

Golden American Life Insurance Company, et al.

January 31, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Golden American Life Insurance Company (''Golden American''), Separate Account A of Golden American (''Account A''), Any Other Separate Account Established By Golden American In The Future To Support Variable Life Insurance Contracts Issued by Golden American (''Future Accounts''), and Directed Services, Inc. (''DSI'').

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) granting exemptions from the provisions of Sections 26(a)(2)(C), 27(c)(1) and 27(c)(2) of the 1940 Act and from paragraphs (b)(1), (b)(12)(i), (b)(13)(iv) and (c)(4)(v) of Rule 6e–2 and of Rule 6e–3(T), and from Rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicant request an order that would permit them to deduct a charge from premium payments to compensate Golden American for its increased federal tax burden resulting from the application of Section 848 of the Internal Revenue Code of 1986, as amended, to the receipt of such payments under certain variable life insurance contracts. Applicants also propose to deduct the charge on a deferred basis from contract cash value, with the balance of any unrecovered amount being deducted upon surrender.

FILING DATE: The application was filed on February 23, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 27, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants: c/o Golden American, 280 Park Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Counsel, or Wendy F. Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. Golden American is a stock life insurance company and an indirect subsidiary of Bankers Trust Company (''Bankers'').

2. Account A is a separate account established by Golden American and registered under the 1940 Act as a unit investment trust. Each of Account A's 10 divisions invests in a corresponding portfolio of The GCG Trust (''GCG Trust''), a registered open-end management company. Account A is, and any Future Account will be, used to fund certain variable life insurance contracts issued by Golden American, including the GoldenSelect VLI and GoldenSelect VL10 Contracts (''Contracts''). A registration statement to register the Contracts under the Securities Act of 1933 has been filed with the Commission. Applicants state that the Contracts will be issued in reliance on the applicable provisions of either Rule 6e–2 or Rule 6e–3(T).

3. DSI, the principal underwriter for the Contracts, is an indirect wholly-owned subsidiary of Bankers and an affiliate of Golden American. DSI is a registered broker-dealer under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc.

4. Applicants propose to deduct a charge to reimburse Golden American for the increase in its federal income taxes resulting from the application of Section 848 of the Internal Revenue Code of 1986 (''Code''), as amended, to the receipt of premium payments under the Contracts. The charge will be reasonably related to Golden American's increased federal tax burden. The charge will be deducted either from (a) premiums received, or (b) Contract cash value on a deferred basis in a series of equal periodic installments, with the balance of any unrecovered amount to be deducted upon early surrender of a Contract. The deduction will be the same notwithstanding the manner in which it is deducted.

5. The Omnibus Budget Reconciliation Act of 1990 (''OBRA 1990''), amending Section 848 of the Code, requires life insurance companies of capitalize and amortize over ten years certain general expenses for the current year. Prior law allowed these expenses to be deducted in full from the current year's gross income. Section 848, as amended, effectively accelerates the realization of income from specified contracts and, consequently, the payment of taxes on that income. Taking into account the time value of money, Section 848 increases the insurance company's tax burden because the

amount of general deductions that must be capitalized and amortized is measured by the premiums received under the Contracts.

6. The amount of deductions subject to Section 848 equals a percentage of the current year's net premiums received (*i.e.*, gross premiums minus return premiums and reinsurance premiums) under life insurance or other contracts categorized under this Section. The Contracts will be categorized under Section 848 as life insurance contracts requiring 7.7% of the net premiums received to be capitalized and amortized under the schedule set forth in Section 848(c)(1).

7. The increased tax burden on every $10,000 of net premiums received under the Contracts is quantified by Applicants as follows. For each $10,000 of net premiums received in a given year, Golden American must capitalize $770 (*i.e.*, 7.7% of $10,000), and $38.50 of this amount may be deducted in the current year. The remaining $731.50 ($770 less $38.50) is subject to taxation at the corporate tax rate of 35% and results in $256.03 (.35%×$731.50) more in taxes for the current year than Golden American otherwise would have owed prior to OBRA 1990. However, the current tax increase will be offset partially by deductions allowed during the next ten years, which result from amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in year ten).

8. It is Golden American's business judgment that it is appropriate to use a discount rate of at least 10% in evaluating the present value of its future tax deductions for the following reasons. Capital that Golden American must use to pay its increased federal tax burden under Section 848 will be unavailable for investment. The cost of capital used to satisfy this increased tax burden essentially will be Golden American's targeted rate of return (*i.e.*, the return sought on invested capital), which is in excess of 10%. Accordingly, Applicants submit that the targeted rate of return is appropriate for use in this present value calculation. To the extent that the 10% discount rate is lower than Golden American's actual targeted rate of return, the calculation of this increased tax burden will continue to be reasonable over time, even if the corporate tax rate applicable to Golden American is reduced, or its targeted rate of return is lowered.

9. In determining the targeted rate of return used in arriving at the discount rate, Golden American considered a number of factors, which it represents are appropriate factors to consider. First, Golden American identified the level of investment return that can be expected to be earned risk-free over the long term. This rate is based upon the expected yield on a 30-year U.S. Treasury Bond. Golden American then increased this rate by the market risk premium demanded by equity investors as compensation for the risks associated with equity investments. The market risk premium is based on the average excess return earned by investing in equities as compared to that earned by investing in risk-free instruments (*i.e.*, long-term U.S. Treasury Bonds). Finally, the resulting rate was modified to reflect the relative volatility of an equity investments in Bankers, Golden American's indirect parent.

10. Using a federal corporate tax rate of 35% and assuming a discount rate of 10%, the present value of the tax effect of the increased deductions allowable in the following ten years, which partially offsets the increased tax burden, comes to $160.40. The effect of Section 848 on the Contracts is therefore an increased tax burden with a present value of $95.63 for each $10,000 of net premiums (*i.e.*, $256.03 less $160.40).

11. Golden American does not incur incremental federal income tax when it passes on state premium taxes to Contract Owners because state premium taxes are deductible in computing federal income taxes. Conversely, federal income taxes are not deductible in computing Golden American's federal income taxes. To compensate Golden American fully for the impact of Section 848, Golden American must impose an additional charge to make it whole for the $95.63 additional tax burden attributable to Section 848, as well as the tax on the additional $95.63 itself, which can be determined by dividing $95.63 by the complement of 35% federal corporate income tax rate (*i.e.*, 65%), resulting in an additional charge of $147.12 for each $10,000 of net premiums, or 1.47%.

12. Based on its prior experience, Golden American reasonably expects to fully take almost all future deductions. It is Golden American's judgment that a 1.38% charge would reimburse it for the increased federal income tax liabilities under Section 848. Applicants represent that the 1.38% charge will be reasonably related to Golden American's increased federal income tax burden under Section 848. This representation takes into account the benefit to Golden American of the amortization permitted by Section 848 and the use of a 10% discount rate (which is equivalent to Golden American's targeted rate of return) in computing the future deductions resulting from such amortization. Golden American believes that the 1.38% charge would have to be increased if future changes in, or interpretations of, Section 848 of any successor provision result in a further increased tax burden due to receipt of premiums. The increase could be caused by a change in the corporate tax rate, or in the 7.7% figure, or in the amortization period.

Applicants' Legal Analysis

1. Applicants request an order under Section 6(c) of the 1940 Act granting exemptions from Section 27(c)(2) of the 1940 Act to allow the deduction of a charge from premiums to compensate Golden American for its increased federal tax burden based on receipt of these premiums under the Contracts. The charge will be in an amount that is reasonably related to Golden American's increased federal tax burden. Applicants also request exemptions from subparagraph (c)(4)(v) of Rules 6e–2 and 6e–3(T) under the 1940 Act to permit the proposed deductions to be treated as other than ''sales load,'' as defined under Section 2(a)(35) of the 1940 Act, for purposes of Section 27 and the exemptions from various provisions of that Section found in Rules 6e–2 and 6e–3(T), respectively. Applicants assert that it is appropriate to deduct a charge for an insurer's increased tax burden attributable to premiums received, and to exclude the deduction of this charge from sales load, because it is a legitimate expense of the company and not for sales and distribution expenses.

2. Applicants further request an order under Section 6(c) for exemptions from Sections 26(a)(2)(C), 27(c)(1) and 27(c)(2) of the 1940 Act, paragraphs (b)(1), (b)(12)(i), (b)(13)(iv) of Rules 6e–2 and 6e–3(T) and Rule 22c–1 thereunder, to permit the deduction of the charge from Contract cash value in deferred, equal periodic installments, as an alternative to a deduction of the charge from premium payments, to compensate Golden American for its increased tax burden under Section 848. Any unrecovered amount of the deferred charge will be deducted from such assets upon an early surrender of a Contract.

3. Section 6(c) authorizes the Commission, by order and upon application, to exempt any person, security, or transaction, or class of persons, securities, or transactions, from any provisions of the 1940 Act. The Commission grants relief under Section 6(c) to the extent an exemption is ''necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the 1940 Act].''

4. Account A is, and the Future Accounts will be, regulated under the 1940 Act as issuers of periodic payment plan certificates. Accordingly, Account A, the Future Accounts, Golden American (as depositor), and DSI (as principal underwriter) are deemed to be subject to Section 27 of the 1940 Act.

5. Section 27(c)(2) prohibits the sale of periodic payment plan certificates unless the following conditions are met. The proceeds of all payments (except amounts deducted for ''sales load'') must be held by a trustee or custodian having the qualifications established under Section 26(a)(1) for the trustees of unit investment trusts. These proceeds also must be held under an indenture or agreement that conforms with the provisions of Section 26(a)(2) and Section 26(a)(3) of the 1940 Act.

6. ''Sales load'' is defined under Section 2(a)(35), in relevant part, as:

> The difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

Sales loads on periodic payment plan certificates are limited by Sections 27(a)(1) and 27(h)(1) to a maximum of 9% of total payments.

7. Certain provisions of Rules 6e–2 and 6e–3(T) provides a range of exemptive relief. Rule 6e–2 provides exemptive relief if the separate account issues scheduled premium variable life insurance contracts as defined in Rule 6e–2(c)(1). Rule 6e–3(T) provides exemptive relief if the separate account issues flexible premium variable life insurance contracts, as defined in subparagraph (c)(1) of that Rule.

8. Applicants state that paragraph (b)(13)(iii) of Rule 6e–2 implicitly provides, and paragraph (b)(13)(iii) of Rule 6e–3(T) explicitly provides, exemptive relief from Section 27(c)(2) permit an insurer to make certain deductions, other than sales load, including the insurer's tax liabilities from receipt of premium payments imposed by states or by other governmental entities. Applicants assert that the proposed deduction with respect to Section 848 of the Code arguably is covered by subparagraph (b)(13)(iii) of each Rule. Applicants note, however, that the language of paragraph (c)(4) of the Rules appears to require that deductions for federal tax obligations from receipt of premium payments be treated as ''sales load.''

9. Applicants state that paragraph (b)(1), together with paragraph (c)(4), of each Rule provides an exemption from the Section 2(a)(35) definition of ''sales load'' by substituting a new definition to be used for purposes of each respective Rule. Rule 6e–2(c)(4) defines ''sales load'' charged on any payment as the excess of the payment over certain specified charges and adjustments, including a deduction for state premium taxes. Rule 6e–3(T)(c)(4) defines ''sales load'' during a period as the excess of any payments made during that period over certain specified charges and adjustments, including a deduction for state premium taxes. Under a literal reading of paragraph (c)(4) of the Rules, a deduction for an insurer's increased federal tax burden does not fall squarely into those itemized charges or deductions, arguably causing the deduction to be treated as part of ''sales load.''

10. Applicants state that the public policy that underlies paragraph (b)(13) of each Rule, and particularly subparagraph (b)(13)(i), like that which underlies paragraphs (a)(1) and (h)(1) of Section 27, is to prevent excessive sales loads from being charged for the sale of periodic payment plan certificates. Applicants submit that this legislative purpose is not furthered by treating a federal income tax charge based on premium payments as a sales load because the deduction is not related to the payment of sales commissions or other distribution expenses. Applicants assert that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of sales load in paragraph (c)(4) of each Rule.

11. Applicants submit that the source for the definition of ''sales load'' found in paragraph (c)(4) of each Rule supports this analysis. Applicants believe that, in adopting paragraph (c)(4) of each Rule, the Commission intended to tailor the general terms of Section 2(a)(35) to variable life insurance contracts to ease verification by the Commission of compliance with the sales load limits of subparagraph (b)(13)(i) of each Rule. Just as the percentage limits of Section 27(a)(1) and 27(h)(1) depend on the definition of sales load in Section 2(a)(35) for their efficacy, Applicants assert that the percentage limits in subparagraph (b)(13)(i) of each Rule depend on paragraph (c)(4) of each Rule, which does not depart, in principal, from Section 2(a)(35).

12. Applicants submit that the exclusion from the definition of ''sales load'' under Section 2(a)(35) of deductions from premiums for ''issue taxes'' suggests that it is consistent with the policies of the 1940 Act to exclude from the definition of ''sales load'' in Rules 6e–2 and 6e–3(T) deductions made to pay an insurer's costs attributable to its federal tax obligations. Additionally, the exclusion of administrative expenses or fees that are ''not properly chargeable to sales or promotional activities'' also suggests that the only deductions intended to fall within the definition of ''sales load'' are those that are properly chargeable to sales or promotional activities. Applicants state that the proposed deductions will be used to compensate Golden American for its increased federal tax burden attributable to the receipt of premiums and not for sales or promotional activities. Therefore, Applicants believe the language in Section 2(a)(35) further indicates that not treating such deductions as sales load is consistent with the policies of the 1940 Act.

13. Finally, Applicants submit that it is probably an historical accident that the exclusion of premium tax in subparagraph (c)(4)(v) of Rules 6e–2 and 6e–3(T) from the definition of ''sales load'' is limited to state premium taxes. When these Rules were each adopted and, in the case of Rule 6e–3(T), later amended, the additional Section 848 tax burden attributable to the receipt of premiums did not yet exist.

14. As noted above, Section 27(c)(2) prohibits the sale of periodic payment plan certificates unless the proceeds, other than sales loads, are deposited with and held by a qualified trustee or custodian, as defined in Section 26(a)(1), under a trust agreement that satisfies the requirements of Sections 26(a)(2) and (a)(3). Section 26(a)(2) prohibits payments from the assets of a registered unit investment trust to its depositor or principal underwriter, or their affiliates or agents, unless the payment is reasonable compensation for performing certain bookkeeping and other administrative duties.

15. Section 27(c)(1) prohibits the sale of a period payment plan certificate by any registered investment company, its depositor or its underwriter, unless the certificate is a redeemable security. ''Redeemable security'' is defined in Section 2(a)(32) as any security which entities the holder to receive a proportionate share of the issuer's current net assets, or the cash equivalent. Rule 22c–1, in part, prohibits a registered investment company from selling, redeeming or repurchasing a redeemable security it has issued except at a price based on the current net asset value of the security.

16. Rule 6e–3(T)(b)(1) provides an exemption from Sections 26(a) and 27(c)(1) and Rule 22c–1 in connection with any sales load deducted under Rule 6e–3(T), other than from premiums. Rule 6e–2 does not have a corresponding provision. Rule 6e–3(T)(12(i) provides, in relevant part, an exemption from Section 27(c)(1) and Rule 22c–1 provided that, to the extent that the calculation of cash value reflects deductions for administrative expenses and fees or sales loads, such deductions need only be made at such times as specified in the Contracts. Although Rule 6e–2(b)(12) provides similar exemptions, it does not provide for the deduction of deferred administrative expenses and fees or deferred sales load. Finally, Rule 6e–3(T)(b)(13)(iv)(C) provides that, subject to other provisions of that Rule, sales loads and administrative expenses or fees may be deduced upon redemption. Rule 6e–2(b)(b)(13)(iv) does not provide similar exemptions. Applicants believe that the omissions noted herein reflect the Commission's assumption at the time it promulgated Rule 6e–2 that sales loads would only be deducted from premiums, rather than a policy decision to forbid other arrangements.

17. Applicants state that it is appropriate to deduct the 1.38% charge on a deferred basis for the same reasons that it is proper to deduct the charge directly from premiums. Nevertheless, Applicants believe they may not be able to rely on paragraphs (b)(1), (b)(12)(i), or (b)(13)(i) of Rules 6e–2 and 6e–3(T) because the deferred charge may be deemed other than an ''administrative charge'' or other than sales load under Rule 6e–3(T), and because the imposition of deferred charges was not contemplated when Rule 6e–2 was adopted.

18. Applicants submit that the deferred charge is more favorable to a Contract Owner than the direct charge from premiums for the following reasons. First, the premium payments available for investment and, thus, the investment itself, will be greater than it would be if such a charge was deducted from premiums. Second, the total amount charged to any Contract Owner is not more than it would be if it was taken directly from premiums paid. Finally, Contract Owners will obtain these advantages without incurring any additional cost.

19. Applicants further submit that it is equally proper to deduct any remaining amount of the deferred charge upon early surrender of a Contract, and that the deduction will not violate Sections 2(a)(32) or 27(c)(1) or Rule 22c–1. First, any remaining amount of the charge deducted upon early surrender is the same amount that would have been deducted if the Contract had not been surrendered. Further, this charge represents a burden borne by Golden American for which it is entitled to be reimbursed. Applicants assert that the deduction upon surrender of any unrecovered amount should not be construed as a restriction on redemption. Finally, Applicants maintain that the Contract are and will be redeemable securities, and that the deduction of any remaining charge upon surrender represents a legitimate deduction under the Contracts.

20. Applicants believe that the exemptions provided by paragraph (b)(1), (b)(12)(i), and (b)(13)(iv) of Rules 6e–2 and 6e–3(T) do not appear to embrace the deduction of the proposed charge on a deferred basis. Rule 6e–2 was adopted when there was less flexibility regarding premium payments and fewer policy features were available to issuers than have subsequently been permitted. In contrast, Rule 6e–3(T) contemplated deferred sales loads and deferred administrative charges, but not the proposed charge.

Applicants submit that: (a) No policy reason exists for the omission of relief for such a deferred charge from the provisions of Rules 6e–2 or 6e–3(T); (b) the deferred charge structure has been accepted as an appropriate feature of life insurance products under Rule 6e–3(T), as well as pursuant to exemptive relief granted by the Commission; (c) the existence of products with deferred charges provides investors a valuable choice; and (d) the Commission has supported efforts to expand investor choice without sacrificing investor protection.

21. Applicants assert that the standards of Section 6(c) are satisfied because the requested relief is appropriate in the public interest and consistent with the purposes of the 1940 Act and the protection of investors. The exemptive relief would: (a) Permit a larger portion of each premium to be immediately invested under a Contract; (b) eliminate the need for Golden American to file additional exemptive applications for each Contract to be issued through a Future Account with respect to the same issues under the 1940 Act that have been addressed in this Application; thus (c) promoting competitiveness in the variable life insurance market by avoiding delay, reducing administrative expenses and maximizing efficient use of resources; and thereby (d) enhancing Golden American's ability to effectively take advantage of business opportunities as they arise. If Golden American were required to repeatedly seek exemptive relief with respect to the same issues addressed in this Application, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of increased overhead expenses.

Conditions for Relief

1. Golden American will monitor the reasonableness of the charge to be deducted pursuant to the requested exemptive relief.

2. The registration statement for each Contract under which the above-referenced charge is deducted will: (a) Disclose the charge; (b) explain the purpose of the charge; and (c) state that the charge is reasonable in relation to Golden American's increased federal tax burden under Section 848 of the Code.

3. The registration statement for each Contract providing for the above-referenced deduction will contain as an exhibit an actuarial opinion as to: (a) The reasonableness of the charge in relation to Golden American's increased federal tax burden under Section 848 of the Code resulting from the receipt of premiums; (b) the reasonableness of the targeted rate of return that is used in calculating such charge; and (c) the appropriateness of the factors taken into account by Golden American in determining such targeted rate of return.

Conclusion

For the reasons and upon the facts set forth above, Applicants submit that the requested exemptions to permit Golden American to deduct 1.38% of premium payments under the Contracts are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–2903 Filed 2–6–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Three-Five Systems, Inc., Common Stock, $0.01 Par Value) File No. 1–4373

February 1, 1995.

Three-Five Systems, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule

12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security) from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Security is listed on the New York Stock Exchange, Inc. (''NYSE''). The Security commenced trading on the NYSE at the opening of business on December 29, 1994 and concurrently therewith the Security was suspended from trading on the Amex.

According to the Company, the Board of Directors has determined that it does not find any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for the Security and result in a potentially negative effect upon investors. In making the decision to withdraw the Security from listing on the Amex, the Company also considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its Security on the NYSE and the Amex. These costs include: (1) Listing and maintenance fees charged by each exchange for shares of the Security currently listed and shares that may be issued by the Company in the future, (ii) legal and other expenses that would arise as a result of duplication of filing documents with both the NYSE and the Amex whenever the Company makes any filing with the Commission, and (iii) other expenses relating to duplication of recordkeeping and reporting requirements that would arise from dual listing. The Board of Directors has determined that, in light of its finding that there is no particular advantage in dual trading of the Security, the expenses associated with dual listing would be excessive.

Any interested person may, on or before February 23, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–2974 Filed 2–6–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Minneapolis/St. Paul Advisory Council Meeting

The U.S. Small Business Administration Minneapolis/St. Paul District Advisory Council will hold a public meeting on Friday, March 31, 1995 at 12:00 noon, at the Decathlon Athletic Club, 1700 East 79th Street, Bloomington, Minnesota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Edward A. Daum, Director, U.S. Small Business Administration, 610-Butler Square, 100 North Sixth Street, Minneapolis, Minnesota 55403, (612) 370–2306.

Dated: January 31, 1995.

Dorothy A. Overal,

Director, Office of Advisory Council.

[FR Doc. 95–3006 Filed 2–6–95; 8:45 am]

BILLING CODE 8025–01–M

[License No. 06/06–0307]

Stratford Capital Partners, L.P.; Notice of Application for Transfer of Ownership

Notice is hereby given that an amendment application has been filed with the Small Business Administration pursuant to § 107.601 of Regulations governing small business investment companies (13 CFR 107.601 (1994)) for a transfer of ownership of Stratford Capital Group, Inc., 200 Crescent Court, Suite 1650, Dallas, Texas 75201 under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 et. seq.) and the Rules and Regulations promulgated thereunder.

The present 100% shareholder, Life Partners Group, plans to retain a $5 million limited partnership interest in the Licensee, renamed Stratford Capital Partners, L.P. Additional commitments to invest up to $40 million have been made by several new investors. The proposed new holders of more than 10% of the limited partnership interests are as follows: Hicks, Muse, Tate & Furst Equity Fund II, L.P., DLJ Fund Investment Partners, L.P., and Life Partners Group.

Matters involved in SBA's consideration of the application include the 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 further given that any person may, not later than 15 days from the date of publication of this notice, submit written comments on the proposed transfer of ownership to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Dallas, Texas.

(Catalog of Federal Domestic Assistance Program No. 59–011, Small Business Investment Companies)

Dated: January 31, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–2936 Filed 2–6–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8–95–002]

Houston/Galveston Navigation Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) will meet to discuss various navigation safety matters affecting the Houston/Galveston area. The meeting will be open to the public.

DATES: The meeting will be held from 9 a.m. to approximately 1 p.m. on Thursday,March 23, 1995.

ADDRESSES: The meeting will be held in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: LTJG D. E. Rowlett, Recording Secretary, Commander, Eighth Coast Guard District (oan), Room 1211, Hale Boogs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–6235.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5

U.S.C. App. 2 § 1 et seq. The meeting is open to the public. Members of the public may present written or oral statements at the meeting. The agenda for the meeting will focus solely on discussion of the Houston Ship Channel 2000 (HSC 2000) report.

Dated: January 27, 1995.

R.C. North,

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

[FR Doc. 95–2994 Filed 2–6–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration and Federal Transit Administration

Environmental Impact Statement; Milwaukee and Waukesha Counties, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT; Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA, the FTA, and the Wisconsin Department of Transportation (WisDOT) are issuing this notice to advise the public and all other interested parties that in accordance with the National Environmental Policy Act (NEPA) an Environmental Impact Statement (EIS) will be prepared for transportation improvements in the central East-West Transportation Corridor of Milwaukee and Waukesha Counties, Wisconsin. The WisDOT will ensure that the EIS also satisfies the requirements of the Wisconsin Environment Policy Act (WEPA). The Draft EIS (DEIS) will include a Major Investment Study (MIS) in accordance with 23 Code of Federal Regulations part 450.

Among the alternatives that the EIS will evaluate are the No-Action and Transportation System Management (TSM) alternatives; light rail transit, freeway modernization, with and without special lanes for buses and carpools; and combinations of freeway modernization and fixed transit alternatives. Any new prudent and feasible alternatives generated through the Scoping process will also be considered.

Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state and local agencies, and through two public meetings.

This notice supersedes the previous FTA Notice of Intent published in the **Federal Register** on March 27, 1992 (Vol. 57, No. 60, Page 10691).

FOR FURTHER INFORMATION CONTACT: Mr. Richard Schimelfenyg, Statewide Projects Engineer, Federal Highway Administration, 4502 Vernon Boulevard, Madison, WI 53705–4905, phone (608) 264–5437, fax (608) 264–5959; Mr. Joel Ettinger, Regional Administrator, Federal Transit Administration, 55 East Monroe Street, Suite 1415, Chicago, Illinois 60603, phone (312) 353–2789, fax (312) 886–0351; or Mr. James Beckwith, Project Manager, Wisconsin Department of Transportation, District 2, 141 NW. Barstow Street, Waukesha, Wisconsin 53188, phone (414) 548–8675, fax (414) 548–8655.

COOPERATING AGENCIES: The FHWA, FTA and WisDOT have determined that the following agencies will be asked to be Cooperating Agencies in preparation of this EIS:

U.S. Army Corps of Engineers (COE),
U.S. Coast Guard (CG),
U.S. Department of Veteran Affairs (VA),
U.S. Department of the Interior—National Park Service (NPS), and
U.S. Environmental Protection Agency (EPA).

Any other agency that believes it may have either jurisdiction-by-law or special expertise related to this project should consult with the individuals listed above.

SUPPLEMENTARY INFORMATION: The central East-West Transportation Corridor is a major travel corridor bisecting Milwaukee and Waukesha Counties. The Corridor includes portions of seven cities: Brookfield, Glendale, Milwaukee, New Berlin, Waukesha, Wauwatosa, and West Allis; three villages: Elm Grove, Shorewood and West Milwaukee; and three towns: Brookfield, Pewaukee and Waukesha.

The central East-West Transportation Corridor study area is generally a corridor approximately four to six miles wide extending from the junction of State Trunk Highway (STH) 16 and Interstate Highway (IH) 94 in Waukesha County 18 miles easterly to downtown Milwaukee and Lake Michigan in Milwaukee County. The central East-West Transportation Corridor generally follows the east-west route of IH–94 and extends north at it's eastern terminus to include the University of Wisconsin—Milwaukee Campus and the near north shore communities adjacent to the City of Milwaukee.

While there are other East-West transportation corridors both north and south of the central transportation corridor, they do not directly serve the central business district of downtown Milwaukee, except by connections to north-south transportation corridors.

Transportation improvements in the central East-West Corridor are intended to improve accessibility in the corridor. A substantial portion of the corridor is largely composed of a low income, non-white, and transit-dependent population. Improved transportation should better serve the bidirectional travel needs of the area's growing employment base and population. Transit and highway improvements would also reduce traffic congestion, improve travel safety, and reduce accidents. Improved transportation operations in the corridor may alleviate regional air quality problems by providing alternatives to the single occupant automobile for many trips. Further, improved transit may alleviate traffic and parking problems that prevail in some of the most densely populated portions of the corridor and assist in opportunities for improved land use patterns and jobs development. In light of the above factors, the purpose of the central East-West Corridor study is to identify the best approach for improving long term transportation service in the corridor in a cost-effective, equitable, and publicly acceptable manner.

Previous Activity

As noted earlier, on March 27, 1992 the FTA announced through a Notice of Intent in the **Federal Register** that an Alternatives Analysis/Environmental Impact Statement (AA/EIS) would be prepared for transit improvements in the East-West Corridor in Milwaukee and Waukesha Counties. During the alternatives analysis reasonable and promising alternatives including technology type, alignment, and location of train storage yards and a maintenance center, were evaluated according to FTA criteria. Twelve alternatives were developed and presented at public meetings, Technical Advisory Committee meetings, and Study Advisory Committee meetings. After FTA approval, the twelve alternatives were being evaluated in an AA/DEIS (that was not circulated). These twelve alternatives included the No Build and Transportation System Management (TSM) alternatives, high occupancy vehicle (HOV) lanes for buses and carpools, express and rapid light rail transit (XLRT and RLRT), rapid busway (RBUS), minimum length routes for both LXRT and RLRT, and combinations of all modal alternatives described above.

In late 1993, a committee of local mayors, county executives, village presidents, and state and regional transportation officials, known as the Study Advisory Committee, identified Alternative 12 as their preliminary

recommendation, while deferring the selection of specific route and station location until the next stage of study, preliminary engineering. The Alternative 12 concept included:

—17 miles of busway or special lanes for carpools and buses parallel to IH 94 between downtown Milwaukee and the City of Waukesha,
—16 miles of light rail transit extending from Glendale through downtown Milwaukee to the County Grounds in western Milwaukee County, and a
—30% increase in metro area bus service split equally between Milwaukee and Waukesha Counties.

While Alternative 12 appeared to be the concept that best addressed the needs of the corridor, there were issues and concerns about specific route options for light rail and the busway. It became apparent that more detailed work would be required on the exact alignments of light rail transit and special lanes as well as their benefits, costs, and impacts before a locally preferred alternative could be recommended.

Concurrent with the AA/EIS study, the WisDOT was evaluating alternatives for modernization of the IH 94 corridor in Waukesha and Milwaukee Counties, including reconstruction of the Zoo, Stadium, and Marquette interchanges. The IH 94 modernization studies were considered as part of the No Build scenario in the AA/EIS. However, the IH 94 modernization studies had to consider how transit alternatives presented in the AA/EIS would affect design alternatives.

In order to be consistent with recent rule changes to 23 CFR part 450, the FTA, FHWA, WisDOT and the Southeastern Wisconsin Regional Planning Commission (the metropolitan planning organization, or MPO, for the region) agreed that the IH 94 modernization studies and the East-West Corridor transit studies be combined in a Draft EIS and Major Investment Study (DEIS/MIS).

The DEIS/MIS will address issues concerning specific route options, alignments, and location of special lanes for potential transit facilities and will also define and evaluate IH 94 highway improvements. The scope of work and alternatives proposed for evaluation in the DEIS/MIS are consistent with the Wisconsin Department of Transportation's recently endorsed Translinks 21 statewide transportation plan as well as the Southeastern Wisconsin Regional Planning Commission's Regional Transportation System Plan, adopted on December 7, 1994.

Among the alternatives that the DEIS/MIS will evaluate are the No-Action and Transportation System Management (TSM) alternatives; light rail transit, freeway modernization, with and without special lanes for buses and carpools; and combinations of freeway modernization and fixed transit alternatives. Any new prudent and feasible alternatives generated through the Scoping process will also be considered.

Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state and local agencies and two public Scoping meetings. Written comments on the scope of alternatives and the type of impacts to be considered should be sent to WisDOT by March 16, 1995.

FHWA, FTA and WisDOT invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the MIS/EIS and identifying any significant social, economic, or environmental issues related to the alternatives.

An information packet describing the purpose of the project, the proposed alternatives, the impact areas to be evaluated, the citizen involvement program, and the preliminary project schedule is being mailed to affected federal, state and local agencies and to interested parties on record. Others may request the Scoping materials by contacting Mr. James Beckwith at the address listed above.

Scoping comments may be made verbally at any of the public Scoping meetings or in writing. Scoping comments should focus on identifying specific social, economic or environmental impacts to be evaluated and suggesting alternatives which are less costly or less environmentally damaging while achieving similar transportation objectives. Scoping is not the approprite time to indicate a preference for a particular alternative. Comments on preferences should be communicated after the DEIS/MIS has been completed. If you wish to be placed on the mailing list to receive further information as the project develops, contact Mr. James Beckwith at the address listed above.

Probable Effects

FHWA, FTA and WisDOT plan to evaluate in the EIS all significant social, economic and environmental impacts of the alternatives. Among the primary issues are transportation service changes, including transit cost, service, patronage change, and its financial implications; the effect on traffic movement and railroad operations; community impacts, including land use planning and zoning compatibility, neighborhood compatibility, local and regional economic change, aesthetics, and utility relocation; cultural resource impacts, including effects on historic, archeological, and park resources; and natural resource impacts, including air quality, noise and vibration, removal of pre-existing hazardous wastes, and effects on water resources and quality, natural features, and ecosystems. The proposed impact assessment and its evaluation criteria will take into account both positive and negative impacts direct and indirect impacts, short-term (construction) and long-term (operation) impacts, and site-specific and corridor-wide impacts. Evaluation criteria will be consistent with the applicable Federal, State of Wisconsin, and local standards, criteria, regulations, and policies. Mitigation measures will be explored for any adverse impacts that are identified as part of the analysis.

FHWA/FTA Procedures

In accordance with the Federal Aid Highway Act and FHWA policy, and the Federal Transit Act, as amended, and FTA policy, the DEIS/MIS will be prepared in conjunction with an analysis of alternatives and initial Preliminary Engineering. After its publication, the DEIS/MIS will be available for public and agency review and comment, and a public hearing will be held. On the basis of the DEIS/MIS and the comments received, WisDOT will select a locally preferred alternative for its major investment strategy. The Regional Transportation System Plan and Transportation Improvement Program will be revised to incorporate the selected strategy. Detailed Preliminary Engineering and preparation of a Final EIS will be completed following FHWA and FTA approval.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction; 20.500, Federal Transit Capital Improvement Grants; and 20.507, Federal Transit Capital Operating Assistance Formula Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Issued on: January 27, 1995.

Richard Schimelfenyg,

Statewide Projects Engineer, FHWA.

[FR Doc. 95–2882 Filed 2–6–95; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 95–006; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1993, 1994, and 1995 Mitsubishi 3000GT and 3000GT VR–4 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993, 1994, and 1995 Mitsubishi 3000GT and 3000GT VR–4 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1993, 1994, and 1995 Mitsubishi 3000GT and 3000GT VR–4 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by its manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 9, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9:30 am to 4 pm)

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors, Inc. of Kingsville, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 1993, 1994, and 1995 Mitsubishi 3000GT and 3000GT VR–4 passenger cars are eligible for importation into the United States. The vehicles that J.K. believes to be substantially similar are the 1993, 1994, and 1995 Mitsubishi 3000GT and 3000GT VR–4 passengers cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1993, 1994, and 1995 Mitsubishi 3000GT and 3000GT VR–4 passenger cars to their U.S. certified counterparts, and found those vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1993, 1994, and 1995 Mitsubishi 3000GT and 3000GT VR–4 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1993, 1994, and 1995 Mitsubishi 3000Gt and 3000GT VR–4 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence * * *, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems. 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 113 Hood Latch Systems, 116 Brake Fluid, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints. 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components. 207 Seating Systems, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 214 Side Impact Protection, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, 301 Fuel System Integrity, and 302 Flammability of Interior Materials.

Additionally, the petitioner states that the non-U.S. certified 1993, 1994, and 1995 Mitsubishi 3000GT and 3000GT VR–4 passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays. (a) Substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment. (a) Installation of U.S.-model headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporated rear sidemarkers; (c) installations of a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims. Installation of a tire information placard.

Standard No. 111 Rearview Mirror. Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 Theft Protection. Installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 Vehicle Identification Number. Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 Occupant Crash Protection. (a) Installation of a seat belt warning buzzer, wired to the seat belt latch; (b) installation to knee bolsters to augment the vehicles' air bag based passive restraint system. The petitioner states that the 1993 models are equipped with a driver's side air bag, and that the 1994 and 1995 models are equipped with both driver's and passenger's side air bags, all of which are identical to the air bags found on the vehicles' U.S.-certified counterparts.

The petitioner further claims that the vehicles are equipped with manual lap and shoulder belts that have identical part numbers to those found on their U.S.-certified counterparts.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on February 1, 1995.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 95–2913 Filed 2–6–95; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in April thru October 1993. The modes of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

MODIFICATION AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
1862–P	DOT–E 1862	Robert Bosch Fluid Power, Racine, WI.	49 CFR 173.302(a)(1), 175.3.	To become a party to exemption 1862 (modes 1, 2, 3, 4).
3667–P	DOT–E 3667	Petro Source Partners, Ltd., Dumas, TX.	49 CFR 173.315(a)	To become a party to exemption 3667 (mode 1).
4453–P	DOT–E 4453	Senex Explosives, Inc., Cuddy, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453 (modes 1, 3).
4453–P	DOT–E 4453	Winchester Building Supply Co., Inc., Winchester, VA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453 (modes 1, 3).
4575–P	DOT–E 4575	Allied-Signal, Inc., Morristown, NJ.	49 CFR 173.314(c), 173.315(a).	To become a party to exemption 4575 (modes 1, 2, 3).
4850–P	DOT–E 4850	Accurate Arms Company, Inc., McEwen, TN.	49 CFR 173.100(cc), 175.3.	To become a party to exemption 4850 (modes 1, 2, 3, 4).
4884–P	DOT–E 4884	Allied-Signal, Inc., Morristown, NJ.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.3(a), 173.302(a)(1), 173.304, 175.3, 178.61.	To become a party to exemption 4884 (modes 1, 2, 3, 4).
4884–P	DOT–E 4884	OSI Specialties, Inc., Sistersville, WV.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.3(a), 173.302(a)(1), 173.304, 175.3, 178.61.	To become a party to exemption 4884 (modes 1, 2, 3, 4).
6309–P	DOT–E 6309	Fomo Products, Inc., Norton, OH.	49 CFR 173.315(a)(1), 174.63(b).	To become a party to exemption 6309 (modes 1, 2).
6530–P	DOT–E 6530	Gulf States Airgas, Inc., Mobile, AL.	49 CFR 173.302(c)	To become a party to exemption 6530 (modes 1, 2).
6530–P	DOT–E 6530	Standard Welders Supply Co., Memphis, TN.	49 CFR 173.302(c)	To become a party to exemption 6530 (modes 1, 2).
6611–P	DOT–E 6611	Air Products Helium, Inc., (APHI), Allentown, PA.	49 CFR 173.318(a)	To become a party to exemption 6611 (modes 1, 3).
6626–P	DOT–E 6626	Haun Welding Supply, Inc., Syracuse, NY.	49 CFR 173.34(e)(15(i), 173.34(e)(15)(v), 175.3.	To become a party to exemption 6626 (modes 1, 2, 3, 4, 5).
6626–P	DOT–E 6626	Holox, Ltd., Atlanta, GA ...	49 CFR 173.34(e)(15(i), 173.34(e)(15)(v), 175.3.	To become a party to exemption 6626 (modes 1, 2, 3, 4, 5).
6626–P	DOT–E 6626	Auto Gas Light Welding Supply Co., Inc., Clifton, NJ.	49 CFR 173.34(e)(15)(i), 173.34(e)(15)(v), 175.3.	To become a party to exemption 6626 (modes 1, 2, 3, 4, 5).
6691–P	DOT–E 6691	Geneva Welding Supply Inc., Geneva, NY.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4).
6691–P	DOT–E 6691	CryoGas Corp., Syracuse, NY.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6691–P	DOT–E 6691	Acetylene Oxygen Company, Harlingen, TX.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (modes 1, 2, 3, 4).
6765–P	DOT–E 6765	Air Products Helium, Inc. (APHI), Allentown, PA.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 6765 (modes 1, 3).
6874–X	DOT–E 6874	Degussa Corporation, Ridgefield Park, NJ.	49 CFR 172.101, 173.370(a)(13).	Authorizes the transport of sodium and potassium cyanides in non-DOT specification wooden boxes (modes 1, 2, 3).
6874–X	DOT–E 6874	Degussa Corporation, Ridgefield Park, NJ.	49 CFR 172.101, 173.370(a)(13).	Authorizes the transport of sodium and potassium cyanidesin non-DOT specification wooden boxes (modes 1, 2, 3).
6932–P	DOT–E 6932	Produven, Caracas, Venezuela.	49 CFR 173.264(b)(4)	To become a party to exemption 6932 (modes 1, 3).
7770–P	DOT–E 7770	Produven, Caracas, Venezuela.	49 CFR 173.143, 173.264(b)(4), 174.63(b).	To become a party to exemption 7770 (modes 1, 2, 3).
7891–P	DOT–E 7891	Nite Lite Company, Clarksville, AR.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504 Table 1, 172.504(a), 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	To become a party to exemption 7891 (modes 1, 2, 4).
7891–P	DOT–E 7891	Albright & Wilson Americas, Ashland, VA.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504 Table 1, 172.504(a), 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	To become a party to exemption 7891 (modes 1, 2, 4).
7951–P	DOT–E 7951	Rich Products Corporation, Buffalo, NY.	49 CFR 173.306(b)(1), 175.3, 178.33.	To become a party to exemption 7951 (modes 1, 2, 3, 4, 5).
7963–P	DOT–E 7963	Zeneca, Inc. Wilmington DE.	49 CFR 173.245, 173.356, 173.360(a)(5).	To become a party to exemption 7963 (modes 1, 2, 3).
7987–P	DOT–E 7987	Zeneca, Inc., Wilmington, DE.	49 CFR 173.343, 173.377	To become a party to exemption 7987 (modes 1,2).
7991–P	DOT–E 7991	Atlanta & Saint Andrews Bay Railway Company, Panama City, FL.	49 CFR Parts 100–177	To become a party to exemption 7991 (mode 1).
8006–X	DOT–E 8006	Esquire Novelty Corporation, Amsterdam, NY.	49 CFR 172.400(a), 172.504 Table 2.	Authorizes the transport of unlabeled packages of toy paper or plastic caps complying with the requirements of 49 CFR 00(p) and 173.109, in motor vehicles with placards, when the gross weight of the caps is 1000 pounds or more (modes 1, 2, 3, 4).
8035–P	DOT–E 8035	Young Wireline Service, Inc., Charleston, WV.	49 CFR 173.100(v), 173.112, 175.3.	To become a party to exemption 8035 (modes 1, 2, 3, 4).
8151–P	DOT–E 8151	Ropak Corporation, Fullerton, CA.	49 CFR 178.19, Part 173, Subparts D, and F.	To become a party to exemption 8151 (modes 1, 2, 3).
8196–P	DOT–E 8196	Compagnie des Containers Reservoires, Paris la Defense, France.	49 CFR 173.119, 173.315(a), 178.245.	To become a party to exemption 8196 (modes 1, 2, 3).
8214–P	DOT–E 8214	Allied Signal Automotive Safety Restraint Systems, Sterling Heights, MI.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8214 (modes 1, 2, 3, 4).
8215–X	DOT–E 8215	Olin Corporation—Winchester Division, East Alton, IL.	49 CFR 173.101, 173.107, 173.154, 173.184, 173.60, 173.74, 173.78, 173.93.	Authorizes the shipment of certain identified Class A, B and C explosives in non-DOT specification containers (modes 1, 2).
8249–X	DOT–E 8249	LPS Industries, Inc., Newark, NJ.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(2), 172.402(a)(3), 172.504(a) and Table 1, 173.126, 172.138, 173.237, 173.246, 173.25(a), 173.3, 175.3.	Authorizes hazardous materials, which are required to bear the POISON label, to be transported without the label when shipped in prescribed packaging (modes 1, 2, 4, 5).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8273–P	DOT–E 8273	Takata Moses Lake, Inc., Moses Lake, WA.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8273 (modes 1, 2, 3, 4).
8445–P	DOT–E 8445	Ecosystems Management, Inc., Lafayette, LA.	49 CFR 173, Subparts D, E, F, H.	To become a party to exemption 8445 (mode 1).
8445–P	DOT–E 8445	ENSCO, Inc., El Dorado, AR.	49 CFR 173, Subparts D, E, F, H.	To become a party to exemption 8445 (mode 1).
8451–P	DOT–E 8451	High Energy International, Fort Worth, TX.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451 (modes 1, 2, 3, 4).
8451–P	DOT–E 8451	Pacific Scientific, Energy Dynamics Division, Chandler, AZ.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451 (modes 1, 2, 3, 4).
8451–P	DOT–E 8451	Special Devices, Inc., Newhall, CA.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451 (modes 1, 2, 3, 4).
8451–P	DOT–E 8451	Siebelair International, Inc., Richmond, CA.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451 (modes 1, 2, 3, 4).
8451–P	DOT–E 8451	SCB Technologies, Inc., Albuquerque, NM.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451 (modes 1, 2, 3, 4).
8453–P	DOT–E 8453	Kesco, Inc., Butler, PA	49 CFR 173.114a	To become a party to exemption 8453 (modes 1, 3).
5541–P	DOT–E 8554	Kesco, Inc., Butler, CA	49 CFR 173.114a, 173.154, 173.93.	To become a party to exemption 8554 (modes 1, 3).
8554–P	DOT–E–8554	Explosives Supply, Inc., Ringwood, NJ.	49 CFR 173.114a, 173.154, 173.93.	To become a party to exemption 8554 (modes 1, 3).
8554–P	DOT–E–8554	Farmers Supply & Explosives, Inc., Barbourville, KY.	49 CFR 173.114a, 173.154, 173.93.	To become a party to exemption 8554 (modes 1, 3).
8554–P	DOT–E–8554	Vet's Explosives, Inc., Torrington, CT.	49 CFR 173.114a, 173.154, 173.93.	To become a party to exemption 8554 (modes 1, 3).
8554–P	DOT–E–8554	Boren-Ireco Co., Inc., Parrish, AL.	49 CFR 173.114a, 173.154, 173.93.	To become a party to exemption 8554 (modes 1, 3).
8554–P	DOT–E–8554	Conex, Inc., Derby, IN	49 CFR 173.114a, 173.154, 173.93.	To become a party to exemption 8554 (modes 1, 3).
8556–X	DOT–E–8556	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To authorize use of non-DOT specification portable tanks for shipment of certain non-flammable or flammable gases with a maximum allowable working pressure of 151 psig or 161 psig (modes 1, 2).
8556–X	DOT–E–8556	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To modify the exemption to provide for overstowage of portable tanks containing helium, refrigerated liquid (modes 1, 2).
8556–P	DOT–E–8556	Air Products Helium, Inc. (APHI), Allentown, PA.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (modes 1, 2).
8556–P	DOT–E–8556	Linde Puerto Rico, Inc., Gurabo, PR.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To become a party to exemption 8556 (modes 1, 2).
8582–P	DOT–E–8582	Columbia Colt Terminal, Columbia, MO.	49 CFR Parts 100–177	To become a party to exemption 8582 (mode 1).
8710–X	DOT–E–8710	Akzo Chemicals, Inc., Chicago, IL.	49 CFR 173.119, 173.21, 173.221.	Authorizes the shipment of an organic peroxide classed as a flammable liquid in a DOT Specification MC–307/312 cargo tank equipped with temperature and pressure sensing devices (mode 1).
8723–P	DOT–E–8723	Senex Explosives, Inc., Cuddy, PA.	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	To become a party to exemption 8723 (modes 1, 2).
8723–P	DOT–E–8723	Dyno New England, Inc., Middlefield, CT.	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	To become a party to exemption 8723 (modes 1, 2).
8723–P	DOT–E 8723	Dyno New England, Inc., Middlefield, CT.	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	To become a party to exemption 8723 (modes 1, 2).
8723–P	DOT–E 8723	W.H. Burt Explosives, Inc., Moab, UT.	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	To become a party to exemption 8723 (modes 1, 2).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8725–X	DOT–E 8725	CNG Cylinder Company of North America, Long Beach, CA.	49 CFR 173.302(a)	To modify the exemption to increase the service pressure from 3,000 psi to 3,600 psi for non-DOT fiber reinforced plastic hoop wrapped cylinder containing certain flammable and nonflammable gases (mode 1).
8725–X	DOT–E 8725	CNG Cylinder Corporation, Long Beach, CA.	49 CFR 173.302(a)	To modify exemption to reduce the design qualification cycling requirements for non-DOT specification cylinders for shipment of nonflammable gases (mode 1).
8725–X	DOT–E 8725	CNG Cylinder Company, Long Beach, CA.	49 CFR 173.302(a)	To manufacture, mark and sell a non-DOT Specification fiber reinforced plastic cylinder of 3,600 psi for shipment of certain flammable and nonflammable gases (mode 1).
8791–P	DOT–E 8791	Zeneca, Inc., Wilmington, DE.	49 CFR 173.245a, 173.3(a), 178.245–1.	To become a party to exemption 8791 (modes 1, 2, 3).
8845–P	DOT–E 8845	Young Wireline Service, Inc., Charleston, WV.	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	To become a party to exemption 8845 (modes 1, 3).
8915–P	DOT–E 8915	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.301(d), 173.302(a)(3)..	To become a party to exemption 8915 (modes 1, 3).
8915–P	DOT–E 8915	Daido Hoxan Inc., Osaka, Japan.	49 CFR 173.301(d), 173.302(a)(3).	To become a party to exemption 8915 (modes 1, 3).
8915–P	DOT–E 8915	Epichem Limited, Merseyside, UK.	49 CFR 173.301(d), 173.302(a)(3).	To become a party to exemption 8915 (modes 1, 3).
8943–P	DOT–E 8943	Franklin Environmental Services, Inc., Wrentham, MA.	49 CFR 173.154	To become a party to exemption 8943 (mode 1).
8958–P	DOT–E 8958	High Energy International, Fort Worth, TX.	49 CFR 172.101, 173.60 .	To become a party to exemption 8958 (modes 1, 2).
8988–P	DOT–E 8988	High Energy International, Fort Worth, TX.	49 CFR 172.101, 173.110, 173.80, 175.30.	To become a party to exemption 8988 (modes 1, 3, 4).
8990–X	DOT–E 8990	Scott High Pressure Technology, Plumsteadville, PA.	49 CFR 173.302(a)(1), 175.3, 178.65–2, 178.65–5(a)(4).	To modify exemption to provide for flammable gas, Division 2.1, as an additional commodity for transportation in non-DOT specification cylinder (modes 1, 2, 3, 4).
9168–X	DOT–E 9168	All-Pak, Inc., Buffalo, NY .	49 CFR 172.504, 173.118, 173.244, 173.3, 173.345, 173.346, 173.359, 173.370, 173.377, 175.3, 175.33, Part 172, Subpart E.	Authorizes the manufacture, marking, and sale of specially designed composite type packaging, for shipment of small quantities of various flammable, corrosive, and poison B liquids and solids shipped without labels (modes 1, 2, 4, 5).
9198–P	DOT–E 9198	Idaho Department of Lands, Coeur d'Alene, ID.	49 CFR 175.5(a)(2)	To become a party to exemption 9198 (mode 4).
9222–P	DOT–E 9222	LWD Trucking, Inc., Calvert City, KY.	49 CFR 173.154	To become a party to exemption 9222 (mode 1).
9262–P	DOT–E 9262	High Energy International, Fort Worth, TX.	49 CFR 173.100(v), 175.30.	To become a party to exemption 9262 (modes 1, 3, 4).
9262–P	DOT–E 9262	Young Wireline Service, Inc., Charleston, WV.	49 CFR 173.100(v), 175.30.	To become a party to exemption 9262 (modes 1, 3, 4).
9275–P	DOT–E 9275	Florasynth Inc., Teterboro, NJ.	49 CFR Parts 100–199	To become a party to exemption 9275 (modes 1, 2, 3, 4, 5).
9275–P	DOT–E 9275	Erno Laszlo, Ltd., Roanoke, VA.	49 CFR Parts 100–199	To become a party to exemption 9275 (modes 1, 2, 3, 4, 5).
9275–P	DOT–E 9275	Noville Essential Oil Company, Inc., North Bergen, NJ.	49 CFR Parts 100–199	To become a party to exemption 9275 (modes 1, 2, 3, 4, 5).
9275–P	DOT–E 9275	Custom Essence, Inc., Somerset, NJ.	49 CFR Parts 100–199	To become a party to exemption 9275 (modes 1, 2, 3, 4, 5).
9275–P	DOT–E 9275	David Michael & Co., Inc., Philadelphia, PA.	49 CFR Parts 100–199	To become a party to exemption 9275 (modes 1, 2, 3, 4, 5).
9275–P	DOT–E 9275	Houbigant, Inc., Ridgefield, NJ.	49 CFR Parts 100–199	To become a party to exemption 9275 (modes 1, 2, 3, 4, 5).
9275–P	DOT–E 9275	Muelhens Inc., Orange, CT.	49 CFR Parts 100–199	To become a party to exemption 9275 (modes 1, 2, 3, 4, 5).
9275–P	DOT–E 9275	Emery Worldwide, Newark, NJ.	49 CFR Parts 100–199	To become a party to exemption 9275 (modes 1, 2, 3, 4, 5).
9281–P	DOT–E 9281	Highway Energy International, Fort Worth, TX.	49 CFR 172.101, 173.100	To become a party to exemption 9281 (modes 1, 2, 3, 4).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9316–X	DOT–E 9316	Fluoroware, Inc., Chaska, MN.	49 CFR 173.268, 173.28(k), 173.299, 178.35, 178.35a, Part 173, Subpart F.	Authorizes the manufacture, marking, and sale of a non-DOT specification inside packaging of teflon PFA plastic, similar to DOT–2SL, contained in a DOT–6D steel overpack, for shipment of up to 70 percent nitric acid and those corrosive liquids authorized in a DOT–6D/2SL or 2SL composite packaging (modes 1, 2, 3).
9346–X	DOT–E 9346	Koppers Industries, Inc., Pittsburgh, PA.	49 CFR 174.67(a)(2)	To authorize setting of the brakes and blocking the wheels of the first and last tank cars on up to a twelve tank car assembly, instead of each individual car, when engaged in unloading crude oil and petroleum (mode 2).
9346–P	DOT–E 9346	Allied-Signal, Inc., Hopewell, VA.	49 CFR 174.67(a)(2)	To become a party to exemption 9346 (mode 2).
9485–X	DOT–E 9485	Chem-Tech, Limited, Des Moines, IA.	49 CFR 173.305	Authorizes the transport of an insecticide, liquefied gas mixture in DOT Specification 4BA260 cylinders (modes 1, 2, 3).
9549–P	DOT–E 9549	High Energy International, Fort Worth, TX.	49 CFR 173.100(v), 175.30.	To become a party to exemption 9549 (modes 1, 3, 4).
9607–P	DOT–E 9607	Schafco, Lancaster, PA ...	49 CFR Parts 100–199	To become a party to exemption 9607 (modes 1, 4, 5).
9623–P	DOT–E 9623	Piedmont Explosives, Inc., Statesville, NC.	49 CFR 177.835(c)(3)	To become a party to exemption 9623 (mode 1).
9645–X	DOT–E 9645	Bonar Plastics, Inc., Lindsay, Ontario, CN.	49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173, Subpart F.	To authorize an additional design non-DOT specification polyethylene portable tank and to provide for shipment of organochlorine pesticides liquid, toxid, n.o.s. division 6.1 as additional commodity (modes 1, 2).
9694–P	DOT–E 9694	Advance Chemical Distribution, Inc., Sand Springs, OK.	49 CFR 173.315(i)(13), 173.33(f)(9), 173.33(h)(5)(i).	To become a party to exemption 9694 (mode 1).
9723–P	DOT–E 9723	Security Environmental Systems, Inc., Los Angeles, CA.	49 CFR 177.848(b)	To become a party to exemption 9723 (mode 1).
9723–P	DOT–E 9723	Mr. Frank, Inc., Matteson, IL.	49 CFR 177.848(b)	To become a party to exemption 9723 (mode 1).
9723–P	DOT–E 9723	Clean Harbors of Natick, Inc., Natick, MA.	49 CFR 177.848(b)	To become a party to exemption 9723 (mode 1).
9723–P	DOT–E 9723	Rollins, CHEMPAK, Inc., Wilmington, DE.	49 CFR 177.848(b)	To become a party to exemption 9723 (mode 1).
9723–P	DOT–E 9723	Environmental Transport Systems, Jamestown, ND.	49 CFR 177.848(b)	To become a party to exemption 9723 (mode 1).
9723–P	DOT–E 9723	Northeast Environmental Services, Inc., Canastota, NY.	49 CFR 177.848(b)	To become a party to exemption 9723 (mode 1).
9723–P	DOT–E 9723	ENSCI Environmental, Inc., Raleigh, NC.	49 CFR 177.848(b)	To become a party to exemption 9723 (mode 1).
9723–P	DOT–E 9723	Consolidated Waste Industries, Inc., Montclair, CA.	49 CFR 177.848(b)	To become a party to exemption 9723 (mode 1).
9723–P	DOT–E 9723	Special Resource Management Inc., Butte, MT.	49 CFR 177.848(b)	To become a party to exemption 9723 (mode 1).
9723–P	DOT–E 9723	ENSR Operations, Canton, OH.	49 CFR 177.848(b)	To become a party to exemption 9723 (mode 1).
9758–X	DOT–E 9758	Camping Gaz International, Paris, Francis.	49 CFR 173.304(d)(3)(ii), 178.33.	To authorize shipment of certain flammable gases in a nonrefillable, non-DOT specification inside container conforming with the DOT Specification 29 except for diameter and capacity (modes 1, 2, 3, 4).
9758–X	DOT–E 9758	Insulation Material Corporation of America, Haltom City, TX.	49 CFR 173.304(d)(3)(ii), 178.33.	To modify the exemption to include cargo aircraft as an additional mode of transportation (modes 1, 2, 3, 4).
9758–P	DOT–E 9758	Insulation Material Corporation of America, Haltom City, TX.	49 CFR 173.304(d)(3)(ii), 178.33.	Request party status and to modify the exemption to include cargo aircraft as an additional mode of transportation (modes 1, 2, 3, 4).
9769–P	DOT–E 9769	Tri-State Environmental, Inc., Romulus, MI.	49 CFR 176.83, 177.848 .	To become a party to exemption 9769 (modes 1, 2, 3).
9953–P	DOT–E 9953	ZENECA Specialty Inks, Winston-Salem, NC.	49 CFR 177.834(i)(2)(i)	To become a party to exemption 9953 (mode 1).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9969–X	DOT–E 9969	G.C. Industries, Inc., Fremont, CA.	49 CFR 173.119, 173.121, 173.123, 173.124, 173.141, 173.145, 173.251, 173.252, 173.255, 173.264, 173.276, 173.302, 173.304, 173.328, 173.333, 173.336, 173.337, 173.352.	Authorizes the transport of small amounts of liquids and gases in diffusion tubes overpacked in capped pipe nipples (modes 1, 2, 3, 4).
10001–P	DOT–E 10001	Interstate Welding Sales Corporation, Marinette, WI.	49 CFR 173.316, 173.320	To become a party to exemption 10001 (mode 1).
10001–P	DOT–E 10001	Barclay Company, Mason City, IA.	49 CFR 173.316, 173.320	To become a party to exemption 10001 (mode 1).
10040–P	DOT–E 10040	ZENECA Inc., Wilmington, DE.	49 CFR 173.133	To become a party to exemption 10040 (modes 1, 3).
10045–X	DOT–E 10045	Federal Express Corporation, Memphis, TN.	49 CFR 173.447(a), 177.842(a), 177.842(b).	Authorizes the transportation of non-fissile radioactive materials packages in specifically approved locations aboard highway vehicles when their combined transport indices exceed 50 or the separation distance criteria cannot be met (mode 1).
10097–X	DOT–E 10097	Hercules Aerospace Company, Magna, UT.	49 CFR 173.88(e)(2)(ii), 173.92(a)(1), 173.92(b).	Authorizes the transport of rocket motors in a propulsive state and with igniters installed in packaging not authorized in 49 CFR 173.92 (mode 1).
10101–P	DOT–E 10101	North East Welding Supply Corp., Auburn, MA.	49 CFR 173.301(c), 173.34(e)(15).	To become a party to exemption 10101 (mode 1).
10165–P	DOT–E 10165	Arizona Department of Commerce, Phoenix, AZ.	49 CFR 173.118, 173.31, 175.30, 175.85, Part 107, Appendix B, Part 172, Subparts C, D, E.	To become a party to exemption 10165 (mode 5).
10171–X	DOT–E 10171	Eurotainer USA, Somerset, NJ.	49 CFR 173.123, 173.315, 178.245.	Authorizes the use of a non-DOT Specification IMO Type 5 portable tank for shipment of certain compressed gases and flammable liquid (modes 1, 2, 3).
10184–X	DOT–E 10184	Praxair, Inc. Danbury, CT	49 CFR 173.34(e)(10), 173.34(e)(9).	Authorizes the shipment of a specific gas mixture in DOT Specification 4B, 4BA or 4BW cylinders retested in accordance with the provisions of 49 CFR 173.34(e)((9) and (e)(10) (modes 1, 2, 3).
10184–P	DOT–E 10184	Allied-Signal, Inc., Morristown, NJ.	49 CFR 173.34(e)(10), 173.34(e)(9).	To become a party to exemption 10184 (modes 1, 2, 3).
10230–X	DOT–E 10230	21st Century Containers, Ltd., Atlanta, GA.	49 CFR 173.128, 173.132, 173.266, Part 173 Subpart F.	Authorizes the manufacture, marking and sale of non-DOT specification, injection molded, crosslink thermoset olef in hydrocarbon portable tank for the shipment of corrosive liquids, flammable liquids, or an oxidizer (modes 1, 2).
10230–X	DOT–E 10230	21st Century Containers, Ltd., Atlanta, GA.	49 CFR 173.128, 173.132, 173.266, Part 173 Subpart F.	Authorizes the manufacture, marking and sale of non-DOT specification, injection molded, crosslink thermoset olefin hydrocarbon portable tank for the shipment of corrosive liquids, flammable liquids, or an oxidizer (modes 1, 2).
10247–P	DOT–E 10247	G.C. Industries, Inc., Fremont, CA.	49 CFR 173.4	To become a party to exemption 10247 (modes 1, 2, 4).
10262–X	DOT–E 10262	Van Leer Tay Limited, Dundee, Scotland.	49 CFR 173.245b	To renew and modify exemption to provide for additional commodity classed as Poisonous material for transportation in bulk bags (modes 1, 2, 3).
10307–P	DOT–E 10307	Georgia Gulf Corporation, Plaquemine, LA.	49 CFR 179.200–18, 179.201–1.	To become a party to exemption 10307 (mode 2).
10318–X	DOT–E 10318	Sonoco IBC, Lavonia, GA	49 CFR 173.119, 173.125, 173.266, 173.276, 173.346, Part 173, Subpart F.	To modify exemption to provide for combustible liquid as an additional class of material for shipment by cargo vessel (modes 1, 2, 3).
10346–P	DOT–E 10346	James River Pennington Inc., Pennington, AL.	49 CFR 174.67(i) and (j), Part 107, Appendix B.	To become a party to exemption 10346 (mode 2).
10346–P	DOT–E 10346	St. Joe Forest Products Company, Port St. Joe, FL.	49 CFR 174.67(i) and (j), Part 107, Appendix B.	To become a party to exemption 10346 (mode 2).
10346–P	DOT–E 10346	Teledyne Wah Chang Albany, Albany, OR.	49 CFR 174.67(i) and (j), Part 107, Appendix B.	To become a party to exemption 10346 (mode 2).
10382–P	DOT–E 10382	Zeneca, Inc., Wilmington, DE.	49 CFR 173.245(a)	To become a party to exemption 10382 (mode 2).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10441–P	DOT–E 10441	Security Environmental System, Inc., Los Angeles, CA.	49 CFR 177.848	To become a party to exemption 10441 (mode 1).
10441–P	DOT–E 10441	Environmental Enterprises, Inc., Cincinnati, OH.	49 CFR 177.848	To become a party to exemption 10441 (mode 1).
10441–P	DOT–E 10441	Broco Environmental, Inc., Rialto, CA.	49 CFR 177.848	To become a party to exemption 10441 (mode 1).
10441–P	DOT–E 10441	Midwest Environmental Transport, Inc., Fairfield, OH.	49 CFR 177.848	To become a party to exemption 10441 (mode 1).
10469–P	DOT–E 10469	Zeneca, Inc., Wilmington, DE.	49 CFR 173.271(a)(11), 173.3(a).	To become a party to exemption 10469 (mode 2).
10513–X	DOT–E 10513	Great Lakes Chemical Corporation, West Lafayette, IN.	49 CFR 173.154	Authorizes the use of a flexible intermediate bulk containers, having a capacity of either 500 or 1,000 pounds, overpacked in pallet mounted, fiberboard containers for shipment of a certain solid oxidizer (mode 1).
10541–X	DOT–E 10541	Aerojet Propulsion Division, Sacramento, CA.	49 CFR 173.92	Authorizes the transportation of rocket motors via highway (mode 1).
10647–P	DOT–E 10647	Wilbur-Ellis Company, Fresno, CA.	49 CFR 174.67(i) and (j), Part 107, Appendix B.	To become a party to exemption 10647 (mode 2).
10659–X	DOT–E 10659	Consani Engineering (PTY) Limited, Republic of South Africa.	49 CFR 178.345–8	To authorize the manufacture, mark and sale of non-DOT specification portable tank containers complying with specifications DOT–407 and DOT–412 for transportation of hazardous waste substances (modes 1, 2, 3).
10683–P	DOT–E 10683	Witco Corporation, New York, NY.	49 CFR 173.242, 178.245–1(a).	To become a party to exemption 10683 (modes 1, 2, 3).
10695–P	DOT–E–10695	AMSCO International, Inc., Erie, PA.	49 CFR 172.101, 172.400(b), 172.504(e).	To become a party to exemption 10695 (modes 1, 2).
10698–X	DOT–E–10698	Chilton Metal Products Division, Chilton, WI.	49 CFR 173.304(a)(2), 178.50.	To authorize the manufacture, mark and sale of DOT specification 48 refillable 13 and 16 ounce cylinders for shipment of propane and refrigerant gas, exempt from various marking, testing and reporting requirements (modes 1, 2).
10717–P	DOT–E–10717	General Chemical Corporation, Parsippany, NJ.	49 CFR 173.31 RETEST TABLE 1, Retest Table 1.	To become a party to exemption 10717 (mode 2).
10733–P	DOT–E–10733	SUSPA Compart A.G., 8503 Altdorf, Germany.	49 CFR 173.306(f)(2)(iii) and (f)(3), 175.3.	To become a party to exemption 10733 (modes 1, 2, 3, 4, 5).
10733–P	DOT–E–10733	Verlin S.A., 9442 Berneck, Switzerland.	49 CFR 173.306(f)(2)(iii) and (f)(3), 175.3.	To become a party to exemption 10733 (modes 1, 2, 3, 4, 5).
10775–X	DOT–E–10775	Elkhart Plastics, Incorporated, Middlebury, IN.	49 CFR 173, 173.119, 173.125, 173.245, 173.249, 173.249(a), 173.250(a), 173.256, 173.257, 173.262, 173.263, 173.264, 173.265, 173.266, 173.269, 173.272, 173.276, 173.277, 173.283, 173.287, 173.288, 173.289, 173.292, 173.297, 173.299(a).	To modify exemption to provide for cargo vessel as an additional mode of transportation for transporting various hazardous materials in non-DOT specification portable tanks (modes 1, 2, 3).
10845–P	DOT–E–10845	LCP Chemicals, Linden, NJ.	49 CFR 173.29(c)(2) and 173.31(c).	To become a party to exemption 10845 (mode 2).
10845–P	DOT–E–10845	ASHTA Chemicals, Inc., Ashtabula, OH.	49 CFR 173.29(c)(2) and 173.31(c).	To become a party to exemption 10845 (mode 2).
10845–P	DOT–E–10845	Public Service Electric and Gas Company (PSE&G), Newark, NJ.	49 CFR 173.29(c)(2) and 173.31(c).	To become a party to exemption 10845 (mode 2).
10883–P	DOT–E–10883	Eastpak Corporation, Mt. Kisco, NY.	49 CFR 173.197	To become a party to exemption 10883 (mode 1).
10886–X	DOT–E 10886	Eco-Pak, Inc., Elizabethton, TN.	49 CFR 173.201, 173.202, 173.203, 173.226 and 173.227.	To reissue an exemption, originally issued on an emergency basis to authorize the manufacture, marking and sale of a UN 1A1W stainless steel drum for the shipment of certain Class 3, 8 and 9 materials and Division 4.1, 4.2, 4.3, 5.1 and 6.1 materials (modes 1, 2, 3, 4).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10886–X	DOT–E 10886	Eco-Pak, Inc., Elizabethton, TN.	49 CFR 173.201, 173.202, 173.203, 173.226 and 173.227.	To modify exemption to authorize construction of equivalent material with rolling hoops in addition to stainless steel construction of UN1A1W drums for use as overpack in transporting various Class 7 hazardous material (modes 1, 2, 3, 4).
10916–X	DOT–E 10916	Nalco Chemical Company, Naperville, IL.	49 CFR Part 173, Subpart F and 178.251–2(a).	To authorize the use of a plastic discharge valve on DOT specification 57 portable tank for use in transporting various classes of hazardous materials authorized for shipment in DOT specification 57 portable tanks (modes 1, 2, 3).
10916–P	DOT–E 10916	Ashland Chemical, Inc., Columbus, OH.	49 CFR Part 173, Subpart F and 178.251–2(a).	To become a party to exemption 10916 (modes 1, 2, 3).
10917–P	DOT–E 10917	Eagle-Picher Industries, Inc., Joplin, MO.	49 CFR 172.101, 172.301, 172.400, 173.212, 173.213.	To become a party to exemption 10917 (modes 1, 2, 3, 4).
10917–P	DOT–E 10917	AEG Corporation, Basking Ridge, NJ.	49 CFR 172.101, 172.301, 172.400, 173.212, 173.213.	To become a party to exemption 10917 (modes 1, 2, 3, 4).
10917–P	DOT–E 10917	Silent Power, Inc., Wayne, PA.	49 CFR 172.101, 172.301, 172.400, 173.212, 173.213.	To become a party to exemption 10917 (modes 1, 2, 3, 4).
10917–P	DOT–E 10917	ABB Advanced Battery Systems, Inc., Mississauga, Ontario, CN.	49 CFR 172.101, 172.301, 172.400, 173.212, 173.213.	To become a party to exemption 10917 (modes 1, 2, 3, 4).
10917–P	DOT–E 10917	ABB Advanced Battery Systems, Inc., Mississauga, Ontario, CN.	49 CFR 172.101, 172.301, 172.400, 173.212, 173.213.	To become a party to exemption 10917 (modes 1, 2, 3, 4).
10917–P	DOT–E 10917	Hughes Aircraft Company, Torrance, CA.	49 CFR 172.101, 172.301, 172.400, 173.212, 173.213.	To become a party to exemption 10917 (modes 1, 2, 3, 4).
10917–X	DOT–E 10917	AEG Corporation, Basking Ridge, NJ.	49 CFR 172.101, 172.301, 172.400, 173.212, 173.213.	To authorize the transportation of certain batteries and cells containing sodium (liquid or solid), and which may also contain sulfur (liquid or solid) and compounds of sodium and sulfur in specific packaging (modes 1, 2, 3, 4).
10933–P	DOT–E 10933	Clean Harbors Environmental Services, Inc., Quincy, MA.	49 CFR 173.12, 174.81, 176.83 and 177.848.	To become a party to exemption 10933 (modes 1, 2, 3).
10967–P	DOT–E 10967	Praxair, Danbury, CT	49 CFR 171.4 and 173.323.	To become a party to exemption 10967 (modes 1, 2, 3).
10967–P	DOT–E 10967	Allied-Signal, Inc., Morristown, NJ.	49 CFR 171.4 and 173.323.	To become a party to exemption 10967 (modes 1, 2, 3).
11000–X	DOT–E 11000	Aeropres Corporation, Shreveport, LA.	49 CFR 173.314 Table	To authorize the transportation in commerce of a Division 2.1 material in DOT Specification 112J340W (mode 2).
11010–X	DOT–E 11010	Hickson Timber Products Ltd., Murrysville, PA.	49 CFR 173.243(c)	To authorized the transportation in commerce of Division 6.1 liquid in a DOT Specification 57 portable tank which meets the UN criteria for a ''protected'' 31A metal IBC (modes 1, 2, 3).
11037–P	DOT–E 11037	E.I. dupont de Nemours & Co., Inc. (DuPont), Wilmington, DE.	49 CFR 172.101	To become a party to exemption 11037 (modes 1, 2, 3, 4, 5).
11037–P	DOT–E 11037	Elf Atochem North America, Inc., Philadelphia, PA.	49 CFR 172.101	To become a party to exemption 11037 (modes 1, 2, 3, 4, 5).
11077–P	DOT–E 11077	Olin Corporation, Stamford, CT.	49 CFR 173.226(b) & 173.227(b).	To become a party to exemption 11077 (mode 1).

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10556–N	DOT–E 10556	Liquid Control Corporation, North Canton, OH.	49 CFR 173.29	To authorize the transportation of mix and dispensing equipment containing residual amounts of material classed as corrosive material and flammable liquid in the holding tanks (Mode 1.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10646–N	DOT–E 10646	Schlumberger Technology Corporation, Houston, TX.	49 CFR 173.302	To manufacture, mark, and sell a non-DOT specification oil well sampling device for shipment of various compressed gases (Mode 1, 2, 3, and 4.)
10659–N	DOT–E 10659	Consani Engineering (PTY) Limited, Republic of South Africa.	49 CFR 178.345–8	To authorize the manufacture, mark and sell of non-DOT specification portable tank containers complying with specifications DOT–407 and DOT–412 for transportation hazardous waste substances (Modes 1, 2, and 3.)
10677–N	DOT–E 10677	Primus of Sweden, S–171 26 Solna, Sweden.	49 CFR 178.33	To authorize the transportation of butane cartridges, not to exceed 3.937 inches inside diameter, made to DOT-Specification 2P (Modes 1, 2, 3, and 4.)
10733–N	DOT–E 10733	SUSPA, Incorporated, Grand Rapids, MI.	49 CFR 173.306(f)(2)(iii) and (f)(3), 175.3.	To authorize shipment of limited quantities of compressed gases, in accumulators which deviate from the required retest parameters (Modes 1, 2, 3, 4, and 5.)
10739–N	DOT–E 10739	Hill Brothers Chemical Co., Phoenix, AZ.	49 CFR 174.67(I), (J)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader (Mode 2.)
10756–N	DOT–E 10756	Taylor-Wharton Cryogenics, Theodore, AL.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h).	To authorize the transportation of a non-DOT specification doubled vacuum portable tank with a working pressure of 20 psig. for transportation of argon and nitrogen (Modes 1, 3.)
10763–N	DOT–E 10763	Reliant Airlines, Ypsilanti, MI.	49 CFR 173.52, 173.53	To authorize the transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only (Mode 4.)
10767–N	DOT–E 10767	Archer Daniels Midland Company (ADM), Decatur, IL.	49 CFR 174.67(I), (J)	To authorize tank cars containing carbon dioxide, classed as nonflammable gas, to remain connected during unloading without the physical presence of an unloader (Mode 2.)
10773–N	DOT–E 10773	Witco Corporation, Phillipsburg, NJ.	49 CFR 174.74 (i) and (j)	To authorize chlorine filled tank cars to remain connected without the physical presence of an operator (Mode 2.)
10782–N	DOT–E 10782	American Cryogas Industries, Pennsauken, NJ.	49 CFR 174.67 (i) and (j)	To authorize tank cars containing carbon dioxide refrigerated liquid, non-flammable compressed gas to remain connected during unloading without the physical presence of an unloader (Mode 2).
10788–N	DOT–E 10788	P.S.I. Plus, Inc., Middletown, CT.	49 CFR 173.302(a)(1), 175.3, 178.65–2, 178.65–5(a)(4).	To authorize the manufacture, mark and sell of non-DOT specification non-refillable steel inside cylinder for use in transporting nonflammable gases (Modes 1, 2, 4, and 5.)
10797–N	DOT–E 10797	Monroe Auto Equipment Company, Monroe, MI.	49 CFR 171.8, 172.101	To authorize the transportation of various types of two-tube gas-pressurized shock absorbers and struts to be classed as ORM–D commodity instead of compressed gas (Modes 1, 2, 3, 4, and 5.)
10799–N	DOT–E 10799	ESM II, Inc., Niagara Falls, NY.	49 CFR 172.331, 173.154, 173.164, 173.178, 173.182, 173.204, 173.217, 173.234, 173.245(b), 173.66.	To authorize the shipment of certain hazardous materials in internally-coated polypropylene flexible intermediate bulk containers (Modes 1, 2, and 3.)
10800–N	DOT–E 10800	Aviation Charter, Inc., Eden Prairie, MN.	49 CFR 172.191, 172.204(c)(3), 173.27, 175.30(a)(i), 175.320(b), 175.75.	To authorize the transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only (Mode 4.)
10801–N	DOT–E 10801	Pipe Welding Supply Co., Inc., Liverpool, NY.	49 CFR 174.67 (i) and (j)	To authorize tank cars containing carbon dioxide, refrigerated liquid, classed as non-flammable gas to remain connected during unloading without the physical presence of an unloader (Mode 2.)
10807–N	DOT–E 10807	U.S. Environmental Protection Agency, New York, NY.	49 CFR 173.403	To authorize the bulk shipment of solids debris contaminated with a radioactive material from superfund cleanup site to a disposal facility (Model 1.)
10819–N	DOT–E 10819	Kleen Brite Laboratories, Inc., Rochester, NY.	49 CFR 176.67(i), 176.67(j).	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader (Mode 2.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10825–N	DOT–E 10825	Allied-Signal Inc., Morristown, NJ.	49 CFR 173.29(a), 173.420.	To authorize the one-time shipment of two 480m cylinders with localized thin spots on the wall, containing residual amounts of radioactive material to be purged and cleaned (Mode 1.)
10832–N	DOT–E 10832	Morton International Automotive Safety Products, Ogden, UT.	49 CFR 173.56, 173.57 ...	To authorize the transportation of unclassified generators, inflators and components contained in specially designed fiberboard, plastic or metal containers as appropriate or the various sub-assemblies to be shipped as hazardous waste to disposal plant (Model 1.)
10844–N	DOT–E 10844	Passaic Valley Sewerage Commissioners, Newark, NJ.	49 CFR 174.67(j)	To authorize chlorine filled tank cars to remain connected during unloading without physical presence of an unloader (Mode 2.)
10848–N	DOT–E 10848	Plastic Reel Corporation of America, Lyndhurst, NJ.	49 CFR 173.183	To authorize the transportation of non-DOT specification plastic packaging for use in transporting flame retardant plastic film (Modes 1, 4.)
10851–N	DOT–E 10851	Lincoln Pulp & Paper Company, Inc. Lincoln, ME.	49 CFR 174.67(j)	To authorize chlorine filled tank cars to remain during unloading without the physical presence of an unloader (Mode 2.)
10860–N	DOT–E 10860	Defense Technology and Procurement Agency CH–3000, Berne 25, Switzerland.	49 CFR 172.101	To authorize the transportation of rocket motors, Class A explosives in metal containers on cargo only aircraft (Mode 4.)
10869–N	DOT–E 10869	Norris Cylinder Company, Longview, TX.	49 CFR 173.301(h), 173.302, 173.304, 173,34(a)(1), 175.3, 178.37.	To authorize the manufacture, mark and sell of non-DOT specification seamless steel cylinders with an allowable design stress not to exceed 104000 psig constructed of 3AA cylinders for use in transporting various hazardous materials (Modes 1, 2, 3, and 4.)
10877–N	DOT–E 10877	Westinghouse Electric Corporation, Pittsburgh, PA.	49 CFR 173.206, 178.245	To authorize the use of non-DOT specification portable tanks for the one-way, one time shipment of sodium, metal (Mode 1.)
10888–N	DOT–E 10888	The Clorox Company, Forest Park, GA.	49 CFR 174.67 (i) and (j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader (Mode 2.)
10891–N	DOT–E 10891	Inmark, Inc., Atlanta, GA .	49 CFR 172.400, 172.402(a)(2), 172.504(a) and Table 1, 173.25(a), 173.3, 175.3.	To manufacture, mark and sell specifically designed composite type packaging, for shipment of small quantities of various flammable, corrosive, and poison B liquids and solids without labels (Modes 1, 2, and 4.)
10892–N	DOT–E 10892	Pfizer Inc., Groton, CT	49 CFR 174.67 (i) and (j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader (Mode 2.)
10895–N	DOT–E 10895	Kansas City Missouri Water/Pollution Control Dept. Kansas City, MO.	49 CFR 174.67 (i) and (j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader (Mode 2.)
10899–N	DOT–E 10899	Tuscarora Inc., Conyers, GA.	49 CFR 173.158(b)(2)(e) .	To authorize the manufacture, mark, and sell of a non-reusable, molded expanded polystyrene inner packaging for a 6.5-gallon glass carboy receptacle overpacked in a 4G box for use in transporting nitric acid of 70% or less (Modes 1, 2, and 3.)
10900–N	DOT–E 10900	Martinaire East, Inc., Dallas, TX.	49 CFR 172.101, 173.27, 175.75.	To authorize the transportation in commerce of certain Division 1.1, 1.2, 1.3, and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only (Mode 4.)
10901–N	DOT–E 10901	Alabama River Pulp Company, Inc., Perdue Hill, AL.	49 CFR 174.67 (i) and (j)	To authorize chlorine-filled tank cars to remain connected during unloading without the physical presence of an unloader (Mode 2.)
10904–N	DOT–E 10904	InVitro International, Irvine, CA.	49 CFR 173.136, 173.137	To authorize an alternative mechanical type test method to determine corrosivity and specific packaging group (Mode 1.)
10905–N	DOT–E 10905	Comdyne I, Incorporated, West Liberty, OH.	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3.	To manufacture, mark, and sell non-DOT specification composite cylinders to be used in transporting certain flammable and non-flammable compressed gases (Modes 1, 3, 4, and 5.)
10907–N	DOT–E 10907	Russell-Stanley Corporation, Red Bank, NJ.	49 CFR 173.227(c)	To authorize the manufacture, mark and sell of 1H1 polyethylene drums for the shipment of Division 6.1, Hazard Zone B materials without a steel overpack (modes 1, 2, and 3.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10909–N	DOT–E 10909	Hammermill Papers, Selma, AL.	49 CFR 174.67 (i) and (j)	To authorize chlorine-filled tank cars to remain connected during unloading without the physical presence of an unloader (Mode 2.)
10911–N	DOT–E 10911	The Pallet Reefer Company, Seaford, DE.	49 CFR 173.24(g)	To manufacture, mark, and sell a specifically designed refrigeration unit equipped with four DOT specification 3AL1800 cylinders, containing carbon dioxide, refrigerated liquid, division 2.2, which are vented during transportation through a controlled release process for cooling purposes (Mode 1.)
10912–N	DOT–E 10912	Westvaco Corporation, New York, NY.	49 CFR 173.31 (c)(1), (c)(5).	To authorize the one-time shipment of an empty chlorine UTLX28349 tank car in need of retest (Mode 2.)
10914–N	DOT–E 10914	Allied-Signal Aerospace Company, Tempe, AZ.	49 CFR 178.44	To authorize the manufacture, mark, and sale of a non-DOT specification welded pressure vessel comparable to a DOT Specification 3HT cylinder for use in transporting compressed gas (Modes 1, 4.)
10918–N	DOT–E 10918	Snyder Industries, Inc., Lincoln, NE.	49 CFR 173.119, 173.125, 173.245, 173.249, 173.249(a), 173.250(a), 173.256, 173.257, 173.262, 173.263, 173.264, 173.265, 173.266, 173.269, 173.272, 173.276, 173.277, 173.283, 173.287, 173.288, 173.289, 173.292, 173.297, 173.299(a), 49 CFR Part 713.	To authorize the manufacture, mark and sell of rotationally molded, reusable polyethylene tank within a plastic frame designed for stacking equipped with screw-lid top closure for use in transporting corrosive and flammable liquids and oxidizers (Modes 1, 2.)
10919–N	DOT–E 10919	World Airways, Inc., Herndon, VA.	49 CFR 172.101, 172.204(c)(3), 175.30(e)(1), 173.27 (b)(2), (3) and 173.27(f) Table 2.	To authorize the transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only (Mode 4.)
10922–N	DOT–E 10922	FIBA, Westboro, MA	49 CFR 172.301(c), 173.34(e).	To authorize the ultrasonic testing instead of hydrostatic testing of DOT-Specification 3A and 3AA seamless steel cylinders for shipment of those materials authorized to be shipped in these cylinders (Modes 1, 2, and 3.)
10923–N	DOT–E 10923	The Boeing Company, Boeing Defense & Space Group, Seattle, WA.	49 CFR 173.306(e), 173.307(a)(4).	To authorize the transportation of aircraft air conditioning units containing refrigerant classed as nonflammable liquefied gas (Mode 1.)
10928–N	DOT–E 10928	Jefferson Smurfit Corp./ Container Corp. of America, Brewton, AL.	49 CFR 174.67(i) and (j) ..	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader (Mode 2.)
10933–N	DOT–E 10933	Rollins CHEMPAK, Inc., Houston, TX.	49 CFR 173.12, 174.81, 176.83 and 177.848.	To authorize the multi-modal transportation of lab-packs with other containerized hazardous materials with partial relief from certain segregation requirements (Modes 1, 2, and 3.)
10938–N	DOT–E 10938	Westvaco Corporation, New York, NY.	49 CFR 174.67(i)	To authorize chlorine filled tank cars to remain attached during unloading without the physical presence of an unloader (Mode 2.)
10944–N	DOT–E 10944	Pacific Scientific, HTL/Kin Tech Division, Duarte, CA.	49 CFR 173.304(a)(1), 175.3, 178.47.	To authorize the manufacture, mark and sale of non-DOT specification cylinders, constructed of titanium material conforming to DOT Specification 4DS for use in transporting compressed gas n.o.s., classed as nonflammable gas, Division 2.2 (Modes 1, 2, 4, and 5.)
10958–N	DOT–E 10958	International Paper, Natchez, MS.	49 CFR 174.67(i) & (j)	To authorize chlorine filled tank cars to remain attached during unloading without the physical presence of an unloader (Mode 2.)
10959–N	DOT–E 10959	Marsulex Incorporated, North York, Ontario, Canada.	49 CFR 173.29(a)(c)(2), 173.31(c)(1).	To authorize a one-time shipment of four DOT Specifications 111A100W2 tank cars which are overdue for tank and safety valve tests containing residue of sulfuric acid, Class 8 (Mode 2.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10963–N	DOT–E 10963	Sigri Great Lakes Carbon Corporation, Union, NJ.	49 CFR 173.119, 173.304, 173.327, 173.328, 173.34, 173.346.	To manufacture, mark and sell non-DOT specification full removable head salvage cylinders of 3½ gallon capacity for over packing damaged or leaking packages of laboratory size gas bottles of pressurized and non-pressurized hazardous material (Mode 2.)
10964–N	DOT–E 10964	Walter Kidde Aerospace, Inc., Wilson, NC.	49 CFR 173.58–16 thru 19, 178.58–2, 178.58–5, 178–58–8 thru 12.	To authorize the manufacture, mark and sell of non-DOT specification cylinders for transporting compressed gas in automatic fire extinguisher system in the cargo area of Boeing 777 aircraft (Modes 4, 5.)
10966–N	DOT–E 10966	Columbia Helicopters, Inc., Portland, OR.	49 CFR 173.119, 173.263, 175.320.	To authorize the transportation of bulk quantities of combustible liquid, Class 3, 8 and Division 2.3 materials in non-DOT specification polyethylene portable tanks (Mode 4.)
10967–N	DOT–E 10967	Balchem, Slate Hill, NY.	49 CFR 171.4 and 173.323.	To authorize use of a limited number of DOT Specification 5P drums for the shipment of ethylene oxide, Division 2.3, beyond the October 1, 1993 compliance date for poison inhalation packagings (Modes 1, 2, and 3.)
10968–N	DOT–E 10968	Stone Container Corporation, Panama City, FL.	49 CFR 174.67 (i) and (j)	To authorize chlorine filled tank cars to remain attached during unloading without the physical presence of an unloader (Mode 2.)
10971–N	DOT–E 10971	Sun Company, Inc., Philadelphia, PA.	49 CFR 173., 173.29(a)(c)(2), 49 CFR.	To authorize a one-time shipment of two tank cars 112J340W and 105J400W which are overdue for valve testing containing residue of liquefied petroleum gas, Division 2.1 (Mode 2.)
10974–N	DOT–E 10974	International Paper/ Androscoggin Mill, Jay, ME.	49 CFR 174.67 (i) and (j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader (Mode 2.)
10975–N	DOT–E 10975	Boise Cascade Corporation, Boise, ID.	49 CFR 174.67 (i) and (j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader (Mode 2.)
10976–N	DOT–E 10976	Occidental Chemical Corporation, Dallas, TX.	49 CFR 173.29(a)(c)(2), 173.31(c)(1), 49 CFR.	To authorize the shipment of a DOT 111A100W2 tank car which is overdue for tank and safety valve test containing residue of sulfuric acid, Class 8 (Mode 2.)
10977–N	DOT–E 10977	Federal Industries Corporation, Plymouth, MN.	49 CFR 172.402(a)(2), 172.504(a) and Table 1, 173.25(a), 173.3, 175.3, 49 CFR 172.400.	To authorize the manufacture, mark and sale of specially-designed composite type packaging for shipment of small quantities of various flammable, corrosive, oxidizers, poison B liquids and solids to be shipped without labels (Modes 1, 2, and 4.)
10978–N	DOT–E 10978	Southern Pacific Railroad, Houston, TX.	49 CFR 173.312(e)(1)	To authorize the shipment of a DOT Specification 111A100W3 tank car containing molten sulphur which was involved in a fire (Mode 2.)
10981–N	DOT–E 10981	Atlas Powder International Ldt., Pearlington, MS.	49 CFR 172.101, 173.62 and 176.83.	To authorize the shipment of explosives, blasting, Type E (1.5D) in IM–102 portable tank containers stowed below deck on cargo vessels dedicated to the shipment of explosive (Modes 1 and 3.)
10982–N	DOT–E 10982	Consolidated Papers, Inc., Wisconsin Rapids, WI.	49 CFR 174.67 (i)+(j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader (Mode 2.)
10983–N	DOT–E 10983	U.S. Reduction Co., Munster, IN.	49 CFR 174.67 (i)+(j), 177.834(i)(3).	To authorize chlorine filled tank cars and cargo tanks to remain connected during unloading without the physical presence of an unloader (Mode 2.)
10984–N	DOT–E 10984	Airco Electronic Gases, Riverton, NJ.	49 CFR 173.304	To authorize the use of DOT Specification 5A/ UN1A1 drum for the shipment of dichlorosilane classed as Division 2.3 (Modes 1 and 3.)
10995–N	DOT–E 10995	James River Paper Company, Camas, WA.	49 CFR 174.67 (i)+(j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader (Mode 1.)
11005–N	DOT–E 11005	Pressure Technology, Inc., Hanover, MD.	49 CFR 173.302(a), 173.304(a)(d), 175.3.	To authorize the manufacture, mark and sell of non-DOT specification fiber reinforced plastic full composite cylinders designed in accordance with DOT–FRP–1 standard for use in transporting various commodities classed as Division 2.1 and 2.2 (Modes 1, 2, 3, 4, and 5.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11008–N	DOT–E 11008	Jupiter Chemicals, Inc., Houston, TX.	49 CFR 173.29(a)(c)(2) ...	To authorize a one-time shipment of a DOT Specification 111A100W3 tank car, containing a chlorine residue, which is overdue for valve testing (Mode 2.)
11009–N	DOT–E 11009	A.E. Staley Manufacturing Company, Decatur, IL.	49 CFR 173.29(a)(c)(2) ...	To authorize a one-time shipment of a DOT Specification 105A500W tank car, containing a chlorine residue, which is overdue for valve testing (Mode 2.)
11020–N	DOT–E 11020	HCI Advance Chemical Distributors, Inc., Catoosa, OK.	49 CFR 174.67 (i) and (j)	To authorize chlorine filled tank cars to remain attached during unloading without the physical presence of an unloader (Mode 2.)
11023–N	DOT–E 11023	City of Houston, Houston, TX.	49 CFR 174.67 (i) and (j)	To authorize chlorine filled tank cars to remain attached during unloading without the physical presence of an unloader (Mode 2.)
11024–N	DOT–E 11024	CITGO Petroleum Corporation, Lake Charles, LA.	49 CFR 174.67 (i) and (j)	To authorize chlorine filled tank cars to remain attached during unloading without the physical presence of an unloader (Mode 2.)
11026–N	DOT–E 11026	Elf Atochem North American Inc., Philadelphia, PA.	49 CFR 173.29(a)(c)(2) ...	To authorize a one-time shipment of a DOT specification ACFX19034 tank car, containing a chlorine residue, which is overdue for inspection (Mode 2.)
11037–N	DOT–E 11037	Rohm & Haas Company, Bristol, PA.	49 CFR 172.101	To authorize maneb stabilized or maneb preparations, stabilized, Division 4.3, UN 2968 to be shipped as essentially nonregulated for domestic transportation (Modes 1, 2, 3, 4, and 5.)
11065–N	DOT–E 11065	City of Cincinnati/Department of Sewers, Cincinnati, OH.	49 CFR 173.67 (i) and (j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader (Mode 2.)
11077–N	DOT–E 11077	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.226(b) and 173.227(b).	To authorize shipment in exclusive use vehicles, of methylhydrazine in 55 gallon UN 1A1 stainless steel drums and Nitric acid in 55 gallon UN 1B1 aluminum drums which deviate from the required wall thickness, secondary cap seal and overpack requirements for Group I Hazard Zone A & B materials (Mode 1.)
11093–N	DOT–E 11093	CP Rail (Canadian Pacific Limited), Montreal, Quebec, CN.	49 CFR 172.704(c)(2)	To extend the training program required under 49 CFR 172.704(c)(2) for train crew employees who transport hazardous materials in CP rail-owned vehicles from once every two years to once every three years (Mode 2.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE6614–X	DOT–E 6614	Mid-State Chemical & Supply Corp. Indianapolis, IN.	49 CFR 173.245, 173.263(a)(28) and 173.277(a)(6).	Authorizes the use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box for transportation of certain corrosive liquids (mode 1).
EE6769–X	DOT–E 6769	E.I. du Pont de Nemours & Company, Inc. Wilmington, DE.	49 CFR 173.314, 173.315	Authorizes the transport of trifluromethane in DOT specification tank cars and cargo tanks (modes 1, 2).
EE7616–X	DOT–E 7616	Illinois Central Railroad Homewood, IL.	49 CFR 172.200(a), 172,204(a), 172,204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	Authorizes the carrier to certify the shipping paper on behalf of the shipper when transporting hazardous materials by rail (mode 2).
EE7879–X	DOT–E 7879	Halliburton Logging Services, Inc. Houston,TX.	49 CFR 173.246, 175.3, 178.42.	Authorizes the shipment of bromine trifluoride in non-DOT specifications seamless cylinders (modes 1, 2, 3, 4).
EE7943–X	DOT–E 7943	Patterson Laboratories, Inc. (Patterson West) Phoenix, AZ.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	Authorizes the shipment of corrosive liquids in fiberboard boxes complying with DOT specification 12B except for handholes in top flaps (mode 1).
EE8273–P	DOT–E 8273	Takata Moses Lake, Inc. Moses Lake, WA.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8273 (modes 1, 2, 3, 4).

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE8582–X	DOT–E 8582	Metro-North Commuter Railroad Company, New York, NY.	49 CFR Parts 100–177 ...	Authorizes the transport of railway track torpedoes and fusees packed in metal kits in motor vehicles by railroad maintenance crews as nonregulated rail carrier equipment (mode 1).
EE8723–X	DOT–E 8723	Alaska-Pacific Powder Company, Anchorage, AK.	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	Authorizes the use of non-DOT specification motor vehicles for bulk shipment of certain blasting agents (modes 1, 2).
EE9275–P	DOT–E 9275	Sanofi Beaute, Inc., Edison, NJ.	49 CFR Parts 100–199 ...	To become a party to exemption 9275 (modes 1, 2, 3, 4, 5).
EE9332–X	DOT–E 9332	Johnson Matthey Company, West Chester, PA.	49 CFR 172.101, 173.150, 175.3.	Authorizes the transport of a solid explosive dissolved in an ammonia solution as a flammable solid in DOT Specification 34 polyethylene containers or DOT Specification 3E polyethylene bottles, packed in DOT Specification 15A wooden boxes (modes 1, 2, 3).
EE9723–P	DOT–E 9723	Environmental Transport Systems, Jamestown, ND.	49 CFR 177.848(b)	To become a party to exemption 9723 (mode 1).
EE10094–X	DOT–E 10094	Arcadian Corporation, Memphis, TN.	49 CFR 173.154(a)(17) ...	Authorizes the transportation of ammonium nitrate solution in DOT Specification 111A100W1 lined and insulated tank car tanks (mode 2).
EE10143–X	DOT–E 10143	Eurocom Imports, Inc., Dallas, TX.	49 CFR 173.306(a), 178.33a.	Authorizes the transport of certain hazardous materials in a container conforming with DOT Specification 2Q exception for size and marking (modes 1, 2).
EE10247–P	DOT–E 10247	G.C. Industries, Inc., Fremont, CA.	49 CFR 173.4	To become a party to exemption 10247 (modes 1, 2, 4).
EE10297–X	DOT–E 10297	Tropigas De Puerto Rico, Inc., San Juan, PR.	49 CFR 173.34(L) (1), (2), (3), 175.30, Part 107 Appendix B.	To authorize the rebuilding and sale of DOT Specification 4B, 4BA and 4BW cylinders in accordance with specification prescribed procedures (modes 1, 2, 3, 4, 5).
EE10529–X	DOT–E 10529	LND, Inc., Oceanside, NY	49 CFR 173.302, 175.3 ...	Authorizes the use of non-DOT specification containers described as hermetically sealed electron tube devices (modes 1, 2, 3, 4, 5).
EE10992–N	DOT–E 10992	Domino Sugar Corporation, New York, NY.	49 CFR 173.31(a)(5)	To authorize the shipment of DOT specification tank cars, containing non-hazardous materials, meeting all DOT requirements except that the tank cars are not equipped with coupler vertical restraint systems (mode 2).
EE11000–N	DOT–E 11000	Aeropres Corporation, Shreveport, LA.	49 CFR 173.314 Table	To authorize the transportation in commerce of a Division 2.1 material in DOT Specification 112J340W (mode 2).
EE 11001–N	DOT–E–11001	Air Products and Chemicals, Incorporated, Allentown, PA.	49 CFR 173.67(k); 174.9(b).	To authorize the shipment of a DOT Specification 111A60ALW1 tank car, containing acetic acid, a class 8 material, meeting all DOT requirements except that the tank car has defective interior heater coils (mode 2).
EE 11002–N	DOT–E–11002	Airstech Chemical Corporation, Pittsburgh, PA.	49 CFR 173.67(k), 174.9(b).	To authorize the shipment of a DOT Specification 111A100W1 tank car, containing phenol, a division 6.1 material, meeting all DOT requirements except that the tank car has defective interior heater coils (mode 2).
EE 11010–N	DOT–E–11010	Hickson Timber Products Ltd., Murrysville, PA.	49 CFR 173.243(c)	To authorize the transportation in commerce of Division 6.1 liquid in a DOT Specification 57 portable tank which meets the UN criteria for a ''protected'' 31A metal IBC (modes 1, 2, 3).
EE 11011–N	DOT–E–11011	Arco Alaska, Incorporated, Pasadena, CA.	49 CFR 173.31(n), 173.315(h), 173.315(i), 178.245–1, 178.245–4 and 178–245–5.	To authorize the one-time shipment for transportation in commerce of a nonflammable liquefied compressed gas in a non-DOT specification ASME Code ''U'' stamped portable tank (mode 3).
EE 11015–N	DOT–E–11015	Vulcan Chemical Company, Wichita, KS.	49 CFR 173.31(b)(3), 179.100–12, 179.100–13 and 179.102–2.	To authorize the transportation in commerce of a DOT Specification 105A50OW tank car, containing a Division 2.3 material meeting all DOT requirements except that the tank car has a defective safety relief valve and chlorine ''C'' kit attached (mode 2).

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 11016–N	DOT–E–11016	Sun Refining and Marketing Company, Philadelphia, PA.	49 CFR Parts 106, 107 and 171–180.	To authorize the transportation in commerce of a DOT Specification 111A10OW1 tank car, containing xylene, a Class 3 material, meeting all DOT requirements except that the tank car has defective interior heater coils (mode 2).
EE 11017–N	DOT–E–11017	Olin Corporation, Stamford, CT.	49 CFR 173.29(c)(2), 173.31(b)(3), 179.100–12(c), 179.100–13 and 179.102–2.	To authorize the transportation in commerce of a DOT Specification 105A50OW tank car, containing a Division 2.3 material, meeting all DOT requirements except that the tank car has a defective safety relief valve and chlorine ''C'' kit attached (mode 2).
EE 11018–N	DOT–E 11018	United States Rail Services, San Francisco, CA.	49 CFR 173.31(a)(7) and 179.100–16.	To authorize the transportation in commerce of certain DOT Class 112 tank cars, containing liquefied petroleum gas and Ammonia, anhydrous, liquid, meet all DOT requirements except that the tank cars have air brake equipment support attachment welded directly to the tank shell (mode 2).
EE 11019–N	DOT–E 11019	Occidental Chemical Corporation, Dallas, TX.	49 CFR 173.29(c)(2), 173.31(b)(3), 179.100–12(c), 179.100–13 and 179.102–2.	To authorize the transportation in commerce of a DOT Specification 105A500W tank car, containing a Division 2.3 material, meeting all DOT requirements except that the tank car has a defective safety relief valve and chlorine ''C'' kit attached (mode 2).
EE 11028–N	DOT–E 11028	Allied Signal Incorporated, Morristown, NJ.	49 CFR 173.29(c)(2), 173.31(b)(3), 179.100–12(c), and 179.100–13.	To authorize the transportation in commerce of a DOT Specification 1125400W tank car, containing a Class 8 material, meeting all DOT requirements except that the tank car has a defective safety relief valve which is equipped with a chlorine ''C'' kit (mode 2).
EE 11030–N	DOT–E 11030	Union Tank Car Company, East Chicago, IN.	49 CFR 173.24(b)	To authorize the transportation of a DOT Specification 111A100W5 tank car, containing a Class 8 material, which does not meet the minimum shell thickness due to corrosion of the tank shell (mode 2).
EE 11035–N	DOT–E 11035	On-Tranck Railcar Services, Incorporated, Houston, TX.	49 CFR 173.24(a), 173.29(c)(2), 173.31(a)(1), 179.201–1 and 179.200–18(a).	To authorize the transportation in commerce of a DOT Specification 111A100W3 tank car, containing a residual amount of a Class 3 material, which has the safety relief valve broken from the tank shell due to shifting of the tank car jacket (mode 2).
EE 11038–N	DOT–E 11038	Mallard Transportation Company, Tulsa, OK.	49 CFR 173.31(a)(7) and 179.100–16.	To authorize the transportation of certain DOT Class 112 tank cars, containing butane, meeting all DOT requirements except that the tank cars have air brake equipment support attachment welded directly to the tank shell (mode 2).
EE 11039–N	DOT–E 11039	Merichem Company, Houston, TX.	49 CFR 173.67(k) and 174.9(b).	To authorize the transportation of a DOT Specification 111A100W1 tank car, containing a residue of Class 8 material, meeting all DOT requirements except that the tank car has defective interior heater coils (mode 2).
EE 11040–N	DOT–E 11040	Sun Refining and Marketing Company, Philadelphia, PA.	49 CFR 173.67(k) and 1.74.9(b).	To authorize the transportation of a DOT Specification 111A100W1 tank car, containing a residual amount of toluene, a class 3 material, meeting all DOT requirements except that the tank car has defective interior heater coils (mode 2).
EE 11041–N	DOT–E 11041	Aerojet Propulsion Division, (APD) Sacramento, CA.	49 CFR 173.124(a)(1)(i) ..	To authorize the transportation in commerce of a Class 9 material (aqueous solution containing not more than 12% ammonium perchlorate, 0.5% nitroguandine and 50 ppm of (RDX) in cargo tanks (mode 1).
EE 11049–N	DOT–E 11049	Stolt-Haven, Incorporated, Perth Amboy, NJ.	49 CFR 173.31(a)	To authorize the transportation in commerce of two DOT Specification 111A10OW1 tank cars, containing combustible liquids, n.o.s. and flammable liquids, n.o.s. (mode 2).

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 11051–N	DOT–E 11051	GLNX Corporation The Woodlands, TX.	49 CFR 173.31(a)(7) and 179.100–16.	To authorize the transportation of certain DOT Class 112 tank cars containing liquefied petroleum gas and conforming with all of the applicable requirements for such cars except that the tank cars have air brake equipment support attachments welded directly to the tank shell (mode 2).
EE 11061–N	DOT–E 11061	ICI, Forest Products Division, Montreal, Quebec, CN.	49 CFR 173.31(b)(3); 179.100–12(c); 179.100–13; and, 179.102–2.	To authorize the transportation in commerce of a DOT (mode 2).
EE 11063–N	DOT–E 11063	United Parcel Service of America, Inc. (UPS), Atlanta, GA.	49 CFR 171.2, 172.200(a), 172.203(a) 172.204(a), 172.302(c), 174.3, 175.30(a)(2), 177.801, 177.818(b) & (b); Part 107, Subpart B, Appendix B.	To authorize the offering and acceptance of hazardous materials for transportation, and the transportation of hazardous materials by aircraft and by motor vehicle and rail freight incident to transportation by aircraft, when the hazardous materials are certified on a shipping paper by a shipper's certification containing certain wording (modes 1, 2, 4, 5).
EE 11066–N	DOT–E 11066	5CM Chemicals Incorporated, Baltimore, MD.	49 CFR 173.31(b)(3); 179.100–12(c); 179.100–13; and, 179.102–2.	To authorize the shipment of a DOT Specification 105A500W tank car, containing a Division 2.3 material, meeting all DOT requirements except that the tank car has a defective liquid valve lange and chlorine ''C'' kit attached (mode 2).
EE 11071–N	DOT–E 11071	Riedel Environmental Services, Inc., Portland, OR.	49 CFR Parts 171, 172, 173 and 177.	To authorize the transportation in commerce of waste hazardous materials in certain non-DOT specification strong leak-proof metal, plastic, or lined wood non-bulk packagings suitable for the liquids or solids to be transported (mode 1).
EE 11072–N	DOT–E 11072	U.S. Department of Defense, Washington, DC.	.....	To authorize the transportation in commerce of explosive materials containing white phosphorus of Class 1, Compatibility Group H stored in shipborne steel barges instead of stored in steel portable magazines or freight containers (mode 3).
EE 11073–N	DOT–E 11073	E.I. du Pont de Nemours and Company, Inc., Wilmington, DE.	49 CFR 172.102(c)(3) Special Provision B14 and B74; and, 179.101–1.	To authorize the transportation of chlorosulfonic acid DOT Class 1125 tank cars constructed of ASTM 204–70, Type 304L stainless steel, equipped with full head shields (mode 2).
EE 11076–N	DOT–E 11076	National Agricultural Chemicals Association (NACA), Washington, DC.	49 CFR Part 107, Appendix B to Subpart B; 171.14(b)(4)(i).	To authorize the transportation in commerce of agricultural chemicals in packagings, authorized by 49 CFR Part 173 that were packaged prior to June 1, 1993, and that have been marked and labeled in accordance with the applicable requirements of 49 CFR Part 173, Subparts D and E, required and authorized prior to October 1, 1993 (modes 1, 2).
EE 11092–N	DOT–E 11092	Merichem Company, Houston, TX.	49 CFR 173.67(k), 174.9(b).	To authorize the shipment of a DOT Specification 111100W1 tank car, containing a residual amount of a Class 8 material, meeting all DOT requirements except that the tank car has defective interior heater coils (mode 2).
EE 11094–N	DOT–E 11094	Rhone-Poulenc, Inc., Shelton, CT.	49 CFR 173.21(b)(1); 174.47(b).	To authorize the transportation of a DOT Specification 105A500W tank car with a safety relief valve, equipped with a chlorine ''C'' kit for the transportation of sulfur dioxide (mode 2).
EE 11095–N	DOT–E 11095	Westvaco Corporation, New York, NY.	49 CFR 173.29(c)(2), 173.31(b)(3), 179–100–12(c) and, 179.100–13.	To authorize the shipment of a DOT Specification 105A500W tank car, containing a Division 2.3 material, meeting all DOT requirements except that the tank car has a defective safety relief valve and chlorine ''C'' kit attached (mode 2).
EE 11101–N	DOT–E 11101	Albright & Wilson Americas, Richmond, VA.	49 CFR 172.102(c)(2) Special Provision B32.	To authorize the shipment of two (2) Class 8 materials, phosphorus oxychloride and phosphorus trichloride, which are also poisonous by inhalation in seven (7) insulated DOT Specification MC 312 cargo tank motor vehicles having design pressures of at least 35 psig (mode 1).
EE 11108–N	DOT–E 11108	Sun Refining and Marketing Company, Philadelphia, PA.	49 CFR 173.67(k), 174.9(b).	To authorize the shipment of DOT Specification 111A100W1 tank cars, containing Naphtha, a Class 3 material, meeting all DOT requirements except that the tank cars has defective interior heater coils (mode 2).

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 11112–N	DOT–E 11112	Laidlaw Environmental Services, Inc., Columbia, SC.	49 CFR Parts 171, 172, 173, and 177 with exceptions.	To authorize the transportation in commerce of waste hazardous materials in certain non-DOT specification strong leak-proof metal, plastic, or lined wood non-bulk packaging (mode 1).
EE 11113–N	DOT–E 11113	FMC Corporation, Philadelphia, PA.	49 CFR 172.102 Special Provision B74.	To authorize the transportation in commerce of a Class 8 material meeting the definition of a poison inhalation material, in certain DOT Specification 1045300W tank cars with a safety relief device rate at 25 percent of the tank test pressure (mode 2).
EE 11119–N	DOT–E 11119	U.S. Chemical and Plastics Co., Inc., Canton, OH.	49 CFR 173.152	To authorize the transportation in commerce of certain organic peroxides, as limited quantities/commodities when the inside containers do not exceed 125 ml for liquids and 500 g for solids (modes 1, 2).
EE11119–P	DOT–E 11119	The Morton Paint Company, Canton, OH.	49 CFR 173.152	To become a party to exemption 11119 (modes 1, 2).
EE11119–P	DOT–E 11119	Catalyst Systems, Inc., Gnadenhutten, OH.	49 CFR 173.152	To become a party to exemption 11119 (modes 1, 2).
EE11123–N	DOT–E 11123	Dyno Nobel, Incorporated, Salt Lake City, UT.	49 CFR Part 107, Appendix B(1) and 171.14(b)(4)(i).	To authorizes the transportation in commerce of certain explosives which are prepared in accordance with the Hazardous Materials Regulations in effect as of September 30, 1991 due to unforeseen delays in receiving approval to meet the communication criteria required by Docket HM–181 (modes 1, 2, 3).
EE11124–N	DOT–E 11124	Canadian National Railway Company, Montreal, Quebec, CN.	49 CFR 172.704(c)(2)	To authorize Canadian based employees of Canadian National Railway Co., who are engaged infrequent and limited transportation of hazardous materials into the United States, to be trained and receive recurrent training every three years in accordance with Part 9 of the Transportation of Dangerous Goods (TGD) Regulation (mode 2).
EE11125–N	DOT–E 11125	Rhone-Poulenc Basic Chemical Company, Shelton, CT.	49 CFR 172.103 Special Revision B74.	To authorize the transportation in commerce of a Class 8 material meeting the definition of a poison inhalation material, in certain DOT specification 1055300W tank cars with a safety relief device rated at 2 percent of the tank test pressure (mode 2).
EE11128–N	DOT–E 11128	Gabriel Chemicals Inc., Houston, TX.	49 CFR 172.102(c)(3) Special Provision B32.	To authorize the transportation in commerce of chlorosulfonic acid, a Class 8 material which is poisonous by inhalation, in four (4) uninsulated DOT Specification MC 312 cargo tank motor vehicles having design pressure of 50 psig (mode 1).
EE 11129–N	DOT–E 11129	Trinity Industries Leasing Company, Chicago Heights, IL.	49 CFR 173.29(b)(2), 173.31(a).	To authorize the transportation in commerce of a DOT Specification 111A100W1 tank car, containing a residual amount of a Class 3 material, meeting in all DOT requirements except that the tank shell has been damaged (mode 2).
EE 11139–N	DOT–E 11139	Alaska Pacific Powder Company, Anchorage, AK.	49 CFR 173.62, Part 107 Appendix B(1), 172.301(c), 175.320(a).	To authorize the transportation in commerce, aboard cargo aircraft, in Alaska, Explosives, blasting, type E, Division 1.5D which are described in 49 CFR Section 175.320 as Blasting agent, n.o.s (mode 4).
EE 11142–N	DOT–E 11142	Gabriel Chemicals, Inc., Houston, TX.	.....	To authorize the transportation in commerce of a Class 8 material meeting the definition of a poison inhalation material in certain DOT Specification 112S340W tank cars (mode 2).
EE 11145–N	DOT–E 11145	LaRoche Chemicals, Incorporated, Baton Rouge, LA.	49 CFR 173.29(c)(2), 173.31(b)(3), 179.100–12(c) and, 179.100–13.	To authorize the transportation in commerce of a DOT Specification 105A500W tank car, containing a division 2.3 material, meeting all DOT requirements except that the tank car has a defective safety relief valve and chlorine ''C'' kit attached (mode 2).
EE 11150–N	DOT–E 11150	Maine State Ferr Service, Rockland, ME.	49 CFR 172.101	To authorize the transportation in commerce of liquefied petroleum gas in DOT Specification cylinders, secured to transport vehicles on-passenger ferry vessels, which is not authorized by the regulations (mode 3).

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 11154–N	DOT–E 11154	CSX Transportation, Inc., Jacksonville, FL.	49 CFR 173.39(c)(2)	To authorize the transportation of a DOT Specification 105A300W tank car, containing a class 3 material, which does not fully comply with all DOT requirements (mode 2).
EE 11155–N	DOT–E 11155	CP Chemicals, Incorporated, Sumter, SC.	.....	To authorize the transportation of a DOT Specification 111A100W tank car, containing a class 3 material, which does not fully comply with all DOT requirements (mode 2).

WITHDRAWAL EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7455–X		Austin Powder Company, Cleveland, OH.	49 CFR 176.177(g), 176.177(h), 176.177(n), 176.177(q), 176.177(r), 176.410(e).	Authorizes the handling and stowage of explosive material in an anchored and unmanned barge, used as a magazine vessel (mode 3).
7558–X		Praxair, Inc., Danbury, CT	49 CFR 173.318(a)(1)	Authorizes use of a non-DOT specification portable tank, for transportation of certain nonflammable gases (mode 1, 3).
7638–X		Gas Tech, Inc. Indianapolis, IN.	49 CFR 173.316(a), 175.3	Authorizes the manufacture, marking and sale of DOT Specification 4L cylinders for transportation of certain nonflammable compressed gases (modes 1, 2, 3, 4).
8156–X		Scott Specialty Gases, Inc., Plumsteadville, PA.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	Authorizes the shipment of flammable gases in DOT Specification 39 cylinders up to 225 cubic inches in volume (modes 1, 2).
8236–P		Daicel Chemical Industries, Ltd., Hyogo-Ken 671–16, Japan.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To authorize transport of a passive restraint system, and of the inflator therefor, containing a class B explosive as a flammable solid (modes 1, 2, 3, 4).
8751–X		Delta Tech Service, Inc., Martinex, CA.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.263(a), 173.346(a), 178.340–7, 178.343–5.	Authorizes the shipment of various corrosive waste liquids or semi-solids in non-DOT specification cargo tanks similar to DOT Specification MC–312 except for bottom outlet valve variations (mode 1).
8870–X		Hach Company, Ames, IA	49 CFR 172.101, 173.286, 175.3.	Authorizes the shipment of compatible hazardous materials of various classifications packed in separate inside receptacles not exceeding 8 fluid ounces or ½ pound packed inside a strong outside container, labeled according to the highest order of hazard, and described as chemical kit (modes 1, 2, 3, 4, 5).
8956–X		Clif Mock Company, Conroe, TX.	49 CFR 173.119, 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	Authorizes the manufacture, marking and sale of non-DOT specification stainless steel cylinders for transportation of nonflammable gases, flammable gases or flammable liquids (modes 1, 3, 4).
10060–N		Ashland Petroleum Company, Ashland, KY.	49 CFR 178.337–17, 178.337–8(a)(1), 178.337–9, 178.342–5(a), Part 173, Subpart D.	To authorize transportation of various flammable and combustible liquids, spilled in highway incidents, in a modified DOT specification MC–331 tank mounted on a tandem axle truck (mode 1).
10332–N		ABB Composites, Inc., Irvine CA.	49 CFR 173.301(h)	To manufacture, mark and sell a non-DOT specification composite pressure vessel for shipment of non-flammable gas (mode 1).
10439–N		U.S. Department of Defense, Falls Church VA.	49 CFR 173.22(a), 174.3, 175.3, 176.3, 177.801.	To authorize transportation of ammunition for Cannon with solid projectile, classed as Class C explosive instead of Class B packaged in accordance with DOD procedures (modes 1, 2, 3).
10597–X		Jevic Transportation, Inc., Delanco, NJ.	49 CFR 177.834(l)(2)(i)	Authorizes the shipment of flammable liquids and/or flammable gases in temperature controlled equipment (mode 1).
10675–N		Schering Berlin Polymers Inc., Dublin, OH.	49 CFR 173.242, 173.244	To authorize the transportation of pyrophoric liquids, n.o.s. and flammable liquids, n.o.s. in non-DOT specification portable tanks. (modes 1, 2).
10701–P		University of Missouri-Columbia, Columbia, MO.	49 CFR 177.825(b); Part 107, Appendix B(1).	To become a party to exemption 10701 (mode 1).
10741–N		Northern Natural Gas Company, Houston, TX.	49 CFR 178.36–2 thru 178.36–18.	To authorize the use of a non-DOT specification cylinder comparable to a 3AX cylinder for use transporting compressed natural gas (mode 1).

WITHDRAWAL EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10748–X		McGill Specialized Carriers, Inc., Marietta, GA.	49 CFR 177.825(b) and Part 107, Appendix B(1).	To authorize the transport of radioactive material; using an alternative route which is not a state designated route, or an interstate (mode 1).
10904–P		S.C. Johnson & Son, Inc., Racine, WI.	49 CFR 173.136, 173.137	To authorize an alternative mechanical type test method to determine corrosivity and specific packaging group (mode 1).
10924–N		BF Goodrich Company, Culver City, KY.	49 CFR 172.101	To authorize the transportation of nitrogen trichloride in DOT DOT 3AA one liter cylinders enclosed inside a plastic bag and placed inside insulated container having ice as the temperature control (mode 1).
11120–N		The Ensing-Bickford Company, Simbury, CT.		
11126–N		Shaw, Pittman, Potts & Trowbridge, Washington, DC.		

Denials

9066–X Request by Inflation Systems, Inc. LaGrange, GA to authorize the transportation of an airbag gas generator as flammable solid in a box constructed of single wall corrugated fiberboard with an inside styrofoam container insert for shock absorption denied September 30, 1993.

10715–N Request by U.S. Department of Defense Washington, DC to authorize the transportation of Class B explosives and fireworks as part of aircrew survival gear denied May 26, 1993.

10716–N Request by The West India Rum Refinery Ltd. Barbados, West Indies to authorize the transportation of various distilled spirits, classed as flammable liquids, in non-DOT specification stainless steel portable tanks equipped with pressure and vacuum relief valves denied July 26, 1993.

10726–N Request by Metropolitan Water District of Southern California Los Angeles, CA to authorize chlorine filled cargo tank vehicles contents to be unloaded at numerous unloading points denied April 5, 1993.

10816–N Request by Electrical Rebuilders Sitka, AK to authorize an additional method of packaging lead acid batteries for use in bulk transportation within freight containers denied May 24, 1993.

10836–N Request by Fibre Drum Technical Council Washington, DC to authorize the manufacture, mark and sale of open-head fiber drums not to exceed 55 gallon capacity which do not meet the performance oriented packaging standards required under Docket HN–181 for the shipment of certain lower level hazardous materials denied August 9, 1993.

10871–N Request by Gallery Chemical Company Gallery, PA to authorize the one-way, one-time transportation of stainless steel pressure vessels containing varying amounts of fused sodium metal, dangerous when wet denied April 28, 1993.

10953–N Request by Air Transport Association of America Washington, DC to extend the life of DOT-Specification 3HT cylinders charged with nitrogen and oxygen, compressed, Division 2.2 utilized as components of aircraft systems denied September 9, 1993.

10999–N Request by OEA, Inc. Denver, CO to Authorization certification Cylinders containing a compressed gas used within an automotive airbag inflator system to be exempt from the burst with requirement of the CGA pamphlet S–1.1 referenced in section 173.34(d) denied September 30, 1993.

11027–N Request by Hoechst Celanese Corporation Charlotte, NC to authorize the use of non-insulated MC330 and MC331 cargo tanks for transportation of sulfur dioxide, classed as Division 2.3 denied August 26, 1993.

11046–N Request by Marsulex Inc. North York, Ontario, Canada to authorize the transport of sulfur dioxide, liquefied, PIH, Zone C material, classed as Division 2.3 in uninsulated MC331 cargo tanks denied August 19, 1993.

11047–N Request by Cominco Fertilizers (U.S.) Inc. Spokane, WA to authorize the transport of sulfur dioxide, liquefied, PIH, Zone C material, classed as Division 2.3 in uninsulated MC331 cargo tanks denied August 19, 1993.

11068–N Request by Ontario Hydro Toronto, Ontario, Canada to manufacture, mark and sell non-DOT specification portable tanks comparable to DOT Specification 51 except the inlet and outlet openings are located at the side, for shipment of hydrogen sulfide, liquefied, classed as Division 2.3 denied September 2, 1993.

11069–N Request by Coulton Chemical Corporation Sylvania, OH to authorize the transport of sulfur dioxide, liquefied, PIH, Zone C material, classed as Division 2.3 in non-insulated MC330 and MC331 cargo tanks denied August 19, 1993.

11079–N Request by National Tank Truck Carriers, Inc. Alexandria, VA to authorize the transportation of materials which are poisonous by inhalation (FIH) and other high hazard materials in bulk packagings denied August 3, 1993.

11083–N Reqeust by Rhone-Poulenc Basic Chemicals Co. Shelton, CT to authorize the use of non-insulated MC312 cargo tanks for transportation of sulfur trioxide, uninhibited, (inhalation hazard) Class 8 denied August 19, 1993.

11096–N Request by Peridot Chemicals (New Jersey), Inc. Newark, NJ to authorize the transport of sulfur dioxide, liquefied, PIH, zone C material, classed as Division 2.3 in non-insulated MC331 cargo tanks denied August 20, 1993.

11097–N Request by K & S Tank Lines Inc. Cooperhill, TN to authorize the transport of sulfur dioxide, liquefied, PTH, zone C material, classed as Division 2.3 in non-insulated MC330 and MC331 cargo tanks denied August 20, 1993.

11100–N Request by Rhone-Poulenc Basic Chemicals Co. Shelton, CT to authorize the shipment sulfur dioxide, liquefied in fifteen (15) non-insulated DOT Specification MC–331

cargo tank motor vehicles denied August 20, 1993.

11102–N Request by Boliden Intertrade Inc. Atlanta, GA to authorize the shipment of sulfur dioxide, liquefied in eight (8) non-insulated DOT Specification MC–330 MC–331 cargo tank motor vehicles denied August 20, 1993.

11127–N Request by U.S. Department of Defense Falls Church, VA to authorize the shipment of ammunition packaged prior to October 1, 1992, which is marked, labeled and described on shipping papers in accordance with the regulations in effect on September 30, 1991 denied September 28, 1993.

Issued in Washington, DC, on January 30, 1995.

J. Suzanne Hedgepeth,

Director, Office of Exemptions and Approvals.

[FR Doc. 95–2729 Filed 2–6–95; 8:45 am]

BILLLING CODE 4910–60–M

International Standards on the Transport of Radioactive Materials; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to discuss issues to be considered at the International Atomic Energy Agency (IAEA) Standing Advisory Group for the Safe Transport of Radioactive Materials (SAGSTRAM) meeting to be held March 6–10, 1995 in Vienna, Austria. SAGSTRAM is a meeting of the Competent Authorities from Member States held annually to advise the Secretariat on major transportation issues facing the radioactive materials transportation industry and to plan the IAEA policies, activities, and responses to these issues.

DATES: February 28, 1995 at 10:00 a.m.

ADDRESSES: Room 4436, Nassif Building, 400 Seventh Street S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Richard Boyle, Radioactive Materials Branch, Office of Hazardous Materials Technology, Research and Special Programs Administration, Department of Transportation, Washington, D.C. 20590; (202) 366–4545.

SUPPLEMENTARY INFORMATION: Several issues will be discussed at the public meeting which are being considered by SAGSTRAM at its March 6–10, 1995 meeting in Vienna, Austria. Currently, SAGSTRAM's agenda centers on resolving the issues that have arisen during IAEA's latest activities associated with the planned 1996 revision of the regulations governing the safe transport of radioactive materials (Safety Series No. 6).

The major issues on the SAGSTRAM's agenda are:

1. Review and approval of the regulatory changes proposed by the Third Technical Committee Meeting (TCM) for the Revision of the IAEA Regulations for the Safe Transport of Radioactive Materials (TCM–405–4).

2. Review and approval of the regulatory changes resulting from the recommendations made by the International Commission on Radiological Protection (ICRP–60). The proposed changes were developed by TCM–800.3 and reviewed and formalized by TCM–405.4.

3. Review and approval of the proposed regulatory changes for packaging high activity radioactive materials and large quantities of radioactive materials transported by air. The proposed changes were developed by TCM–675.3 and reviewed and formalized by TCM–405.4. This agenda item will include a review of the possible exemption of very low dispersible material from the proposed air transport packaging regulations.

4. Review and approval of research topics brought before the IAEA transportation division for consideration. Proposed topics include: revision of the Q-system, use of non-ductible materials in radioactive materials packaging (brittle fracture), use of burnup credit for spent nuclear fuel packages, and the proper use and maintenance of UF_6 overpacks.

The public is invited to attend without prior notification.

Documents: Copies of all documents relating to the issues to be discussed by SAGSTRAM are on file in RSPA's Dockets unit (Nassif Building, Room 8421) and may be viewed Monday—Friday from 8:00 a.m. to 4:30 p.m. Documents may also be requested by contacting RSPA's Dockets Unit at (202) 366–4453.

Issued in Washington, D.C., on February 2, 1995.

Alan I. Roberts,

Associated Administrator for Hazardous Materials Safety.

[FR Doc. 94–2967 Filed 2–6–94; 8:45 am]

BILLING CODE 4910–60–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 25

Tuesday, February 7, 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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, February 13, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–3164 Filed 2–3–95; 3:05 pm]

BILLING CODE 6210–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Tuesday, February 14, 1995.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: The first three items are open to the public. The last item is closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

6321A Railroad Accident Report: Derailment of the Ringling Bros. and Barnum & Bailey Circus Blue Train, Lakeland, Florida, January 13, 1994.

6521 Aircraft Accident Report: Runway Departure Following Rejected Takeoff, Continental Airlines Flight 795, McDonnell Douglas MD–82, N18835, LaGuardia Airport, Flushing, New York, March 2, 1994.

6514 Recommendations to Federal Aviation Administration, U.S. Coast Guard, National Association of State Boating Law Administrators, and the Seaplane Pilots Association Concerning Seaplane Operations in Navigable Waters.

6354A Opinion and Order: Administrator v. Bielecki, et al., Dockets SE–9244–9249; disposition of respondents' appeals.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: February 3, 1995.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 95–3151 Filed 2–3–95; 2:40 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 6, 13, 20, and 27, 1995.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 6

There are no meetings scheduled for the Week of February 6.

Week of February 13—Tentative

There are no meetings scheduled for the Week of February 13.

Week of February 20—Tentative

There are no meetings scheduled for the Week of February 20.

Week of February 27—Tentative

Tuesday, February 28

10:00 a.m.

Briefing by OIG on Special Evaluation (Public Meeting)

(Contact: Robert Shideler, 301–415–5972)

2:00 p.m.

Discusssion of Management Issues (Closed—Ex. 2 and 6)

Wednesday, March 1

10:00 a.m.

Briefing by Electricity Committee of NARUC (Public Meeting)

(Contact: Spiros Droggitis, 301–504–2367)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Afirmation 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: Willian Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system will also become available in the near future. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

* * * * *

Dated: February 3, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–3150 Filed 2–3–95; 2:39 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 60, No. 25
Tuesday, February 7, 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, 672, and 676

[Docket No. 941249–4349; I.D. 112894C]

Foreign Fishing; Groundfish of the Gulf of Alaska; Limited Access Management of Federal Fisheries In and Off of Alaska

Correction

In rule document 94–31399 beginning on page 65975, in the issue of Thursday, December 22, 1994, make the following correction.

On page 65979, Table 4 is corrected to read as set forth below:

TABLE 4.—PRELIMINARY 1995 ALLOCATION (METRIC TONS) OF PACIFIC COD IN THE GULF OF ALASKA; ALLOCATIONS TO INSHORE AND OFFSHORE COMPONENTS

Regulatory area	TAC	Component Allocation	
		Inshore (90%)	Offshore (10%)
Western	29,900	26,910	2,990
Central	68,000	61,200	6,800
Eastern	5,100	4,590	510
Total	103,000	92,700	10,300

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR95-4-000]

Arkansas Oklahoma Gas Corporation; Notice of Petition for Rate Approval

Correction

In notice document 95–1922 appearing on page 5172 in the issue of Thursday, January 26, 1995, the docket line should read as set forth above.

BILLING CODE 1505–01–D

federal register

Tuesday
February 7, 1995

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1001 et al.

Milk in the New England and Other Marketing Areas; Decision on Proposed Amendments to Tentative Marketing Agreements and Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1099, 1106, 1108, 1124, 1126, 1131, 1134, 1135, 1137, 1138, 1139

[Docket No. AO–14–A66, etc.; DA–92–11]

RIN 0581–AA57

Milk in the New England and Other Marketing Areas; Decision on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1001	New England	AO–14–A66
1002	New York-New Jersey	AO–71–A81
1004	Middle Atlantic	AO–160–A69
1005	Carolina	AO–388–A6
1006	Upper Florida	AO–356–A30
1007	Georgia	AO–366–A35
1011	Tennessee Valley	AO–251–A37
1012	Tampa Bay	AO–347–A33
1013	Southeastern Florida	AO–286–A40
1030	Chicago Regional	AO–361–A30
1032	Southern Illinois-Eastern Missouri	AO–313–A40
1033	Ohio Valley	AO–166–A63
1036	Eastern Ohio-Western Pennsylvania	AO–179–A58
1040	Southern Michigan	AO–225–A44
1044	Michigan Upper Peninsula	AO–299–A28
1046	Louisville-Lexington-Evansville	AO–123–A64
1049	Indiana	AO–319–A41
1050	Central Illinois	AO–355–A28
1064	Greater Kansas City	AO–23–A61
1065	Nebraska-Western Iowa	AO–86–A49
1068	Upper Midwest	AO–178–A47
1075	Black Hills, South Dakota	AO–248–A22
1076	Eastern South Dakota	AO–260–A31
1079	Iowa	AO–295–A43
1093	Alabama-West Florida	AO–386–A13
1094	New Orleans-Mississippi	AO–103–A55
1096	Greater Louisiana	AO–257–A42
[1] 1097	Memphis, Tennessee	AO–219–A48
[1] 1098	Nashville, Tennessee	AO–184–A57
1099	Paducah, Kentucky	AO–183–A47
1106	Southwest Plains	AO–210–A54
1108	Central Arkansas	AO–243–A45
1124	Pacific Northwest	AO–368–A22
1126	Texas	AO–231–A62
1131	Central Arizona	AO–271–A31
1134	Western Colorado	AO–301–A23
1135	Southwestern Idaho-Eastern Oregon	AO–380–A12
1137	Eastern Colorado	AO–326–A27
1138	New Mexico-West Texas	AO–335–A38
1139	Great Basin	AO–309–A32

[1] The Memphis, Tennessee, and Nashville, Tennessee, orders were terminated, effective July 31, 1993.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts the base month Minnesota-Wisconsin (M-W) price updated with a butter/powder/cheese formula as the replacement for the Minnesota-Wisconsin price series, which establishes minimum prices for milk under all Federal milk orders. The amendments adopted in this decision are based on evidence received at a public hearing held June 15–19, 1992. The amendments differ from the Recommended Decision in that they use the Western Dry Buttermilk and Nonfat Dry Milk prices in the updating formula instead of the Central States Dry Buttermilk and Nonfat Dry Milk prices. Referenda will be conducted in five markets, and dairy farmer cooperatives will be polled in the other markets to determine whether dairy farmers approve the issuance of the orders as amended to incorporate the base month M-W price updated with a butter/powder/cheese formula.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Branch Chief, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments will promote orderly marketing of milk by producers and regulated handlers.

The U.S. Small Business Administration (SBA) objected to the previous certification in a letter to the Administrator of the Agricultural Marketing Service. The SBA indicated that the certification does not comply with the analytical mandate of the Regulatory Flexibility Act (RFA) in that at least a brief explanation of the reasons for the certification must be provided to inform the regulated community of the reasons for the certification. Furthermore, the SBA contends that the simple assertion that the amendments would promote the orderly marketing of milk by producers and regulated handlers is insufficient and is contradicted by the findings in the recommended decision. Specifically, the SBA contends that the recommended decision ''acknowledges that the proposed modifications could result in wide swings in price for any given month (59 FR 40428).'' The SBA contends that these price changes could be significant for small handlers and processors.

Since the SBA letter refers to a specific finding in the recommended decision to question the certification, the letter was filed with the Hearing Clerk as an exception to the decision. Also, since the ''exception'' refers to a specific finding, it is dealt with in the findings and conclusions below. With regards to the basis for the certification, SBA ignores the fact that the recommended decision contained an extensive analysis of the effect of the proposed amendments, as well as numerous alternatives, and their comparative effect on the current price series. Reference by SBA only to the conclusory statements in the recommended decision, therefore, is not justified.

At this point, we reaffirm that the proposed rule will not have a significant economic impact on a substantial number of small entities for reasons that are set forth later in this decision. The base month M–W price, updated by a product price formula, will continue to apply in the same manner as the current M–W price but has a greater degree of reliability for reasons that are set forth in this decision.

These proposed amendments have been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (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 the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a 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.

No amendatory action is taken in this decision for two other markets (Memphis, Tennessee, and Nashville, Tennessee) that were involved in this proceeding and listed in the original hearing notice. These orders were terminated effective July 31, 1993. This proceeding is hereby terminated with respect to those two markets. Thus, of the 40 orders originally involved in this proceeding, the new pricing amendments are adopted herein for only 38 orders.

At the time of publication of this decision in the **Federal Register**, a proposed termination is being considered for the Paducah, Kentucky, milk order. If the proposed termination is approved, then a referendum on the amendments contained in this decision will not be necessary and will not be conducted. However, if the proposed termination is not approved for the Paducah, Kentucky, order then proper notice will be given in the **Federal Register** and a referendum will be conducted to determine approval of the amendments contained in this decision.

The amendments adopted in this final decision are tailored to conform with the amendments adopted on the basis of the national hearing adopting a new Class II price.

Prior documents in this proceeding:

Notice of Hearing: Issued May 12, 1992; published May 15, 1992 (57 FR 20790).

Recommended Decision: Issued August 3, 1994; published August 6, 1994 (59 FR 40418).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the New England and other specified marketing areas. The hearing was held pursuant to the provisions of the Act and the applicable rules of practice (7 CFR part 900), in Alexandria, Virginia, on June 15–19, 1992, pursuant to notice issued May 12, 1992 (57 FR 20790).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on August 3, 1994, issued the recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Four paragraphs are added after paragraph 74;
2. One paragraph is added after paragraph 76;
3. Three paragraphs are added after paragraph 88;
4. One paragraph is added after paragraph 92;
5. Twelve paragraphs and one table are added after paragraph 93;
6. Paragraph 95 is revised;
7. Five paragraphs are added after paragraph 95;
8. In paragraph 96, subparagraph 3(a) is revised;
9. Paragraphs 97–98 are revised, the table after paragraph 98 is removed, and seven paragraphs are added; and
10. One paragraph is added after paragraph 99.

The material issue on the record of the hearing relates to: *Replacement of the Minnesota-Wisconsin price series used to establish minimum prices under the Federal orders.*

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Background Statement

This proceeding was initiated in response to concerns expressed regarding the reliability of the Minnesota-Wisconsin price series (M–W price) as an accurate indicator of the average price of milk used in manufactured products because of a continuing decline in manufacturing grade (Grade B) milk production and the number of plants that compete for the Grade B milk supply. Prior to the announcement of this hearing, a study of possible alternative pricing mechanisms was undertaken by the Department and was released in November 1991. A study was also mandated by Congress in the 1990 Farm Bill, which further required that a public hearing be held on the issue and that the statistical information developed in the study be made available to the public.

A Notice of Hearing issued on May 15, 1992, listed ten proposals to be considered during the M–W price replacement hearing. The proposals fell into four main categories: (1) Competitive pay prices, (2) product price formulas, (3) cost-of-production formulas, and (4) the price support level. Several of the competitive pay prices were also proposed in conjunction with product price formulas for price-updating purposes. The hearing was specifically limited to a replacement for the M–W price. The hearing notice also specified that any proposals that would change the price level would have to be justified under the supply and demand pricing standards of the Act (7 U.S.C. 608c(18)).

Replacement for the Minnesota-Wisconsin Price Series

All Federal milk orders should be amended to provide for a new price series that will establish minimum prices under Federal milk orders utilizing the base month M–W competitive pay price updated with a butter/powder/cheese product price formula.

Adoption of the updated base month M–W price will result in a basic formula price that adequately reflects the value of milk used in manufactured products and will allow for the continued use of an unregulated, competitive market price. Hence, supply and demand conditions will continue to be directly reflected in the basic formula price that serves as a basis for minimum pricing of regulated milk.

Since the M–W price was first adopted in 1961 in the Chicago Regional marketing area, it has been used as a basis for setting minimum prices paid by regulated handlers. The M–W price is the mover of all Class I and Class II prices and is essentially the Class III price under all orders. Using the M–W price as the Class III price maintains price coordination between Grade B and Grade A milk supplies used for manufacturing purposes.

The M–W price is a competitive price that represents an estimate of the average of prices paid for Grade B milk in Minnesota and Wisconsin by plants that manufacture butter, nonfat dry milk, and cheese. These products are sold in a national market in competition with such products made from Grade A milk that is in excess of fluid milk needs. Month-to-month changes in the M–W price reflect changes in overall supply and demand conditions for milk and its products nationally.

The M–W price is currently computed by the National Agricultural Statistics Service (NASS). It is announced on or before the 5th day of every month and applies to Grade B milk delivered during the previous month. For example, the M–W price for February is announced on March 5 (in 1994 it was announced on March 4). The M–W price determination is a two-step process. It involves (1) determining the average of actual pay prices at a large number of plants purchasing Grade B milk for the base month (in the above example, January), and (2) based on a sample of these plants, determining what the expected change in pay prices will be from the base month (January) to the following month (February), the month for which the M–W price is being determined. The reason for the updating procedure is that actual pay prices for a month are not available until late in the following month. Thus, updating the base month M–W price results in an M–W price that better reflects current marketing conditions.

To calculate the base month M–W price, NASS collects actual data for the entire previous month from approximately 160–170 plants located in Minnesota and Wisconsin. The plants report the total pounds of Grade B milk received from producers and the total dollars paid to producers for the entire month. These plants represent approximately two-thirds of all Grade B milk sold in the two States.

NASS derives the estimated portion of the M–W price series based on reports of a sample of approximately 67 of the base-month plants. These plants account for about 35 percent of the total manufacturing grade milk sold in the two States. These plants provide actual pay price data for the first half of the month and estimate prices for the second half of the month to which the M–W price relates. NASS then calculates the estimated change in price between the base month and the current month and applies this estimated change to the base month M–W price to determine the M–W price. According to the NASS witness who testified at the hearing, some plants in the estimate survey are unable to provide actual price data and can only estimate purchases for the first half of the month. Thus, the plants in the estimate survey that report actual price information account for about 25 percent of the Grade B milk in the two States.

When the price series was first adopted in 1961, Grade B milk production accounted for 68 percent, or 18 billion pounds, of the total milk production in the two States. This production was purchased by about 1,200 plants. By 1992, Grade B production had declined to five billion pounds or 14 percent of the total milk production in the two States, with 272 plants purchasing the milk. Due to the decline in Grade B production and the number of plants purchasing the milk, along with the number of plants which can provide actual pay price data for the first half of the month, the statistical reliability of the M–W price has been questioned.

Several proposals considered during this proceeding were based on competitive pay prices. There was support by a large majority of the witnesses who testified during the hearing and in post-hearing briefs for the adoption of a competitive pay price series. Most witnesses testified in opposition to the use of product price formulas, the support price, and cost-of-production formulas as replacements for the M–W price. Three main competitive pay price series were considered during the hearing: the A/B price series, the base month M–W (which is currently used to calculate the M–W price), and the Agricultural Prices M–W. These competitive pay price series were proposed in combination with a product price formula to be used to update the previous month's price to the current month with one exception which will be addressed later.

An A/B manufacturing price series (A/B price) was developed based on industry proposals and comments submitted in connection with the Department's study. NASS developed this new competitive pay price series that represents prices paid for milk used in the manufacturing of dairy products, regardless of grade. NASS collects data from 150 plants in Minnesota and Wisconsin that receive Grade B and/or Grade A milk used primarily to manufacture cheese, butter, and nonfat dry milk. The sample represents 78 percent of Minnesota's total milk production, of which approximately 75 percent is Grade A, and 65 percent of Wisconsin's total milk production, of which about 84 percent is Grade A.

The calculation of the A/B price requires the deduction of the ''pool draw,'' which is money that the Grade A plants receive from the Federal order pool as part of their share of the Class I market. This information is obtained by NASS from the Chicago Regional and Upper Midwest market administrators. The A/B prices are reported routinely in ''Dairy Market News.'' As currently calculated, the A/B price that is available on or before the 5th day of the month is the price for the second preceding month.

Proponents of proposals one and two, as listed in the hearing notice, were the main supporters of the adoption of an A/B price to replace the current M–W price. The National Farmers Organization (NFO), a cooperative association that proposed proposal one, advocated the usage of an A/B price updated by 50 percent of a product price formula. In connection with the A/B price, NFO recommended the adoption of a floor price for the basic formula price equal to the cost of production.

Two witnesses testified on behalf of NFO. The first witness primarily focused on the cost-of-production floor price. He stated that a fundamental purpose of NFO is to seek the cost of production plus a reasonable profit for dairy farmers. To meet this organizational purpose, NFO proposed using the national average economic (full ownership) costs, as calculated by the Economic Research Service for the most recently reported calendar year, as the floor price. The floor price would be utilized as the basic formula price whenever the competitive A/B price fell below the cost of production. The witness contended that establishing a floor price for the basic formula price would provide dairy farmers with stability in their milk price. The witness further stated that NFO did not believe that establishing a floor price at the cost-of-production level would have any impact on stimulating production.

The second witness for NFO testified regarding the need to adopt an A/B price with a product price updater as a replacement for the M–W price. This witness asserted that a competitive pay price based solely on Grade B milk does not represent the true farm value of milk because of the decline in competition among plants purchasing Grade B milk. He contended that this lack of competition allows plants to shift money from Grade B milk producers and use this extra money to attract Grade A producers. Accordingly the witness stated that the A/B price series needed to be adopted to better reflect the true value of milk used in manufacturing.

The witness addressed the concern of regulated prices being reported within the A/B price calculation that may create an upward price bias. NFO recognizes that this is a major factor; however, they do not propose to deregulate any plants in the A/B survey since a majority of the reporting plants are cooperative plants. The witness stated that the ''blend down'' of the Grade A price by the Grade B price and the non-inclusion of hauling subsidies would provide room above federal order

minimum prices for flexibility in both upward and downward price movements. The witness asserted that this would negate any concern about an upward price bias in the A/B price series.

Because the A/B price announced on or before the 5th of each month would apply to milk marketed in the second preceding month, NFO proposed the use of a product price updating formula in conjunction with the A/B price. NFO advanced the use of 50 percent of a product price formula which included all primary products and by-products of milk. NFO maintains that all products should be used in a product price formula to reflect the full value of producer milk. The witness stated that NFO chose to use only 50 percent of the updater because producer prices are not as volatile as prices in the product markets and because NFO believes this would lend a further degree of stability to producer prices.

The Trade Association of Proprietary Plants (TAPP) and Farmers Union Milk Marketing Cooperative (FUMMC) also supported the adoption of the A/B price series to replace the M–W price. The TAPP and FUMMC's proposal (number two) would utilize an A/B price series updated by a weekly butter/powder/cheese product price formula. To this value a competitive premium would be added and 20 cents deducted yielding a tentative weekly M–W price. The final M–W price would be announced on or before the 5th of the following month and would be the weighted average of the tentative weekly M–W prices for the current month.

The witness representing these two groups testified that the current M–W price, which is based solely on Grade B milk, underrepresents the true competitive value of milk for manufacturing purposes by 45 to 60 cents per hundredweight. According to the witness, this difference is paid to producers in the form of premiums and hauling subsidies. The witness said that because these are not consistent between plants, this situation is creating chaotic marketing conditions. The witness stated that incorporating Grade A milk into the Minnesota and Wisconsin price survey would result in a price series which would reflect the true competitive value of milk and promote orderly marketing conditions.

The witness further testified that the industry is in need of current, or weekly, pricing to assist in marketing decisions. Using the A/B price in conjunction with a weekly updater to establish a tentative weekly M–W price would provide the industry with current information to be used as a pricing guide for the following week. The witness claimed that the dairy industry needs this information for buying, selling, and determining the value of milk in manufactured products.

Two additional proposals noticed were based on the A/B price series. One proponent of proposal three, the Northeast Ad Hoc Federal Order Committee, withdrew its support for this proposal. This proposal would have expanded the amount of milk surveyed and/or expanded the states included in the survey. No other proponents of an expanded survey testified in support of this proposal. Thus, it is considered abandoned.

Land O'Lakes (LOL) was the proponent of proposal four, the A/B price updated with a product price formula. At the hearing the witness for LOL offered a modification to the proposal as noticed. This modification was ruled to be beyond the limited scope of the hearing. As a result, LOL removed their support for this proposal. Thus, it is considered abandoned.

One additional proposal, proposal number seven, utilizes the A/B price series in conjunction with a product price formula as a replacement alternative for the M–W price. This proposal will be addressed later in this decision.

Opposition to the adoption of the A/B price series was expressed specifically by two witnesses during the hearing and subsequently in several briefs. A witness for the Milk Industry Foundation and the International Ice Cream Association (MIF/IICA), trade associations representing a substantial number of dairy processors, stated that the adoption of an A/B price survey provides a broader sample of milk, but would enhance the basic formula price. This, according to MIF/IICA, does not meet the criteria set forth in the hearing notice that the M–W replacement alternative be revenue-neutral. The witness cited statistics which indicated that during the period of September 1990 through March 1992, the A/B price averaged 65 cents higher than the M–W price. The witness further expressed concern regarding an upward bias that is built into the A/B price because some of the milk included in the survey is regulated.

A second witness representing Kraft General Foods (Kraft), opposed the adoption of the A/B price and further addressed the question of the upward bias in the A/B price. The witness stated that the A/B price uses regulated Grade A prices in the survey which are not competitively determined and therefore cannot truly reflect the value of milk used in manufacturing. The witness further explained that the A/B price also incorporates the highly competitive premium price structures that exist in the Midwest. Together these two factors, according to the Kraft witness, result in the upward price bias. The witness stated that this higher price level cannot be justified based on current supply and demand conditions as a replacement for the M–W price.

Briefs filed on behalf of Anderson-Erickson and Southern Foods Group (AE/SFG), Kraft, Southern Coalition of Dairy Farmers (SCDF), United Dairymen of Arizona (UDA), Wisconsin Farm Bureau Federation and Minnesota Milk Producers Association (WFBF/MMPA), and the United States Department of Justice reiterated that the nature of the A/B price survey results in an upward bias in the reported price because of the inclusion of the regulated Grade A milk and the lack of adjustment for some price premiums. The briefs also maintained that adopting the A/B price as a replacement for the M–W price would result in higher prices under the Federal order program, an outcome which has no economic justification based on current supply and demand conditions.

Substantial opposition to the adoption of a cost-of-production floor price was expressed by numerous witnesses at the hearing and subsequently in post-hearing briefs. The brief filed by AE/SFG specifically addressed the concept of establishing floor prices. The brief stated that ''establishing floor prices would disassociate prices from the market needs.'' Official Notice is taken of the Final Decision (58 FR 12634, published March 5, 1993) from the 1990 National Hearing. The brief also pointed out that in the 1990 National Hearing final decision floor prices for Class I and Class II milk were rejected. The AE/SFG brief alleged that the proponents failed to provide supply and demand evidence which demonstrates that marketing conditions have changed substantially within the last two years to warrant a change from the Department's earlier decision. Additional opposition to proposals replacing the M–W price with cost-of-production formulas is addressed later in this decision.

The second competitive pay price series considered as a replacement for the M–W price is the base month M–W price. As explained previously, the base month M–W price is one component currently used by NASS to compute the M–W price. Adoption of the base month M–W price was advanced by five proponents in the notice of hearing. The MIF/IICA and AE/SFG proposed the use of the base month M–W price in

conjunction with a product price formula updater. This price would be available on or before the 5th day of the month and would be based on the price for the second preceding month updated by the change in a product price formula for the preceding month.

The witness representing the MIF/IICA testified that a basic formula price, based on an expanded, unregulated competitive pay price for Grade B milk in Minnesota and Wisconsin, would best reflect the supply and demand conditions for all major uses of manufactured dairy products and would provide the industry with a reliable price series. The witness stated that the base month M–W price survey represents about 60 percent of all Grade B milk in Minnesota and Wisconsin and incorporates a representative sample of both twice-a-month pay plants, as in the current M–W price, and once-a-month pay plants. Because the base month M–W price available on or before the 5th day of the month is for the second preceding month, the witness stated the need for a product price formula to update the base month M–W price. The MIF/IICA proposed adopting a butter/powder/cheese formula using annual product yields and Minnesota and Wisconsin product weights to update the base month M–W price. This formula was utilized in the Department's study to update the Agricultural Prices M–W. For example, the use of an updating formula would result in the price announced on March 5th being based on January pay prices updated by changes in product prices between January and February.

The witness testified that this proposal would be essentially revenue-neutral when compared to the current M–W price. Their comparison of these two price series from January 1988 through April 1992 resulted in an updated base month M–W price that averaged only five cents per hundredweight higher than the current M–W price.

A witness representing Country Fresh, Inc., the Morningstar Group, Inc., and Oak Farms Dairy (Country Fresh, et al.) also testified in support of the adoption of the updated base month M–W price as a replacement for the current M–W price. The witness supported this proposal for four main reasons: (1) It uses actual Grade B milk prices in Minnesota and Wisconsin, thus linking Federal order prices to the competitive markets; (2) it expands the Grade B survey to alleviate NASS' statistical concerns; (3) prices remain relatively equal to current M–W prices; and (4) the proposal provides the same amount of advance pricing currently available under the Federal order program.

Kraft also supported the adoption of the base month M–W price as the replacement for the current M–W price. However, Kraft's proposal does not include an updater. Thus, the price announced on the 5th of each month would be the price for the second preceding month. For example, the price announced on March 5th would represent January pay prices. The witness representing Kraft testified that the adoption of the base month M–W without an updating adjuster would accomplish the following objectives: (1) Eliminate the use of estimated prices; (2) Keep the M–W price determined in a non-regulated market; (3) Reflect competitive conditions for milk rather than products; (4) Result in a more competitively determined price; and (5) Remain free from fine tuning.

The Kraft witness testified in opposition to the use of an updater in conjunction with the base month M–W price for two reasons. First, although he agreed that product prices and milk prices are related, he stated that changes in competitive milk prices do not correspond exactly with changes in product prices. Secondly, the witness asserted that product price formulas are subject to controversy based on which product prices, product yields, and weight factors are used.

The Kraft witness acknowledged that the additional lag created by Kraft's proposal may affect the way the industry conducts business, as the lag may create month-to-month differences in processor margins. However, the witness contended that over time this proposal does not change the competitive value of milk to either producers or processors.

Opposition to the adoption of the base month M–W price was presented by witnesses representing NFO, TAPP/FUMMC, and the United States Cheese Makers Association, the American Producers of Italian Type Cheese Association, the Ohio Swiss Cheese Association, and the Wisconsin Cheese Makers Association (Cheese Makers) and in briefs filed on behalf of these organizations and WFBF/MMPA. The witnesses for these organizations objected to the adoption of the base month M–W price for two primary reasons. First, the decline in the amount of Grade B milk production raises uncertainty about the statistical reliability of any survey based only on Grade B milk. Secondly, a Grade B only survey does not reflect the true value of milk used for manufacturing purposes.

The opposition recited statistics regarding the decline in Grade B milk producers and processors that they claim has resulted in a lack of competition for the Grade B milk supply and an increased competition for the Grade A milk supply. The opposition further contended that as manufacturers shift money away from the Grade B supply, they can use this money to attract the Grade A milk supply. This results in Grade B prices which do not truly reflect the value of milk used for manufacturing purposes. The opponents argued that merely enlarging the sample size would neither affect the amount of competition nor the value of the milk.

The Cheese Makers also argued that the continued use of a Grade B survey results in the extended use of an untimely price announcement, announcing the price for the milk after it has been manufactured into products. The witness stated that the dairy industry is one of the last industries to engage in the receipt of a raw commodity, manufacture it into finished products, and price and sell these products before knowing the cost of the raw ingredient. This, according to the witness, is resulting in an unstable market.

To follow through on the argument presented by the Cheese Makers regarding the untimeliness of a Grade B survey, several witnesses opposed the additional lag in pricing created by Kraft's proposal. In fact, most witnesses who supported the adoption of a competitive pay price series advocated the use of a product formula for updating purposes. One witness for the Central Milk Producers Cooperative (CMPC) stated that the industry has long recognized one problem with the current M–W price being the time lag between changes in product markets and milk prices both on the upside and downside of the market. The combination of the M–W price lag and the forward pricing used in the Federal order program further complicates the timing problem and any additional lag would be unacceptable. In its brief, CMPC further asserted that an additional lag could create an opportunity for exploitation of the market by manufacturers.

The witness for Country Fresh, et al., stated that these organizations strongly oppose any reduction in the amount of forward notice the industry currently receives on its raw milk costs. This point of view was further addressed by the National Milk Producers Federation witness who stated that Federal order prices should, to the maximum extent possible, reflect current market conditions. The brief filed on behalf of AE/SFG stated that although we ''understand Kraft's proposal * * * less

current pricing does not benefit anyone in the industry.''

The third competitive pay price series advanced as an alternative to the current M–W price is the Agricultural Prices M–W (Ag Prices M–W), which was developed for the study in response to an industry request to make the least amount of change necessary to replace the current M–W price. The Ag Prices M–W is an approximation of the base month M–W price and is calculated from NASS' ''Prices Received'' series, which includes estimates of manufacturing grade milk prices for Minnesota and Wisconsin. The ''Prices Received'' estimates are computed approximately two weeks prior to the tabulation of the base month M–W price. These estimates are published around the end of each month in ''Agricultural Prices'', a NASS publication.

The ''Prices Received'' estimates are derived from reports of plants that are part of the base month sample. These prices for Minnesota and Wisconsin are weighted together using the same weights as in the M–W price to determine the Ag Prices M–W. Thus, the Ag Prices M–W available on the 5th day of the month would be the price for the second preceding month. The price announced March 5th would represent January pay prices. The volume of Grade B milk represented in the ''Prices Received'' sample represents about 30 percent of all Grade B milk sold in Minnesota and Wisconsin.

The adoption of the Ag Prices M–W updated with a product price formula was supported by numerous producer organizations during the hearing. One proponent of this replacement option, proposal number six, was the National Milk Producers Federation (NMPF), a federation that represents a substantial number of dairy cooperative marketing associations. A witness speaking on behalf of NMPF testified that there are currently sufficient quantities of Grade B milk being marketed in Minnesota and Wisconsin to allow NASS to collect reliable price information received by dairy producers for Grade B milk in those States.

The NMPF witness further stated that the Ag Prices M–W ''will reflect a price level determined by competitive conditions which are affected by supply and demand in all the major uses of manufactured dairy products. It is a free market pay price resulting from competitive bidding among unregulated processors for milk for various manufacturing uses and is a good measure of changes in the value of milk for manufacturing.'' The witness also testified to the need for updating the Ag Prices M–W because Federal order prices should reflect current market conditions as much as possible and the one-month lag created by this formula would be unacceptable. The proponents of the Ag Prices M–W recommended the use of the same product price updating formula that is currently used to update Class II prices. Use of the Ag Prices M–W was also supported by Darigold, Farmers Cooperative Creamery, Northwest Independent Milk Producers Association, and Tillamook Cooperative Creamery Association (Darigold, et al.), all of whom are additional proponents of the Ag Prices M–W. A witness representing Darigold, et al., concluded that an important element of this price series is its relative price stability compared with the current M–W price.

Opposition to the use of the Ag Prices M–W was advanced by the same organizations who opposed the adoption of the base month M–W price. The opposition cited the identical arguments for opposing the Ag Prices M–W as for the base month M–W price.

In post-hearing briefs, all of the proponents of the base month M–W price and the Ag Prices M–W reiterated the need for the adoption of a competitive pay price series as a replacement for the current M–W price. Most of the proponents of these two proposals, with the exception of Kraft, stated that the primary difference between the updated base month M–W price and the updated Ag Prices M–W was the sample size. Most of these proponents expressed a willingness to support either competitive pay price series based on the amount of milk the Department determined would be necessary to obtain an accurate estimate of the price paid for Grade B milk in Minnesota and Wisconsin.

Three other types of proposals were considered at the hearing: Product price formulas, the support price, and cost-of-production formulas. All three types of proposals received substantial opposition. One other proposal listed in the hearing notice, proposal number eight, would have established the basic formula price on wholesale prices of manufactured products. Two proponents, Lamers Dairy, Inc., and Empire Cheese, Inc., withdrew their support for this proposal. There was no other support for proposal eight during the hearing. Thus, it is considered abandoned.

The Cheese Makers proposed the adoption of a product price formula updated by a competitive pay price factor as a replacement for the M–W price, listed as proposal number seven in the hearing notice. This proposal is based on a current competitive pricing mechanism designed to reflect the current true value for milk. This proposal would require the announcement of weekly prices based on a butter/powder/cheese formula using the most recent weekly product prices. This weekly basic formula price would be announced on Friday and would apply to the following Monday through Sunday. The weekly prices would then be used to compute a monthly average product price formula value. A competitive differential, the difference between the monthly A/B price and the average product price value, would be multiplied by 50 percent to yield a preliminary adjustor. The preliminary adjustor would be added to the monthly product price formula value to determine the calculated basic formula price. The final industry price would then be computed based on 75 percent of the difference between the competitive A/B price and the calculated basic formula price plus the blend price for the second preceding month. The intended result is a price to producers which would be more representative of the value of manufacturing grade milk.

The witness testifying on behalf of the Cheese Makers stated that their proposal would determine the true manufacturing value of milk by using a product price formula updated with a competitive pay price. The witness also testified to the need within the industry for current pricing or announcing a price on Friday of each week that could be used as a guideline for pricing milk the following week. According to the witness, current pricing is crucial to the dairy industry because the price of the raw milk used in manufacturing is unpriced when the finished product is sold.

Opposition to the Cheese Makers use of a product price formula as the basis for the basic formula price was presented by several organizations during the hearing and in post-hearing briefs. The witness representing Country Fresh, et al., stated that although product prices reflect supply and demand conditions in the marketplace, translating these into raw milk prices presents problems. According to the Country Fresh, et al., witness a product formula price has three key components: product prices, yield factors, and manufacturing allowances. Selecting the appropriate product prices, yield factors and manufacturing allowance to be used in the formula is difficult. The witness explained that there are several products and by-products of milk which can be used in a product price formula. Determining which products, and to a lesser extent

which by-products, are included directly influences the value represented by the formula. Selecting appropriate yield factors is also difficult because these vary both seasonally and annually. Finally, establishing appropriate manufacturing allowances that vary with each plant based on the modernness of the facility, management practices, milk supplies, and product yields further complicates a product price formula. Factors that may be appropriate at one time can quickly become unacceptable, said the Country Fresh, et al., witness. Kraft's witness reiterated the points set forth by the Country Fresh, et al., witness, stating that changes in competitive milk prices do not correspond exactly with changes in product prices.

In the post-hearing brief filed by AE/SFG, three supplementary reasons for opposing the Cheese Makers proposal were presented. According to the brief, product price formulas are unable to properly fulfill market-clearing functions. In addition to the assumptions concerning which products, yield factors, and manufacturing allowances are included in the formula, the AE/SFG brief contended that product price formulas will not send producers the needed production signals to increase or decrease production as quickly as would competitive pay prices. A second issue raised by AE/SFG related to the effect of the final price adjustor. According to the AE/SFG brief, the final price adjustor provides for more current pricing for cheese manufacturers at the expense of less current pricing for fluid processors. The final issue addressed in this brief concerned the price enhancement that AE/SFG projected would occur for which they believe there is no supporting economic analysis under current supply and demand conditions. The brief filed by Country Fresh, et al., also addressed the concern that this proposal would eliminate advance pricing, a result the brief considered unacceptable.

A brief filed by Alto Dairy Cooperative (Alto) stated that the Cheese Makers proposal attempts to set the stage for a long-run solution because it moves the industry toward a pricing system that reflects the value of milk products and their milk components. Alto felt that with some simplification and revisions, this proposal could form the basis for a long-term solution. However, Alto further stated that in this proceeding the revisions needed are not possible because the proceeding does not allow for consideration of the relationship between the Class I and Class III prices.

The Minnesota Milk Producers Association and the Wisconsin Farm Bureau Federation (MMPA/WFBF) proposed replacing the M–W price with the support price (proposal number nine in the hearing notice). Four witnesses testified in support of this proposal. In addition, Lamers Dairy, Inc., and Hansen's Dairy, Inc., stated support for this proposal during the hearing.

The first witness for MMPA/WFBF testified that the adoption of the support price as the basic formula price would establish consistency between the price support program and the Federal milk order program. The witness stated that this proposal would establish easily determined minimum prices for all classes of milk and would not set an effective, or market, price. According to the witness, this proposal would allow local market over-order pricing and over-order premiums to set the price for milk, resulting in a more market-driven system.

The second witness for MMPA/WFBF elaborated on the benefit created by this proposal, as perceived by the witness, because it would decouple classified pricing from the Upper Midwest. He contended that the supply and demand situation in this area is unique because competition for manufacturing milk is driving producer pay prices year round. He described the effect of adopting the support price as a decrease in class prices where the order prices are the effective prices, and little change in markets where competition is determining the effective prices. A third witness for MMPA/WFBF reiterated these points and testified that the adoption of this proposal would guarantee that minimum order prices were not leading to disparate regional profitability levels.

The final witness for MMPA/WFBF testifying in favor of adopting the support price as the basic formula price expounded on the points advanced by the previous witnesses. The witness also reiterated that this proposal would make the Federal milk order program consistent with the price support program in pursuing the objective of minimum prices. He observed that the minimum prices in all Federal orders are linked to the M–W price, not local supply and demand conditions. Thus, he stated, these prices are impacted by supply and demand conditions in Minnesota and Wisconsin regardless of what local marketing conditions may warrant. According to the witness, minimum prices established without regard to local supply and demand conditions result in disparate regional profitability. This witness testified that the adoption of the support price may or may not have an impact on the producer prices. If the competitive conditions of the market warrant the current price then this price would remain. If not, it would decline to the support level. He argued that adoption of the support price as the basic formula price would succeed in establishing minimum prices and thus would allow the Federal order program to establish true minimum prices.

The witness stated that Federal order prices are intended to be minimum prices. However, he stated that the extent to which the Federal order prices represent minimum prices instead of effective prices varies among the orders as is evident by the cooperative pay prices. He asserted that if the cooperative pay price is above the order minimum blend price, then local marketing conditions are establishing the effective price. However, the witness concluded, if the cooperative pay price is below the order minimum blend price, the minimum prices are too high.

Besides the brief filed by the proponents, two additional briefs were filed in support of this proposal, one by the U.S. Department of Justice (DOJ) and the second on behalf of Lamers Dairy, Inc., and Hansen's Dairy, Inc. The DOJ brief stated that the adoption of the support price as the basic formula price would establish a low minimum price which would allow market forces to play the greatest possible role in determining milk production and price. The DOJ contended that a low minimum price would not result in inadequate milk supplies or harm efficient producers, but would facilitate the transition towards a free market; would provide for more efficient industry performance; and would result in lower prices to consumers.

Substantial opposition to the adoption of the support price as the basic formula price was presented during the hearing and in post-hearing briefs. A witness representing Pennmarva Dairymen's Federation and its member cooperatives and Milk Marketing, Inc. (Pennmarva, et al.), offered extensive testimony in opposition to adopting the support price. First, the witness stated that the milk value established under the Federal order program should be based on the competitive value of milk used to produce manufactured dairy products. Since 1990, he observed, the support price of $10.10, adjusted to 3.5 percent butterfat, has yielded a price between $9.88 and $9.97 per hundredweight, depending on the support price calculation. He stated that during the same period, the M–W price at 3.5 percent butterfat has ranged from $10.02 to $13.94 per hundredweight.

The witness contended that these price fluctuations have provided the necessary signals to Federal order producers to make adjustments in supply according to demand.

The next point of objection by the Pennmarva, et al., witness focused on the disruption of orderly marketing conditions which he feared would be created by the adoption of the support price. According to the witness, this disruption would result because the Federal order price would be below the competitive value of milk. During the period between April 1988 through April 1992, the M–W price has exceeded the support price by amounts ranging from $.12 to $4.58.

The Pennmarva, et al., witness then explained that the Federal order program and the price support program have different objectives. He described the order program objective as maintaining an adequate supply of milk to meet the fluid needs of the market, while the support program provides a price floor for milk used to manufacture dairy products. Another point of opposition addressed by the witness was the fact that Federal order class prices would no longer be influenced by seasonal and other supply and demand factors.

Further objection by the Pennmarva, et al., witness addressed the fact that milk not regulated under the Federal order program would still be priced on a competitive basis, creating differences in price levels and further resulting in disorderly marketing. A substantial increase in over-order prices would become the means of improving the competitiveness of regulated handlers, resulting in greater inequities between producers and handlers. The witness projected that this would lead to increased instability between producers and handlers because of the increase in risks by both parties.

Several other witnesses, including but not limited to MIF/IICA, NMPF, CMPC, AE/SFG, Darigold, et al., SCDF, Dairylea and its affiliated cooperatives, and Country Fresh, et al., expounded on the points of opposition addressed by the Pennmarva, et al., witness during the hearing and in post-hearing briefs. The consensus of those opposing the adoption of the support price was that it would result in disorderly marketing conditions with the price received by dairy farmers being lowered. They contended that Federal order prices would no longer reflect supply and demand conditions but would be based on a politically determined price.

The final M–W price replacement alternative considered at the hearing, proposal number ten, was the use of a cost-of-production formula to determine the basic formula price. Several independent dairy farmers and dairy farmer organizations proposed this alternative. Proposal number ten in the hearing notice listed a formula that might be utilized to determine the cost of production although none of the witnesses testifying in support of this proposal discussed the listed formula. The witness testifying on behalf of the Progressive Agriculture Organization and several other groups (PAO) and the witness representing the National Farmers Union (NFU) proposed using the national average cost of production published by USDA, adjusted annually, as the basic formula price.

The PAO witness stated that all dairy farmers should be treated equally and that the current basic formula price results in an inadequate pay price for producer milk. The witness contended that due to the inadequacy of this price, several dairy farmers have been either forced out of business or forced to increase production to maintain a constant cash flow. According to the witness, the PAO proposal would benefit producers, processors, and consumers because it would result in long-term price stability by eliminating the volatile price swings the industry currently experiences. Although the witness stated that this proposal would increase prices, he maintained that it would not stimulate production. Basically, these viewpoints were expressed by other witnesses representing the American Dairy Farmer Campaign and several other groups, Empire State Family Farm Alliance and several other groups, and the NFU. As mentioned previously, NFO also supported the adoption of the cost of production as a floor price for the basic formula price.

A witness from the University of Wisconsin—River Falls, testified exclusively in opposition to the cost of production as a replacement for the M–W price. The witness based his opposition on the theory that the price received for milk determines the cost of production. He cited historical data which he maintained proved that dairy farmers do adjust their inputs in response to milk prices. He further reiterated the point that the adoption of a cost-of-production formula would not monitor changes in national supply and demand conditions.

In addition to this witness, an overwhelming amount of opposition to the adoption of a cost-of-production formula was presented during the hearing and in post-hearing briefs. The general consensus of the opposition is that a cost-of-production formula accounts for only factors affecting supply conditions; it does not factor demand conditions into the calculation. Also, the opposition argued that basing the cost of production on the national average would not account for the regional variations in production costs and would tend to advantage the larger, more efficient producers. It was further agreed by the opponents that the ultimate result of adopting a cost-of-production formula as the basic formula price would be an increase in production. Another problem cited with this proposal is the availability of data; USDA cost-of-production numbers tend to lag current production costs by two years.

The Agricultural Marketing Agreement Act of 1937, as amended (the Act), authorizes the Federal milk order program. 7 U.S.C. section 602 sets forth the declaration of policy and 7 U.S.C. section 608c(18) sets forth certain milk pricing requirements. Part of the policy of the Federal milk order program is to

> Establish and maintain such orderly marketing conditions * * * as will provide, in the interests of producers and consumers, an orderly flow of the supply, thereof * * * to avoid unreasonable fluctuations in supplies and prices * * *.

The pricing provisions state in part, that

> Whenever the Secretary finds, upon the basis of evidence adduced at the hearing * * *, that the parity prices of such commodities are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area * * * he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk to meet current needs and further to assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs, and be in the public interest.

The hearing notice stated that any change in price levels must be justified under the supply and demand pricing standards mentioned above. The hearing record indicates that current price levels are achieving a reasonable balance between supply and demand for milk. Present price levels are ensuring consumers of an adequate supply of milk while maintaining sufficient reserve supplies.

The record conclusively demonstrates that three types of the proposals considered—product price formulas (except for updating purposes), the support price, and cost-of-production formulas—would change current price levels and do not have sufficient justification in the evidentiary record for such changes. In addition, the latter

two proposals do not comply with the criteria specified in the Act. Consequently, such proposals are denied.

A host of economic conditions affect both supply and demand. The interaction of supply and demand results in a ''market'' price. Thus, the M–W price, as a competitive pay price, reflects all of the economic conditions that affect both supply and demand and is automatically responsive to any changes that affect economic conditions.

The cost-of-production formulas and the price support level, as replacements for the M–W price, would ignore these economic factors and would establish price levels on a limited and different basis. While the cost of milk production is an economic factor that affects supply, it is not a price indicator that reflects all economic supply and demand factors. Likewise, the price support level is a price floor that is designed to prevent further price reductions that might otherwise be warranted by supply and demand conditions. As a result of not encompassing all economic supply and demand factors, these two types of proposals would establish prices on factors that are not in conformance with the requirements of the Act.

The use of cost-of-production formulas also would substantially enhance price levels, a result which was not justified on the basis of the evidentiary record of this proceeding. During the five-year period 1988–1992, the economic (full ownership) costs of producing a hundredweight of milk, as published by the Economic Research Service (ERS), annually averaged $1.77 greater than the current M–W price, ranging from $0.27 to $3.04 more. The cost of production exceeded the M–W price during these five years in all but seven months, September 1989 through January 1990, and May and June 1990. This was an atypical period within the dairy industry that resulted in record level prices as milk production declined and demand in both the domestic and foreign markets increased. Official Notice is taken of ''Economic Indicators of the Farm Sector, Costs of Production—Major Field Crops & Livestock and Dairy, 1991,'' February 1994, Economic Research Service.

The same five-year comparison of NFO's proposal, which is based on an A/B updated price with a cost-of-production floor price as the basic formula price, disclosed that the cost-of-production value would have been in effect for all but 14 months during this 60-month period. NFO's proposal results in a basic formula price that would have exceeded the current M–W price by an annual average of $2.01, ranging from $0.93 to $3.04.

The opposite of the price enhancement generated by the cost-of-production formula as the basic formula price could occur if the support price were adopted as a replacement. The support price as the basic formula price would result in a significant decrease in Federal order minimum prices, an outcome which was not justified on the basis of the evidentiary record of this proceeding. The same five-year comparison (1988–1992) of the support price to the current M–W price shows that the M–W price on a yearly basis averaged $1.60 greater than the support price, ranging from a low in 1988 of $0.70 to a high in 1990 of $2.32. On a monthly basis, the M–W price equalled the support price only once during this period and exceeded the support price by as much as $4.58. Official notice is taken of ''Dairy Market News'', Volume 60, Report 31, Agricultural Marketing Service. As a result, Federal order minimum prices would be static and would be virtually meaningless as indicators of supply and demand conditions and changes in such conditions. Minimum prices established on such a basis would not be consistent with the requirements of the Act.

The exception filed on behalf of WFBF/MMPA objected to the adoption of a competitive pay price based solely on Grade B milk. The exception stated that the recommended decision failed to recognize the decline in Grade B milk production and use and the increase in the use of Grade A milk for manufacturing purposes. The exception contends that Grade B milk prices in Minnesota and Wisconsin do not reflect national supply and demand conditions and is discriminatory to Upper Midwest producers, thus it should not be adopted.

The exception also states that the recommended decision rejected the support price proposal as a replacement for two reasons. According to the exception, these reasons were: 1) the support price was opposed by several witnesses testifying at the hearing and in several briefs, and 2) the support price would result in federal order minimum prices less than those that currently exist. The exception further reiterates WFBF/MMPA's position supporting the adoption of the support price as the replacement for the M–W price and attempts to discredit the Department's reasons for denying the proposal.

In fact, as the recommended decision concluded, there is not sufficient justification in the evidentiary record for any significant change in current price levels, whether higher or lower. Furthermore, WFBF/MMPA fails to recognize that another important reason for denying the support price proposal is that it does not comply with the criteria specified in the Act requiring prices to be established based on the economic conditions that affect supply and demand. The price support level does not adequately reflect all of the factors that affect supply and demand. The recommended decision recognized the decline in Grade B milk production, but concluded that there is still ample competition for this milk in Minnesota and Wisconsin. The Department continues to believe, contrary to WFBF/MMPA arguments, that at this time the base month M–W price does represent supply and demand conditions throughout the United States because it is an area of significant reserve milk supplies. The additional information in the recommended decision regarding the support price proposal, which is mentioned in the WFBF/MMPA exception, further supports the denial of the proposal. Although the Pennmarva witness is referenced frequently in the summary of evidence within the record, this witness was supported by numerous other witnesses and in several briefs. The arguments presented by this witness serve to provide specific information as to the projected impact of adopting the support price. Consequently, the arguments advanced in the WFBF/MMPA exception are rejected.

The National Family Farm Coalition filed an exception requesting that the Department consider replacing the current M–W price with a cost-of-production formula. The exception does not provide any additional evidence supporting this proposal that has not already been discussed completely in the recommended decision. Therefore, the exception is denied.

As was indicated in the brief filed by Alto, the Cheese Makers formula needs to be further developed to be considered as a viable alternative for replacing the M–W price. The formula as presented during the hearing would still require the use of a competitive pay price series to be utilized in computing the final adjustor. The Cheese Makers proposed the use of the A/B price but stated that any competitive pay price could be utilized in their proposal. However, they provided no analysis as to what impact other competitive pay prices may have on the formula.

The Cheese Makers proposal, as presented, is also likely to be revenue-enhancing, and such enhancement is not justified on the basis of the evidentiary record of this proceeding.

The proponents contend that the proposal does not change current price levels. However, the proponents are comparing their proposal to the A/B price series, which increases price levels from the current M–W price, as previously discussed. The calculated basic formula price advanced by the Cheese Makers results in a moderate price increase over the M–W price. In 1989 the calculated basic formula price averaged $0.29 above the M–W price and in 1990 averaged $0.33 greater than the M–W price. A substantial increase in the M–W price is evident when the final adjustor is included in the comparison. This computation resulted in a 1989 price $0.54 greater than the M–W price and $0.62 greater in 1990. The use of the final adjustor, which adjusts the price after wholesale prices for fluid milk products have been determined, would effectively eliminate the advance Class I pricing feature that currently exists under the orders. The proposal also does not specify a clear procedure for the computation of minimum Class II prices. As a result of all the changes that would need to be adopted to make this a workable replacement, the Cheese Makers proposal goes beyond the scope of the hearing to consider a replacement for the M–W price as the basic formula price under all Federal milk orders.

Exceptions filed by the Wisconsin Cheese Makers Association (WCMA) object to the continued use of a competitive pay price and support the adoption of the Cheese Makers proposal. WCMA reiterated the positions stated on behalf of the Cheese Makers during the hearing in support of this proposal. WCMA's exception also contended that a number of statements in the recommended decision about the Cheese Makers proposal were misleading. The arguments presented by WCMA have not provided the Department with any substantial basis for changing the conclusion reached in the recommended decision regarding the deficiencies of the Cheese Makers proposal.

As demonstrated throughout the hearing record, the obvious problem with the current M–W price survey is the declining amount of Grade B milk and the declining number of plants that purchase such milk. These trends have resulted in concern about the validity of the M–W price as a measure of the competitive value of milk for manufacturing purposes. However, this was not an immediate concern of a large number of the parties that participated in this proceeding. The immediate concern expressed was the reliability of the procedure to update the base month M–W price to compute the current month's M–W price. The NASS witness testified that the number of plants available for updating the base month has been declining as fewer plants pay twice a month. However, the NASS witness did not express any reservations about the reliability of the base month M–W price.

When the M–W price was first adopted in 1961 as the basic formula price in the Chicago order, the Secretary determined that a competitive pay price was superior to product formulas or the support price in establishing the basic formula price. That decision states:

> The use of the competitive pay price method of pricing milk is based upon the premise that in a highly competitive economy dairy concerns will tend to purchase milk at prices commensurate with the more efficient concerns' ability to pay for the product. As shifts occur in the relationship between finished products prices, one group of processors may be able to pay higher prices. The other processors must meet or approximate these prices or lose their supplies. If a dairy concern fails to make the necessary adjustments, it will in time be forced out of business. Increasing labor and other costs will tend to reduce prices paid for milk. On the other hand, the use of new assembling, processing, packaging and marketing techniques which reduce costs or increase product returns will tend to increase prices paid for milk. These upward or downward adjustments in costs would be automatically reflected in reserve prices by using the competitive pay prices method of pricing.

The economic rationale stated when the M–W price was first adopted remains sound today. Consequently, the basic formula price replacement should continue to be based on a competitive pay price series.

Of the three competitive pay price series considered at the hearing, the evidence on the record supports the adoption of either the base month M–W price or the Ag Prices M–W, both updated by a product price formula. Each price series has tracked the M–W price in the past, thus reflecting the same supply and demand conditions. The majority of participants in this proceeding indicated that either price series would be acceptable, leaving the determination of the amount of milk and number of plants included in the sample size to the discretion of the Secretary. In cross examination, the NASS witness stated that the base month M–W price is expected to outlive the Ag Prices M–W in terms of statistical reliability because it relies on a larger sample size of actual pay prices compared to the Ag Prices M–W. Thus, this decision recommends adopting the base month M–W price updated with a butter/powder/cheese formula, because this price is based on actual pay prices from a larger Grade B sample size and is projected to have greater statistical longevity than the Ag Prices M–W.

The price levels that would have resulted under the three alternative competitive pay price series, as compared to the M–W price, support the above recommendation. The degree of coordination between the current M–W price and the alternative replacements is a substantial indicator of the ability of the pricing alternatives to echo the supply and demand conditions reflected by the current M–W price. An accurate comparison of these prices without updaters could not be made on a monthly basis because each of these prices lags the M–W price by a month. However, a three-year comparison essentially eliminates this problem.

During both 1990 and 1991, the average A/B price per hundredweight exceeded the M–W price per hundredweight by 63 cents, and by 85 cents in 1992. The average Ag Prices M–W per hundredweight exceeded the M–W price per hundredweight by nine cents in 1990, equalled the M–W price per hundredweight in 1991, and was two cents greater in 1992. The base month M–W price per hundredweight yielded an average of six cents more in 1990 and resulted in the same price differences as the Ag Prices M–W per hundredweight in 1991 and 1992. Over the three-year period, the base month M–W price per hundredweight and Ag Prices M–W per hundredweight averaged nearly the same as the current M–W price per hundredweight while the A/B price per hundredweight averaged about 70 cents higher. The most recently published information indicates that this trend is continuing. Official notice is taken of ''Dairy Market News,'' Jan. 3–7, 1994, Volume 61, Report 1, Agricultural Marketing Service; ''Agricultural Prices, 1992 Summary,'' July 1993, National Agricultural Statistics Service; ''Minnesota-Wisconsin Manufacturing Grade Milk Price,'' monthly release, June 1992–February 1994, Wisconsin Agricultural Statistics Service; ''Prices Received—Minnesota-Wisconsin Manufacturing Grade Milk, 1992 Summary,'' June 1993, National Agricultural Statistics Service.

The evidence on the record indicates that a large amount of Grade A milk is being manufactured into dairy products. However, the record does not validate the argument that this Grade A milk should be factored into the basic formula price. Additionally, there was no substantial evidence submitted regarding current supply and demand

conditions that warrants price increases of the magnitude generated by the A/B price.

The A/B proponents may be correct to state that this option represents an average value for a large proportion of milk used for manufacturing purposes in the Midwest. However, it does not represent a market-clearing price for supplies of milk in excess of fluid demand. This is evident by the amount of milk that is currently sold at prices below the A/B price, that is, at the current M–W price. The hearing record indicates that adopting this price series would tend to be revenue-enhancing.

To be considered in the future as a viable alternative, the A/B price series needs to address two inherent problems. First the A/B price is based in part on a regulated price. Regulated plants included in the survey that use Grade A milk for manufacturing are subject to minimum order pricing. This factor results in an upward bias in the A/B price. The price for this milk cannot be directly reduced to pay price levels warranted by supply and demand conditions for such milk. After the first month of implementation, survey plants would be reporting a pay price which could not be less than the minimum price required to be paid for Grade A milk under the Federal order program. Consequently, after the first month of implementation, supply and demand conditions would have a limited influence on the price.

The proponents of this series maintained that the ''blend down'' of the Grade A price with the Grade B price will eliminate this problem. However, a review of the amount of milk included in this survey, approximately 70 percent of the total milk production in the States of Minnesota and Wisconsin, of which almost 80 percent is Grade A, indicates that it is unlikely the Grade B price would have a ''blending down'' impact or effect on the Grade A price.

Secondly, Grade A premiums are built into the A/B price unless specifically deducted. This, too, results in an upward bias as premiums are added one month into the reported price and the same premium is then added in the second month to the already existing premium.

As a result of lack of justification for price enhancement in the evidentiary record, as well as the problems associated with the upward price bias, the proposals to replace the M–W price with an A/B price are denied. Potential solutions addressing the upward bias were not considered during this proceeding.

An exception filed by NFO supports the adoption of a competitive pay price to replace the current M–W price. This exception, as well as one filed by TAPP and FUMMC, strongly argue against the adoption of a competitive pay price based solely on Grade B milk marketings. The exceptions reiterated many of the points supporting the adoption of a competitive pay price based on both Grade A and Grade B pay prices. They contend that a Grade B only pay price series establishes too low of a price and does not reflect the true competitive national value for milk used for manufacturing purposes. NFO, TAPP and FUMMC take further exception to the conclusions in the recommended decision that the A/B price series does not represent a market clearing price and has an inherent ''upward bias'' due to the inclusion of premiums and the use of regulated plants reporting regulated pay prices for the Grade A portion of the milk included in the survey. They also object to the Department's discussion of the ''revenue neutrality'' or ''revenue enhancing'' effects of various proposals.

In addition to the above arguments, NFO requested that non-pooled Grade A milk be included in the base month survey and TAPP and FUMMC argued that all class prices should be considered simultaneously in order to obtain price levels that actually reflect supply and demand conditions. The TAPP and FUMMC exception contended that Class I differentials should be changed to offset an increase in the basic formula price.

The basic reasons for denial of the A/B price series stated in the recommended decision remain valid. NFO, TAPP and FUMMC reiterated the arguments advanced in the hearing and in post-hearing briefs and did not provide any new information supporting their positions. Furthermore, the NFO request that unregulated Grade A milk be included in the base month survey is denied. The evidentiary record of this proceeding did not address this issue; therefore, there is no basis at this time to allow the use of unregulated Grade A milk in the base month survey. With regards to the TAPP and FUMMC request to consider all class prices, the scope of this hearing was specifically limited to a replacement of the current M–W price; thus, the Department has no further opinion or conclusion regarding this issue.

A comparison of the survey size for May 1991 data demonstrates that the Ag Prices M–W survey included 131.6 million pounds of milk reported by 71 plants. The base month M–W price survey included 316.5 million pounds of milk reported by 168 plants. Simply waiting a few additional days results in a sample size of milk which is 140 percent greater than the Ag Prices M–W. The base month M–W price sample size of milk is over four and one-half times greater than the current M–W price estimate survey, which included actual pay price reports on only 56.8 million pounds of milk reported by 69 plants. Thus, the base month M–W price best reflects the competitive pay prices of a much larger volume of milk and sample of plants and should be the primary component in the basic formula price.

The hearing record also supports the use of a product price formula to update the base month M–W price to the current month. The base month M–W price available on the 5th day of a month would represent milk prices for the second preceding month. For example the price announced March 5th would be based on January prices. A product price formula updater would enable the base month M–W price to reflect more accurately current supply and demand conditions taking into account price changes for wholesale manufactured products during the preceding month, in this example February. Although product prices do not translate directly into milk prices, the record indicates that the industry views these as a good indicator of changes in milk prices for updating purposes.

The price delay that would be created by adopting this proposal without an updating method would result in the minimum price required to be paid by regulated plants varying significantly from what unregulated plants were actually paying for milk for manufacturing uses in the same month. Because of this inequity, adoption of the base month M–W price without a product price updater cannot be justified as a replacement for the M–W price.

An analysis of the effects of various updating formulas on the competitive pay prices resulted in minor differences. Most hearing participants advocated the use of the change in gross values yielded by a product price formula between the preceding month and the current month. Only NFO advocated using 50 percent of this change, stating that producer prices and product markets do not change at the same rate. NFO claimed that using 50 percent would not reflect the volatility of product markets on a penny-for-penny basis and further lends a degree of stability to producer prices.

The NFO exception reiterated their argument that only 50 percent of the product price formula updater be used

when computing the updated base month M–W price. The recommended decision fully discussed the basis for using 100 percent of the product price formula adjuster to update the base month survey. This conclusion has not changed after full consideration of NFO's exception.

All hearing participants promoted the use of a butter/powder/cheese formula with minor differences expressed regarding the inclusion of specific by-products. After reviewing the various formulas, it is concluded the best updater would include the following products and representative price series: Grade AA butter, Chicago Mercantile Exchange (AAB); nonfat dry milk, Central States production area (NFDM); dry buttermilk, Central States production area (DBM); Cheddar cheese, 40-pound block, National Cheese Exchange (NCE); and Grade A butter, Chicago Mercantile Exchange (AB). Dry whey is not included in the formula because not all cheese manufacturers process whey, and the disposal of it is a cost to many manufacturers. Furthermore, dry whey is no longer included in calculating the cheese purchase price under the dairy price support program.

The Coffee, Sugar and Cocoa Exchange, Inc. (CSCE), filed an exception supporting the use in the recommended decision of an updated base month M–W price to replace the current M–W price. However, CSCE did offer a modification of the updating formula. CSCE proposed replacing the average monthly NCE 40-pound block Cheddar cheese price used in the formula with an average of the NCE monthly cheese price and an average price for the spot CSCE Cheddar cheese futures contract for the month. Since this modification is beyond the evidentiary record of this proceeding, it cannot be considered at this time.

After further review of the production and market for the products included in the product price updating formula, the Department is revising this formula. The Western Nonfat Dry Milk price and Dry Buttermilk price will be used in the updating formula. The use of these product prices will be more representative in determining the price change in the overall market for these products because a larger proportion of actual movements of these products will be considered.

The updating formula in the recommended decision utilized both the Central States Dry Buttermilk price and Nonfat Dry Milk price as reported by the Department, typically in Dairy Market News (DMN). Both of these price series report the ''spot'' market for carlot/trucklot quantities of dry buttermilk and nonfat dry milk, FOB Central States production area manufacturing plants. ''Spot'' transactions are sales of product that have no regular or committed outlet and are sold on the open market for immediate delivery or delivery within a few days, also referred to as the ''cash market.'' To the extent possible, both sellers and buyers are interviewed. The price carried each week in DMN is a range consisting of the low and high prices that are considered representative of the market for the entire week. Monthly averages are based on weekly prices and are time-weighted according to the number of workdays in the month. When market activity is very limited, the market may be reported ''too few to report'' (TFEWR) and no price information is provided. No monthly average is computed if one or more weekly prices is missing.

A review of the dry buttermilk values used in the updating formula revealed that for two months of 1992 and three months of 1993, a Central States Dry Buttermilk average price was not published by the Department. Consequently, the dry buttermilk prices used in the updating formula in the recommended decision for these months were equivalent prices determined by the Department. The use of an equivalent price for Central States Nonfat Dry Milk also occurred once during 1992 when DMN was unable to report a price.

Reviewing dry buttermilk production data as published in the ''Dairy Products 1993 Summary'' shows that the production and the number of manufacturers is declining in the Central States region. During 1993, seven plants were located in the Central States region manufacturing 7.1 million pounds of dry buttermilk, or 14 percent of the U.S. total production. In 1990, 14 plants reported 13 million pounds of production representing 23 percent of the U.S. total. This data represents the total market for dry buttermilk in the Central States region; thus, the potential spot market is significantly smaller. Due to the small market, there were six weeks during 1993 when the dry buttermilk powder price was TFEWR.

The Western dry buttermilk market statistics represent a greater amount of production. During 1993, dry buttermilk production in California alone accounted for 26.8 million pounds, or 53 percent of the U.S. total. Monthly production ranged from a high of 3.1 million pounds in January to a low of 1.6 million pounds in August. During the same period, the Central States production of dry buttermilk powder ranged from a high of 1.4 million pounds in January to a low of 193,000 pounds in August and September. Western dry buttermilk production is over 275 percent greater than the Central States production. Due to the large volumes of dry buttermilk powder sold in the Western Region, the spot market is considered to be active since there has not been a period of time from 1990 through 1993 when there has been TFEWR compared with six weeks during 1993 for the Central States Dry Buttermilk price.

Reviewing the nonfat dry milk production data for the Central States region also reveals a decline in production and manufacturers. In 1990, 19 plants in the Central region reported 101.5 million pounds of production, representing 12 percent of the U.S. total. By 1993, the same comparison of Central region states shows 13 plants producing 42.4 million pounds of nonfat dry milk, or 4 percent of the U.S. total. The ''Dairy Products 1993 Summary'' does report data for the East North Central and West North Central regions in total. When combined, 23 plants in these two regions are producing 128.8 million pounds of nonfat dry milk, or 14 percent of the U.S. total.

Analysis of the Western nonfat dry milk production statistics also reveals an increasingly stronger market. During 1993, nonfat dry milk production by 11 plants in California accounted for 415.5 million pounds or 44 percent of the U.S. total. The total Western region production represented 20 plants producing 575.1 million pounds or 61 percent of the U.S. total. In 1990, 12 plants in California manufactured 321.6 million pounds.

As is evident from these statistics, the Western dry buttermilk and nonfat dry milk production represent a significantly larger volume of milk than does the Central States production. In cross examination, the Department's witness from the Agricultural Marketing Service agreed that in the Department's study, the focus was on the M–W replacement and since Minnesota and Wisconsin are in the Central States region, the Central States powder prices were used. The witness further stated that arguments could be made to use other prices. Specifically, the witness stated that ''if the M–W price is considered as representing a national price series an argument can be made to use a nonfat dry milk price series that represents a larger proportion of nonfat dry milk.'' The witness went on to state that the Western Nonfat Dry Milk price series represented a larger amount of production than the Central States price.

The Department believes, based on the evidentiary record of this proceeding, that the base month M–W price represents national supply and demand conditions. Therefore, it is concluded that the larger production volumes and marketings of dry buttermilk powder and nonfat dry milk in the Western states will reflect changes in national market values more precisely than will the Central States prices. There is also concern about the use of equivalent prices that would need to be determined whenever a price or pricing constituent is not reported. Consequently, the Department is revising the product price updating formula to use the Western Dry Buttermilk price and the Western Nonfat Dry Milk price. The Department concludes that the adoption of the Western prices in the updating formula will provide for a reliable measure of market changes for these two products.

Due to the fact that the updating formula measures only the changes in product prices and does not establish a price level, an analysis of the impact of substituting the Western powder prices shows that they have little effect on the updated base month M–W price. During the four year period from 1990–1993, the updated price using Western prices yielded the same 12-month average as the recommended updating formula during 1990, 1992, and 1993. During 1991, the use of the Western prices would have resulted in an average price that was one cent less than the recommended M–W price.

The following table provides a comparison of the current M–W price, recommended decision updated base month M–W price, and the final decision updated base month M–W price:

MONTHLY PRICE COMPARISONS—1993

Month/year (col.1)	Current M–W (col. 2)	Rec. decision M–W (col. 3)	Final dec. M–W [1] (col. 4)	Difference: rec dec. M–W—final dec. M–W (col. 5)	Difference: final dec. M–W—current M–W (col. 6)
Jan 93	$10.89	$11.02	$11.02	$0.00	$0.13
Feb 93	10.74	10.72	10.72	0.00	(0.02)
Mar 93	11.02	11.19	11.19	0.00	0.17
Apr 93	12.15	12.61	12.61	0.00	0.46
May 93	12.52	12.37	12.37	0.00	(0.15)
Jun 93	12.03	11.82	11.82	0.00	(0.21)
Jul 93	11.42	11.30	11.31	0.01	(0.11)
Aug 93	11.17	11.18	11.17	(0.01)	0.00
Sep 93	11.90	12.29	12.29	0.00	0.39
Oct 93	12.46	12.19	12.19	0.00	(0.27)
Nov 93	12.75	12.62	12.62	0.00	(0.13)
Dec 93	12.51	12.44	12.44	0.00	(0.07)
Ave 93	11.80	11.81	11.81	0.00	0.01

[1] Uses Western Dry Buttermilk and Nonfat Dry Milk prices in the updating formula.

Most hearing participants advocated the use of either support price yield factors or annual yield factors in the formula. The study released by the Department developed and used annual yield factors for each month. These annual yield factors will be used in the updating formula. Basically these yields are those used under the price support program adjusted to milk containing 3.5 percent butterfat. The yields used in the formula are: butter—4.27 pounds per hundredweight of milk; nonfat dry milk—8.07 pounds per hundredweight of milk; dry buttermilk—.42 pounds per hundredweight of milk; Cheddar cheese—9.87 pounds per hundredweight of milk; and whey cream butter—.238 pounds per hundredweight of milk.

Hearing participants also advocated the use of factors to weight the butter-nonfat dry milk and cheese components of the formula. These weights are based on the proportion of milk used in the production of butter-nonfat dry milk and in the production of American cheese in the Minnesota and Wisconsin area. Nonfat dry milk is used to compute the butter-nonfat dry milk weighting factor because significant proportions of butter are manufactured in Minnesota and Wisconsin from the butterfat that is in excess of fluid milk operations. Cheese accounts for about 95 percent of the milk used in these products in the two States and about 75 percent in the United States. The Minnesota and Wisconsin weights are being used in the product price formula because the competitive pay price adopted is a Minnesota and Wisconsin pay price series. The milk equivalent used will typically be for the second preceding month.

In their exception, WCMA requested that Grade A skim milk used to produce a Class III–A product be eliminated from the weighting calculation. WCMA believes that the use of this powder in the formula will lower the recommended replacement price.

Nonfat dry milk production is not divided into that produced from Grade A milk and that produced from Grade B milk. The nonfat dry milk price is based on the sales of all nonfat dry milk as described earlier. The weighting percentages should continue to be based on the entire volume of milk used to make both cheese and nonfat dry milk regardless of the grade of milk used. The WCMA request to remove powder produced from Grade A milk from production data is denied.

The exception filed on behalf of CMPC strongly supported the recommended replacement for the current M–W price. In their exception, CMPC did express concern about the proposed weighting method used in the updating formula. CMPC pointed out that the section of the decision that contained the written computation (59 FR 40428) did not set forth a specific definition as to the month that will be used to weight the production of cheese and butter/nonfat dry milk in Minnesota and Wisconsin. However, the order language contains the phrase ''most recent reporting period'' to indicate the production data to be used. CMPC's concern regards exactly which monthly data will be used in the updating formula.

As is stated in the order language, the most recent reporting period data will

be used in the updating formula. The production data used in the formula is published by NASS in the monthly ''Dairy Products'' report. The ''Dairy Products'' report is released at the beginning of each month and contains data for the second preceding month. For example, the ''Dairy Products'' report issued on January 5, 1993, contained data for November 1992. The ''Dairy Products'' report is issued at 3:00 p.m. EST.

If a Dairy Products report is published on the same day as the M–W price is announced, that production data cannot be used in the updating formula because it is not known until after the release of the M–W price at 1:00 p.m. EST. Therefore, in most cases the most recent production data available for use in the updating formula is for the second preceding month from the month the M–W price applies. On occasion (typically about once per year), NASS will release the ''Dairy Products'' report prior to the announcement of the M–W price. In these months, the most recent data available to be used in the updating formula is for the preceding month and this data is used to determine the weighting percentages. Although this may result in production data for one month being used twice, stating that the most recent reporting period data will be used in the updating formula allows the Department to use the most current data available when calculating the M–W price.

The butter/powder/cheese formula recommended in this decision was developed and tested in the Department's study. The gross value change in the product price formula from the preceding month to the current month will be used to update the base month M–W price. The gross value change for each month will be computed as follows:

(1) Determine the gross value of milk used to manufacture Cheddar cheese and butter/nonfat dry milk:

(a) The gross value of milk used to manufacture Cheddar cheese equals $(9.87\times NCE)+(.238\times AB)$; and

(b) The gross value of milk used to manufacture butter-nonfat dry milk equals $(4.27\times AA)+(8.07\times NFDM)+(.42\times DBM)$.

(2) Determine the amount by which these gross values exceed or are less than the respective gross values for the preceding month.

(3) Compute weighting factors to be applied to the gross value changes. The weighting factors will be calculated as follows:

(a) Determine the milk equivalent for the most recent reporting period for both American cheese and butter-nonfat dry milk by using the American cheese production in Minnesota and Wisconsin divided by 9.87 to determine the cheese milk equivalent and the nonfat dry milk production in Minnesota and Wisconsin divided by 8.07 to determine the butter-nonfat dry milk equivalent;

(b) Add the cheese milk equivalent and the butter-nonfat dry milk equivalent together to calculate the total milk equivalent; and

(c) Divide the milk equivalent for cheese by the total milk equivalent to yield the cheese weighting factor and divide the butter-nonfat dry milk equivalent by the total milk equivalent to yield the butter-nonfat dry milk weighting factor.

(4) Use these weighting factors to compute a weighted average of changes in the gross values described above.

An analysis of the base month M–W price updated by the full gross value change in the butter/powder/cheese formula, as revised in this decision, and by 50 percent of the gross value change, revealed that using the full gross value change results in an updated base month M–W price which better reflects current price levels. During 1990 the full gross value change in the butter/powder/cheese updating formula resulted in an average updated base month M–W price eight cents greater than the current M–W price, and in 1991 the updated price averaged two cents less. During 1992 and 1993, the average updated base month M–W price was greater than the current M–W price by three cents and one cent, respectively. The base month M–W price updated by 50 percent of the same formula resulted in a 1990 average price which exceeded the M–W price by 31 cents, in 1991 the average price was 11 cents less, in 1992 the average price was seven cents greater, and in 1993 the average price was three cents less. Official Notice is taken of ''Dairy Market Statistics'', 1992 and 1993 Annual Summaries, Agricultural Marketing Service; and ''Dairy Products'', 1992 and 1993 Annual Summaries, National Agricultural Statistic Service. From evidence in the record, and the results of this analysis, it is concluded that the full value of gross change between the preceding month and the current month using the butter/powder/cheese formula described above results in an updated price that best reflects the current value of manufacturing milk.

Although the updated base month M–W price will result in annual price levels that nearly maintain the current annual price levels, the updated base month M–W price will not track the current M–W price precisely from month-to-month. This is because the month-to-month price variability will increase as a result of the use of a product price formula that will allow the updated base month price to react quicker to marketing conditions both on the upside and downside of the market. Column six of the preceding table compares the monthly updated base month M–W price as modified in this decision to the current monthly M–W price for 1993. During this period, the greatest monthly differences occurred in April when the updated base month M–W price of $12.61 per hundredweight, exceeded the current M–W price by 46 cents, and in October when the updated base month M–W price of $12.19 per hundredweight, was 27 cents lower than the current M–W price. However, for the entire 12 month period the updated base month M–W price exceeded the M–W price by only one cent.

As previously indicated, the SBA objected to the certification that the proposed rule would not have a significant economic impact on a substantial number of small entities. The SBA contended that the certification was suspect as a result of an alleged previous finding ''that the proposed modifications could result in wide swings in price for any given month.''

First of all, the previous finding does not indicate that the modification could result in wide price swings. Wide price changes from month-to-month have occurred with the current M–W price. Over the last four years, the M–W price has increased by as much as $1.13 from the previous month and decreased by as much as $2.02 from the previous month. The findings in the recommended decision indicated that the modified price would be expected to be more variable from month-to-month than the current M–W price during periods of both increasing and decreasing prices. Over the last four years the modified price contained herein, which is almost identical to the price modification in the recommended decision, increased by as much as $1.42 from the previous month and decreased by as much as $2.03 from the previous month. These maximum month-to-month changes occurred during the same months that the M–W price registered its greatest month-to-month changes.

Over the long run, the modified price tracks the M–W price very closely, as previously stated, and thus reflects the same changes in supply and demand conditions that are represented by the current M–W price. The price modification represents the best alternative to the M–W price compared to other pricing options considered at the hearing. Since the continued

statistical reliability of the updating procedure used to determine the current M–W price has been questioned by many who are knowledgeable of the industry, a replacement is necessary to continue a milk order program that promotes the orderly marketing of milk by producers and handlers. Without a replacement at this time, in effect, there would be no pricing mechanism to carry out the program.

The new price modification has responded more quickly to changes in supply and demand conditions than the current M–W price; however, the record's price data for the analyzed period reveals that the price modification has not been more variable from month-to-month. In fact, over the 48-month period from 1990 through 1993, the modified price has changed by a lessor amount than the M–W price during 22 months, changed by the same amount during two months, and changed by a greater amount during 24 months. Over the entire period of the data, the modified price exhibited about the same month-to-month variability as the M–W price. All that can really be said is that the modified price tends to respond more quickly to changes in marketing conditions than the M–W price. As a result, there are months over the four-year period when the modified price would have increased when the M–W price decreased, and vice versa. Price movements in opposite directions, however, say nothing about the magnitude of the price change from the previous month.

The greatest increase in price variability on the upside between the modification and the M–W was 47 cents per hundredweight or 4.0 cents per gallon. This is relatively small compared to the greatest month-to-month increases in the M–W price, $2.02 per hundredweight, or 17.4 cents per gallon.

The most important element of the price changes is that all fluid milk handlers, large and small alike, would know the magnitude of the price changes in advance of purchasing the milk and would have the opportunity to make any finished product pricing changes just as they do now. In addition, all Class II pricing changes would be known in advance. The Class II handlers, large or small, who are regulated would continue to compete on the same basis as currently. Class II processors who are not regulated would not be subject to any minimum order prices and would not be affected by the price modification. Likewise, manufacturing plants and handlers who divert milk to such plants would not be affected by the price modifications unless they choose to be regulated or decide to associate milk with a Federal order pool for their own reasons. The manufacturing plants and the handlers who divert milk to such plants are not required to be regulated.

For the previous reasons, the price modifications will not have a significant economic impact on a substantial number of small entities. The price modifications will continue to apply to all handlers and processors in the same manner as current Federal order pricing. Although most of the regulated plants are considered to be small businesses, the price modifications should not affect small businesses differently than large businesses, or differently than the current price series.

This decision recognizes that the adoption of the base month M–W price, or any Grade B milk series, is only a short-term solution since the amount of Grade B milk production is expected to continue declining. This decision agrees with the MIF/IICA witness who stated that the adoption of a Grade B survey, although it would not be a long-term solution, would provide the industry with a reliable basic formula price for a few more years allowing the industry additional time to carefully consider longer-term solutions. Adoption of the base month M–W price will provide the Department and the industry with more time to jointly develop a viable, long-term solution.

Several exceptions were filed in support of the updated base month M–W price. Some of these exceptions reiterated the view expressed by the Department that this is only a short-term solution. The Department continues to recognize that this replacement is only temporary and alternative pricing options will need to be considered in the near future.

Several organizations made specific requests regarding the adoption of a M–W price replacement. National All-Jersey, Inc., a national dairy farmer organization, and the American Jersey Cattle Club, a breed registry association, requested that the Secretary continue adjusting the M–W replacement to a 3.5 percent butterfat standard, continue collecting and reporting the protein content of the milk in the survey, and adopt a price replacement which will not restrict the further implementation of multiple component pricing plans. The adoption of the base month M–W as the replacement for the current M–W price will not change any of the adjustments and announcements that are currently reported and will not hinder adoption of multiple component pricing plans. The NFO and Cheese Makers further requested the continued collection and possible publication of the hauling subsidies paid to producers by plants in Minnesota and Wisconsin. It is expected that this information will continue to be collected by NASS and published by NASS in their ''Prices Received'' publication.

Conforming Changes

As proposed in the Notice of Hearing, conforming changes are provided in the butterfat differential section to allow for the use of the updated base month M–W price in the butterfat differential calculation. To calculate a butterfat differential that will reflect the most current marketing conditions, the preceding month's base month M–W price at test, updated by the current month's product formula updater, will be used in conjunction with the current month's butter price. A comparison between the above butterfat differential and the current butterfat differential results in slight differences. This method of calculating the butterfat differential was supported in the CMPC and NFO briefs.

Additional changes have been made to the Black Hills, South Dakota, Pacific Northwest, Southwestern Idaho-Eastern Oregon, and Great Basin orders. One change has been made to the Black Hills order to provide for uniform implementation and use of the basic formula price in all Federal orders. This has been accomplished by removing the butter/powder formula price. One conforming change each has been made to the Pacific Northwest, Southwestern Idaho-Eastern Oregon, and Great Basin orders to provide for more uniform location of the butterfat differential provision within these orders.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the New England and other orders were first issued and when they were amended. The previous

findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the New England and other marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referenda be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the orders as amended and as hereby proposed to be amended, regulating the handling of milk in the New York-New Jersey, Georgia, Eastern Ohio-Western Pennsylvania, Alabama-West Florida, and Southwestern Idaho-Eastern Oregon marketing areas is approved or favored by producers, as defined under the terms of each of the orders, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

The representative period for the conduct of such referenda is hereby determined to be June 1994 for the New York-New Jersey order; and November 1994 for the Southwestern Idaho-Eastern Oregon, Georgia, Eastern Ohio-Western Pennsylvania, and Alabama-West Florida orders.

The agents of the Secretary to conduct such referenda are hereby designated to be the respective market administrators of the aforesaid orders.

Determination of Producer Approval and Representative Period for All Other Orders

August 1994 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the New England marketing area; and November 1994 for orders regulating the handling of milk in all other marketing areas except those for which referenda are provided, is approved or favored by producers, as defined under the terms of each of the orders as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1099, 1106, 1108, 1124, 1126, 1131, 1134, 1135, 1137, 1138, 1139

Milk marketing orders.

Dated: January 27, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

Order Amending the Orders Regulating the Handling of Milk in the New England and Other Marketing Areas

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the orders regulating the handling of milk in the New England and other marketing areas. The hearing was held 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 (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the New England

and other marketing areas shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and order amending the orders contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on August 3, 1994, and published in the **Federal Register** on August 8, 1994 (59 FR 40418), as modified herein, shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

Accordingly, this decision proposes 7 CFR chapter X be amended as follows:

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

The authority citation for 7 CFR Parts 1001 through 1139 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

1. Section 1001.51 is revised to read as follows:

§ 1001.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1001.76 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent reporting period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent reporting period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1001.76 is amended by revising paragraph (b) to read as follows:

§ 1001.76 Butterfat differential.

* * * * *

(b) Round to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1001.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. Section 1002.51 is revised to read as follows:

§ 1002.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1002.81 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent reporting period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1002.56 is amended by revising paragraphs (e), (f) and (g) and by adding a new paragraph (h), to read as follows:

§ 1002.56 Announcement of class prices and butterfat differential.

* * * * *

(e) The basic formula price for the preceding month, pursuant to § 1002.51, as reported by the United States Department of Agriculture.

(f) The average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, using the base month series, for the second preceding month, as reported by the United States Department of Agriculture.

(g) The average price per pound, of Grade A (92-score) butter, at the Chicago Mercantile Exchange, for the preceding month, as reported by the United States Department of Agriculture.

(h) The average price per pound, of nonfat dry milk f.o.b. Western Area, for the preceding month, as reported by the United States Department of Agriculture.

3. Section 1002.81 is revised to read as follows:

§ 1002.81 Butterfat differential.

The butterfat differential for the adjustment of prices as specified in this part shall be plus or minus for each one-tenth of one percent of butterfat above or below 3.5 percent by an amount computed as follows: Round to the nearest one-tenth cent, 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1002.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. Section 1004.50 is amended by revising paragraph (d)(1) to read as follows:

§ 1004.50 Class and component prices.

* * * * *

(d) * * *

(1) Compute a butterfat differential per one percent butterfat, rounded to the nearest one-tenth cent, by multiplying the current month's butter price by 1.38, and subtract from the result an amount determined by multiplying 0.028 by the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1004.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

* * * * *

2. Section 1004.51 is revised to read as follows:

§ 1004.51 Basic formula prices.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1004.50(d)(1) and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

PART 1005—MILK IN THE CAROLINA MARKETING AREA

1. Section 1005.51 is revised to read as follows:

§ 1005.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1005.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1005.74 is revised to read as follows:

§ 1005.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price(s) shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1005.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

1. Section 1006.51 is revised to read as follows:

§ 1006.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1006.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1006.74 is revised to read as follows:

§ 1006.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1006.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. Section 1007.51 is revised to read as follows:

§ 1007.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1007.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1007.74 is revised to read as follows:

§ 1007.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices for base and excess milk shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1007.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. Section 1011.51 is revised to read as follows:

§ 1011.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1011.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the

annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1011.74 is revised to read as follows:

§ 1011.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price(s) shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1011.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

1. Section 1012.51 is revised to read as follows:

§ 1012.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1012.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1012.74 is revised to read as follows:

§ 1012.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1012.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

1. Section 1013.51 is revised to read as follows:

§ 1013.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis

using the butterfat differential for the preceding month computed pursuant to § 1013.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1013.74 is revised to read as follows:

§ 1013.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1013.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. Section 1030.51 is revised to read as follows:

§ 1030.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1030.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile

Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1030.74 is revised to read as follows:

§ 1030.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1030.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1032—MILK IN THE SOUTHERN ILLINOIS-EASTERN MISSOURI MARKETING AREA

1. Section 1032.51 is revised to read as follows:

§ 1032.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1032.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1032.74 is revised to read as follows:

§ 1032.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding

month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1032.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

1. Section 1033.51 is revised to read as follows:

§ 1033.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1033.73 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1033.73 is revised to read as follows:

§ 1033.73 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1033.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. Section 1036.51 is revised to read as follows:

§ 1036.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1036.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1036.74 is revised to read as follows:

§ 1036.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1036.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. Section 1040.51 is revised to read as follows:

§ 1040.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1040.51 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1040.74 is revised to read as follows:

§ 1040.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1040.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1044—MILK IN THE MICHIGAN UPPER PENINSULA MARKETING AREA

1. Section 1044.51 is revised to read as follows:

§ 1044.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1044.62 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1044.62 is revised to read as follows:

§ 1044.62 Butterfat differential.

The applicable uniform prices to be paid pursuant to § 1044.70 shall be increased or decreased, for each one-tenth of one percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1044.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. Section 1046.51 is revised to read as follows:

§ 1046.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1046.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to

paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1046.74 is revised to read as follows:

§ 1046.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1046.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. Section 1049.51 is revised to read as follows:

§ 1049.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1049.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per

hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1049.74 is revised to read as follows:

§ 1049.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1049.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

1. Section 1050.51 is revised to read as follows:

§ 1050.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1050.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1050.74 is revised to read as follows:

§ 1050.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota

and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1050.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

1. Section 1064.51 is revised to read as follows:

§ 1064.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1064.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1064.74 is revised to read as follows:

§ 1064.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1064.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. Section 1065.51 is revised to read as follows:

§ 1065.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1065.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average

for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1065.74 is revised to read as follows:

§ 1065.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1065.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. Section 1068.51 is revised to read as follows:

§ 1068.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1068.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in

hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1068.74 is revised to read as follows:

§ 1068.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1068.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1075—MILK IN THE BLACK HILLS, SOUTH DAKOTA MARKETING AREA

1. Section 1075.50 is amended by revising paragraph (c) to read as follows:

§ 1075.50 Class prices.

* * * * *

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

2. Section 1075.51 is revised to read as follows:

§ 1075.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1075.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

3. Section 1075.74 is revised to read as follows:

§ 1075.74 Butterfat differential.

The uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1075.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

1. Section 1076.51 is revised to read as follows:

§ 1076.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1076.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to

paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1076.74 is revised to read as follows:

§ 1076.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1076.51 (a) through (e), as reported by the Department. the basic formula price for the month computed pursuant to § 1076.51, as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1079—MILK IN THE IOWA MARKETING AREA

1. Section 1079.51 is revised to read as follows:

§ 1079.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1079.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry Buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1079.74 is revised to read as follows:

§ 1079.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1079.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

1. Section 1093.51 is revised to read as follows:

§ 1093.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1093.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1093.74 is revised to read as follows:

§ 1093.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota

and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1093.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

1. Section 1094.51 is revised to read as follows:

§ 1094.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1094.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1094.74 is revised to read as follows:

§ 1094.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1094.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

1. Section 1096.51 is revised to read as follows:

§ 1096.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1096.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1094.74 is revised to read as follows:

§ 1096.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1096.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA

1. Section 1099.51 is revised to read as follows:

§ 1099.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1096.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the

annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1099.74 is revised to read as follows:

§ 1099.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1099.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. Section 1106.51 is revised to read as follows:

§ 1106.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1106.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1106.74 is revised to read as follows:

§ 1106.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1106.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

1. Section 1108.51 is revised to read as follows:

§ 1108.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1108.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1108.74 is revised to read as follows:

§ 1108.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1108.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

§ 1124.19 [Removed and Reserved]

1. Section § 1124.19 is removed and reserved.

2. Section 1124.50 is amended by revising the reference in paragraph (e) and paragraph (f)(2) from ''§ 1124.19(e)'' to ''paragraph (f)(3) of this section'' and adding a new paragraph (f)(3) to read as follows:

§ 1124.50 Class and component prices.

* * * * *

(f) * * *

(3) Compute a butterfat differential rounded to the nearest one-tenth cent, by multiplying the current month's butter price by 0.138, and subtract from the result an amount determined by multiplying 0.0028 by the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1124.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

* * * * *

3. Section 1124.51 is revised to read as follows:

§ 1124.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1124.50(f)(3) and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

4. Section 1124.75 is amended by revising the reference in paragraph (a)(2)(i) from ''§ 1124.19'' to ''§ 1124.50(f)(3)''.

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. Section 1126.51 is revised to read as follows:

§ 1126.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1126.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1126.74 is revised to read as follows:

§ 1126.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the

nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1126.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

1. Section 1131.51 is revised to read as follows:

§ 1131.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1131.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1131.74 is revised to read as follows:

§ 1131.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1131.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1134—MILK IN THE WESTERN COLORADO MARKETING AREA

1. Section 1134.51 is revised to read as follows:

§ 1134.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1134.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1134.74 is revised to read as follows:

§ 1134.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1134.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

§ 1135.19 [Removed and Reserved]

1. Section 1135.19 is removed and reserved.

2. Section 1135.50 is amended by revising the reference in paragraph (e) and paragraph (f)(2) from ''§ 1135.19'' to ''paragraph (f)(3) of this section'' and adding a new paragraph (f)(3) to read as follows:

§ 1135.50 Class and component prices.

* * * * *

(f) * * *

(3) Compute a butterfat differential rounded to the nearest one-tenth cent, by multiplying the current month's butter price by 0.138, and subtract from the result an amount determined by multiplying 0.0028 by the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1135.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

* * * * *

3. Section 1135.51 is revised to read as follows:

§ 1135.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1135.50(f)(3) and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

4. Section 1135.74 is amended by revising the reference in paragraphs (b)(2)(i) and (b)(2)(ii) from ''§ 1135.19'' to ''§ 1135.50(f)(3)''.

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. Section 1137.51 is revised to read as follows:

§ 1137.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1137.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1137.74 is revised to read as follows:

§ 1137.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1137.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1138—MILK IN THE NEW MEXICO-WEST TEXAS MARKETING AREA

1. Section 1138.51 is revised to read as follows:

§ 1138.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1138.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price. Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.*

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

2. Section 1138.74 is revised to read as follows:

§ 1138.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1138.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

1. Section 1139.50 is amended by revising the reference in paragraph (d) from ''§ 1139.51(a)'' to ''paragraph (e)(1) of this section'' and by revising paragraph (e), to read as follows:

§ 1139.50 Class and component prices.

* * * * *

(e) *Butterfat price.* The butterfat price per pound shall be the total of paragraphs (e)(2) and (e)(3) of this section computed as follows:

(1) Compute a butterfat differential rounded to the nearest one-tenth cent, by multiplying the current month's butter price by 0.138, and subtract from the result an amount determined by multiplying 0.0028 by the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1139.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

(2) The skim milk value per hundredweight for the month, computed pursuant to paragraph (d) of this section, divided by 100; and

(3) The butterfat differential for the month computed pursuant to paragraph (e)(1) of this section multiplied by 10.

* * * * *

2. Section 1139.51 is revised to read as follows:

§ 1139.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1139.50(e)(1) and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month

and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

[This marketing agreement will not appear in the Code of Federal Regulations]

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ _____ [1] to _____, all inclusive, of the order regulating the handling of milk in the (_____ Name of order _____) marketing area (7 CFR Part _____ [2]) which is annexed hereto; and

II. The following provisions:

§ _____ [3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____ [4], _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ _____ [3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[FR Doc. 95–2448 Filed 2–6–95; 8:45 am]

BILLING CODE 3410–02–P

[1] First and last sections of order.

[2] Appropriate Part number.

[3] Next consecutive section number.

[4] Appropriate representative period for the order.

federal register

Tuesday
February 7, 1995

Part III

Office of Personnel Management

January 1995 Pay Adjustments; Notice

OFFICE OF PERSONNEL MANAGEMENT

January 1995 Pay Adjustments

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management, on behalf of the President and the President's Pay Agent, is publishing salary tables incorporating pay adjustments effective on the first day of the first pay period beginning on or after January 1, 1995, for General Schedule (GS) employees in each locality pay area. These salary tables are based on the new 1995 General Schedule, as adjusted by Executive Order 12944 of December 28, 1994 (60 FR 309, January 3, 1995), and the locality-based comparability payments authorized by the President in his November 30, 1994, Memorandum for the President's Pay Agent (59 FR 62549, December 5, 1994). Also included are 1995 salary tables for law enforcement officers, employees in interim geographic adjustment areas, members of the Senior Executive Service, employees in senior-level and scientific or professional positions, administrative law judges, members of boards of contract appeals, and officials covered by the Executive Schedule. The 1995 General Schedule (exclusive of locality payments) is included because it continues to apply to employees in Alaska, Hawaii, and all areas outside the continental United States, and because it must also be used for certain pay administration purposes for GS employees in locality pay areas. Finally, the definition of each locality pay area also is included.

For the President's Pay Agent.

James B. King,

Director.

1995 Salary Tables—General Schedule and Locality Rates of Pay

Executive Order 12944 puts into effect an across-the-board increase of 2 percent in the rates of basic pay for the General Schedule, the Foreign Service Schedule, and certain schedules for the Veterans Health Administration of the Department of Veterans Affairs. These adjustments are required by Public Law 103–329, and the new schedules became effective on the first day of the first pay period beginning on or after January 1, 1995.

The attached 1995 salary tables also show the locality rates of pay for General Schedule employees in each of the 27 locality pay areas. Locality-based comparability payments are authorized under 5 U.S.C. 5304. The locality rates of pay are computed based on the annual rates of basic pay of the 1995 General Schedule (Salary Table No. 95–GS) and reflect the locality-based comparability payments authorized by the President on November 30, 1994. The locality payments authorized by the President for 1995 range from 3.74 percent to 8.53 percent and replace the locality payments authorized by the President for 1994. The locality rates of pay are considered basic pay for purposes of retirement, life insurance, premium pay, severance pay, and advances in pay. They are also used to compute workers' compensation payments and lump-sum payments for accrued and accumulated annual leave. They are not considered basic pay for any other purpose.

SALARY TABLE NO. 95–GS—1995 GENERAL SCHEDULE, INCORPORATING A 2.00% INCREASE

[Effective January 1995]

	Annual rates by grade and step										Within-grade increase amounts
	1	2	3	4	5	6	7	8	9	10	
GS–1	$12,141	$12,546	$12,949	$13,352	$13,757	$13,994	$14,391	$14,793	$14,811	$15,183	Varies
GS–2	13,650	13,975	14,428	14,811	14,974	15,414	15,854	16,294	16,734	17,174	Varies
GS–3	14,895	15,392	15,889	16,386	16,883	17,380	17,877	18,374	18,871	19,368	$497
GS–4	16,721	17,278	17,835	18,392	18,949	19,506	20,063	20,620	21,177	21,734	557
GS–5	18,707	19,331	19,955	20,579	21,203	21,827	22,451	23,075	23,699	24,323	624
GS–6	20,852	21,547	22,242	22,937	23,632	24,327	25,022	25,717	26,412	27,107	695
GS–7	23,171	23,943	24,715	25,487	26,259	27,031	27,803	28,575	29,347	30,119	772
GS–8	25,662	26,517	27,372	28,227	29,082	29,937	30,792	31,647	32,502	33,357	855
GS–9	28,345	29,290	30,235	31,180	32,125	33,070	34,015	34,960	35,905	36,850	945
GS–10	31,215	32,256	33,297	34,338	35,379	36,420	37,461	38,502	39,543	40,584	1,041
GS–11	34,295	35,438	36,581	37,724	38,867	40,010	41,153	42,296	43,439	44,582	1,143
GS–12	41,104	42,474	43,844	45,214	46,584	47,954	49,324	50,694	52,064	53,434	1,370
GS–13	48,878	50,507	52,136	53,765	55,394	57,023	58,652	60,281	61,910	63,539	1,629
GS–14	57,760	59,685	61,610	63,535	65,460	67,385	69,310	71,235	73,160	75,085	1,925
GS–15	67,941	70,206	72,471	74,736	77,001	79,266	81,531	83,796	86,061	88,326	2,265

SALARY TABLE NO. 95–ATL—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 4.66% FOR THE LOCALITY PAY AREA OF ATLANTA, GA (NET INCREASE: 2.79%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,707	$13,131	$13,552	$13,974	$14,398	$14,646	$15,062	$15,482	$15,501	$15,891
GS–2	14,286	14,626	15,100	15,501	15,672	16,132	16,593	17,053	17,514	17,974
GS–3	15,589	16,109	16,629	17,150	17,670	18,190	18,710	19,230	19,750	20,271
GS–4	17,500	18,083	18,666	19,249	19,832	20,415	20,998	21,581	22,164	22,747
GS–5	19,579	20,232	20,885	21,538	22,191	22,844	23,497	24,150	24,803	25,456
GS–6	21,824	22,551	23,278	24,006	24,733	25,461	26,188	26,915	27,643	28,370
GS–7	24,251	25,059	25,867	26,675	27,483	28,291	29,099	29,907	30,715	31,523
GS–8	26,858	27,753	28,648	29,542	30,437	31,332	32,227	33,122	34,017	34,911

SALARY TABLE NO. 95–ATL—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 4.66% FOR THE LOCALITY PAY AREA OF ATLANTA, GA (NET INCREASE: 2.79%)—Continued

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–9	29,666	30,655	31,644	32,633	33,622	34,611	35,600	36,589	37,578	38,567
GS–10	32,670	33,759	34,849	35,938	37,028	38,117	39,207	40,296	41,386	42,475
GS–11	35,893	37,089	38,286	39,482	40,678	41,874	43,071	44,267	45,463	46,660
GS–12	43,019	44,453	45,887	47,321	48,755	50,189	51,622	53,056	54,490	55,924
GS–13	51,156	52,861	54,566	56,270	57,975	59,680	61,385	63,090	64,795	66,500
GS–14	60,452	62,466	64,481	66,496	68,510	70,525	72,540	74,555	76,569	78,584
GS–15	71,107	73,478	75,848	78,219	80,589	82,960	85,330	87,701	90,071	92,442

SALARY TABLE NO. 95–BOS—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 6.97% FOR THE LOCALITY PAY AREA OF BOSTON-WORCESTER-LAWRENCE, MA-NH-ME-CT (NET INCREASE: 3.45%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,987	$13,420	$13,852	$14,283	$14,716	$14,969	$15,394	$15,824	$15,843	$16,241
GS–2	14,601	14,949	15,434	15,843	16,018	16,488	16,959	17,430	17,900	18,371
GS–3	15,933	16,465	16,996	17,528	18,060	18,591	19,123	19,655	20,186	20,718
GS–4	17,886	18,482	19,078	19,674	20,270	20,866	21,461	22,057	22,653	23,249
GS–5	20,011	20,678	21,346	22,013	22,681	23,348	24,016	24,683	25,351	26,018
GS–6	22,305	23,049	23,792	24,536	25,279	26,023	26,766	27,509	28,253	28,996
GS–7	24,786	25,612	26,438	27,263	28,089	28,915	29,741	30,567	31,392	32,218
GS–8	27,451	28,365	29,280	30,194	31,109	32,024	32,938	33,853	34,767	35,682
GS–9	30,321	31,332	32,342	33,353	34,364	35,375	36,386	37,397	38,408	39,418
GS–10	33,391	34,504	35,618	36,731	37,845	38,958	40,072	41,186	42,299	43,413
GS–11	36,685	37,908	39,131	40,353	41,576	42,799	44,021	45,244	46,467	47,689
GS–12	43,969	45,434	46,900	48,365	49,831	51,296	52,762	54,227	55,693	57,158
GS–13	52,285	54,027	55,770	57,512	59,255	60,998	62,740	64,483	66,225	67,968
GS–14	61,786	63,845	65,904	67,963	70,023	72,082	74,141	76,200	78,259	80,318
GS–15	72,676	75,099	77,522	79,945	82,368	84,791	87,214	89,637	92,059	94,482

SALARY TABLE NO. 95–CHI—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 6.92%—FOR THE LOCALITY PAY AREA OF CHICAGO-GARY-KENOSHA, IL-IN-WI (NET INCREASE: 3.53%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,981	$13,414	$13,845	$14,276	$14,709	$14,962	$15,387	$15,817	$15,836	$16,234
2	14,595	14,942	15,426	15,836	16,010	16,481	16,951	17,422	17,892	18,362
3	15,926	16,457	16,989	17,520	18,051	18,583	19,114	19,645	20,177	20,708
4	17,878	18,474	19,069	19,665	20,260	20,856	21,451	22,047	22,642	23,238
5	20,002	20,669	21,336	22,003	22,670	23,337	24,005	24,672	25,339	26,006
6	22,295	23,038	23,781	24,524	25,267	26,010	26,754	27,497	28,240	28,983
7	24,774	25,600	26,425	27,251	28,076	28,902	29,727	30,552	31,378	32,203
8	27,438	28,352	29,266	30,180	31,094	32,009	32,923	33,837	34,751	35,665
9	30,306	31,317	32,327	33,338	34,348	35,358	36,369	37,379	38,390	39,400
10	33,375	34,488	35,601	36,714	37,827	38,940	40,053	41,166	42,279	43,392
11	36,668	37,890	39,112	40,335	41,557	42,779	44,001	45,223	46,445	47,667
12	43,948	45,413	46,878	48,343	49,808	51,272	52,737	54,202	55,667	57,132
13	52,260	54,002	55,744	57,486	59,227	60,969	62,711	64,452	66,194	67,936
14	61,757	63,815	65,873	67,932	69,990	72,048	74,106	76,164	78,223	80,281
15	72,643	75,064	77,486	79,908	82,329	84,751	87,173	89,595	92,016	94,438

SALARY TABLE NO. 95–CIN—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 5.33% FOR THE LOCALITY PAY AREA OF CINCINNATI-HAMILTON, OH-KY-IN (NET INCREASE: 3.09%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,788	$13,215	$13,639	$14,064	$14,490	$14,740	$15,158	$15,581	$15,600	$15,992
GS–2	14,378	14,720	15,197	15,600	15,772	16,236	16,699	17,162	17,626	18,089
GS–3	15,689	16,212	16,736	17,259	17,783	18,306	18,830	19,353	19,877	20,400
GS–4	17,612	18,199	18,786	19,372	19,959	20,546	21,132	21,719	22,306	22,892
GS–5	19,704	20,361	21,019	21,676	22,333	22,990	23,648	24,305	24,962	25,619
GS–6	21,963	22,695	23,427	24,160	24,892	25,624	26,356	27,088	27,820	28,552
GS–7	24,406	25,219	26,032	26,845	27,659	28,472	29,285	30,098	30,911	31,724
GS–8	27,030	27,930	28,831	29,731	30,632	31,533	32,433	33,334	34,234	35,135
GS–9	29,856	30,851	31,847	32,842	33,837	34,833	35,828	36,823	37,819	38,814
GS–10	32,879	33,975	35,072	36,168	37,265	38,361	39,458	40,554	41,651	42,747
GS–11	36,123	37,327	38,531	39,735	40,939	42,143	43,346	44,550	45,754	46,958
GS–12	43,295	44,738	46,181	47,624	49,067	50,510	51,953	53,396	54,839	56,282
GS–13	51,483	53,199	54,915	56,631	58,347	60,062	61,778	63,494	65,210	66,926
GS–14	60,839	62,866	64,894	66,921	68,949	70,977	73,004	75,032	77,059	79,087
GS–15	71,562	73,948	76,334	78,719	81,105	83,491	85,877	88,262	90,648	93,034

SALARY TABLE NO. 95–CLE—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 4.23% FOR THE LOCALITY PAY AREA OF CLEVELAND-AKRON, OH (NET INCREASE: 2.88 %)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,655	$13,077	$13,497	$13,917	$14,339	$14,586	$15,000	$15,419	$15,438	$15,825
GS–2	14,227	14,566	15,038	15,438	15,607	16,066	16,525	16,983	17,442	17,900
GS–3	15,525	16,043	16,561	17,079	17,597	18,115	18,633	19,151	19,669	20,187
GS–4	17,428	18,009	18,589	19,170	19,751	20,331	20,912	21,492	22,073	22,653
GS–5	19,498	20,149	20,799	21,449	22,100	22,750	23,401	24,051	24,701	25,352
GS–6	21,734	22,458	23,183	23,907	24,632	25,356	26,080	26,805	27,529	28,254
GS–7	24,151	24,956	25,760	26,565	27,370	28,174	28,979	29,784	30,588	31,393
GS–8	26,748	27,639	28,530	29,421	30,312	31,203	32,095	32,986	33,877	34,768
GS–9	29,544	30,529	31,514	32,499	33,484	34,469	35,454	36,439	37,424	38,409
GS–10	32,535	33,620	34,705	35,790	36,876	37,961	39,046	40,131	41,216	42,301
GS–11	35,746	36,937	38,128	39,320	40,511	41,702	42,894	44,085	45,276	46,468
GS–12	42,843	44,271	45,699	47,127	48,555	49,982	51,410	52,838	54,266	55,694
GS–13	50,946	52,643	54,341	56,039	57,737	59,435	61,133	62,831	64,529	66,227
GS–14	60,203	62,210	64,216	66,223	68,229	70,235	72,242	74,248	76,255	78,261
GS–15	70,815	73,176	75,537	77,897	80,258	82,619	84,980	87,341	89,701	92,062

SALARY TABLE NO. 95–COL—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 5.30% FOR THE LOCALITY PAY AREA OF COLUMBUS, OH (NET INCREASE: 4.19%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,784	$13,211	$13,635	$14,060	$14,486	$14,736	$15,154	$15,577	$15,596	$15,988
2	14,373	14,716	15,193	15,596	15,768	16,231	16,694	17,158	17,621	18,084
3	15,684	16,208	16,731	17,254	17,778	18,301	18,824	19,348	19,871	20,395
4	17,607	18,194	18,780	19,367	19,953	20,540	21,126	21,713	22,299	22,886
5	19,698	20,356	21,013	21,670	22,327	22,984	23,641	24,298	24,955	25,612
6	21,957	22,689	23,421	24,153	24,884	25,616	26,348	27,080	27,812	28,544
7	24,399	25,212	26,025	26,838	27,651	28,464	29,277	30,089	30,902	31,715
8	27,022	27,922	28,823	29,723	30,623	31,524	32,424	33,324	34,225	35,125
9	29,847	30,842	31,837	32,833	33,828	34,823	35,818	36,813	37,808	38,803
10	32,869	33,966	35,062	36,158	37,254	38,350	39,446	40,543	41,639	42,735
11	36,113	37,316	38,520	39,723	40,927	42,131	43,334	44,538	45,741	46,945
12	43,283	44,725	46,168	47,610	49,053	50,496	51,938	53,381	54,823	56,266
13	51,469	53,184	54,899	56,615	58,330	60,045	61,761	63,476	65,191	66,907
14	60,821	62,848	64,875	66,902	68,929	70,956	72,983	75,010	77,037	79,065
15	71,542	73,927	76,312	78,697	81,082	83,467	85,852	88,237	90,622	93,007

SALARY TABLE NO. 95–DFW—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 5.65% FOR THE LOCALITY PAY AREA OF DALLAS-FORTH WORTH, TX (NET INCREASE: 3.41%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,827	$13,255	$13,681	$14,106	$14,534	$14,785	$15,204	$15,629	$15,648	$16,041
GS–2	14,421	14,765	15,243	15,648	15,820	16,285	16,750	17,215	17,679	18,144
GS–3	15,737	16,262	16,787	17,312	17,837	18,362	18,887	19,412	19,937	20,462
GS–4	17,666	18,254	18,843	19,431	20,020	20,608	21,197	21,785	22,374	22,962
GS–5	19,764	20,423	21,082	21,742	22,401	23,060	23,719	24,379	25,038	25,697
GS–6	22,030	22,764	23,499	24,233	24,967	25,701	26,436	27,170	27,904	28,639
GS–7	24,480	25,296	26,111	26,927	27,743	28,558	29,374	30,189	31,005	31,821
GS–8	27,112	28,015	28,919	29,822	30,725	31,628	32,532	33,435	34,338	35,242
GS–9	29,946	30,945	31,943	32,942	33,940	34,938	35,937	36,935	37,934	38,932
GS–10	32,979	34,078	35,178	36,278	37,378	38,478	39,578	40,677	41,777	42,877
GS–11	36,233	37,440	38,648	39,855	41,063	42,271	43,478	44,686	45,893	47,101
GS–12	43,426	44,874	46,321	47,769	49,216	50,663	52,111	53,558	55,006	56,453
GS–13	51,640	53,361	55,082	56,803	58,524	60,245	61,966	63,687	65,408	67,129
GS–14	61,023	63,057	65,091	67,125	69,158	71,192	73,226	75,260	77,294	79,327
GS–15	71,780	74,173	76,566	78,959	81,352	83,745	86,138	88,530	90,923	93,316

SALARY TABLE NO. 95–DAY—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 5.19% FOR THE LOCALITY PAY AREA OF DAYTON-SPRINGFIELD, OH (NET INCREASE: 3.40%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,771	$13,197	$13,621	$14,045	$14,471	$14,720	$15,138	$15,561	$15,580	$15,971
GS–2	14,358	14,700	15,177	15,580	15,751	16,214	16,677	17,140	17,602	18,065
GS–3	15,668	16,191	16,714	17,236	17,759	18,282	18,805	19,328	19,850	20,373
GS–4	17,589	18,175	18,761	19,347	19,932	20,518	21,104	21,690	22,276	22,862
GS–5	19,678	20,334	20,991	21,647	22,303	22,960	23,616	24,273	24,929	25,585
GS–6	21,934	22,665	23,396	24,127	24,859	25,590	26,321	27,052	27,783	28,514
GS–7	24,374	25,186	25,998	26,810	27,622	28,434	29,246	30,058	30,870	31,682
GS–8	26,994	27,893	28,793	29,692	30,591	31,491	32,390	33,289	34,189	35,088
GS–9	29,816	30,810	31,804	32,798	33,792	34,786	35,780	36,774	37,768	38,763
GS–10	32,835	33,930	35,025	36,120	37,215	38,310	39,405	40,500	41,595	42,690
GS–11	36,075	37,277	38,480	39,682	40,884	42,087	43,289	44,491	45,693	46,896
GS–12	43,237	44,678	46,120	47,561	49,002	50,443	51,884	53,325	54,766	56,207
GS–13	51,415	53,128	54,842	56,555	58,269	59,982	61,696	63,410	65,123	66,837
GS–14	60,758	62,783	64,808	66,832	68,857	70,882	72,907	74,932	76,957	78,982
GS–15	71,467	73,850	76,232	78,615	80,997	83,380	85,762	88,145	90,528	92,910

SALARY TABLE NO. 95–DEN—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 5.75% FOR THE LOCALITY PAY AREA OF DENVER-BOULDER-GREELEY, CO (NET INCREASE: 3.18%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,839	$13,267	$13,694	$14,120	$14,548	$14,799	$15,218	$15,644	$15,663	$16,056
GS–2	14,435	14,779	15,258	15,663	15,835	16,300	16,766	17,231	17,696	18,162
GS–3	15,751	16,277	16,803	17,328	17,854	18,379	18,905	19,431	19,956	20,482
GS–4	17,682	18,271	18,861	19,450	20,039	20,628	21,217	21,806	22,395	22,984
GS–5	19,783	20,443	21,102	21,762	22,422	23,082	23,742	24,402	25,062	25,722
GS–6	22,051	22,786	23,521	24,256	24,991	25,726	26,461	27,196	27,931	28,666
GS–7	24,503	25,320	26,136	26,953	27,769	28,585	29,402	30,218	31,034	31,851
GS–8	27,138	28,042	28,946	29,850	30,754	31,658	32,563	33,467	34,371	35,275
GS–9	29,975	30,974	31,974	32,973	33,972	34,972	35,971	36,970	37,970	38,969
GS–10	33,010	34,111	35,212	36,312	37,413	38,514	39,615	40,716	41,817	42,918
GS–11	36,267	37,476	38,684	39,893	41,102	42,311	43,519	44,728	45,937	47,145
GS–12	43,467	44,916	46,365	47,814	49,263	50,711	52,160	53,609	55,058	56,506
GS–13	51,688	53,411	55,134	56,856	58,579	60,302	62,024	63,747	65,470	67,192
GS–14	61,081	63,117	65,153	67,188	69,224	71,260	73,295	75,331	77,367	79,402
GS–15	71,848	74,243	76,638	79,033	81,429	83,824	86,219	88,614	91,010	93,405

SALARY TABLE NO. 95–DET—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 6.59% FOR THE LOCALITY PAY AREA OF DETROIT-ANN ARBOR-FLINT, MI (NET INCREASE: 3.70%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,941	$13,373	$13,802	$14,232	$14,664	$14,916	$15,339	$15,768	$15,787	$16,184
GS–2	14,550	14,896	15,379	15,787	15,961	16,430	16,899	17,368	17,837	18,306
GS–3	15,877	16,406	16,936	17,466	17,996	18,525	19,055	19,585	20,115	20,644
GS–4	17,823	18,417	19,010	19,604	20,198	20,791	21,385	21,979	22,573	23,166
GS–5	19,940	20,605	21,270	21,935	22,600	23,265	23,931	24,596	25,261	25,926
GS–6	22,226	22,967	23,708	24,449	25,189	25,930	26,671	27,412	28,153	28,893
GS–7	24,698	25,521	26,344	27,167	27,989	28,812	29,635	30,458	31,281	32,104
GS–8	27,353	28,264	29,176	30,087	30,999	31,910	32,821	33,733	34,644	35,555
GS–9	30,213	31,220	32,227	33,235	34,242	35,249	36,257	37,264	38,271	39,278
GS–10	33,272	34,382	35,491	36,601	37,710	38,820	39,930	41,039	42,149	43,258
GS–11	36,555	37,773	38,992	40,210	41,428	42,647	43,865	45,083	46,302	47,520
GS–12	43,813	45,273	46,733	48,194	49,654	51,114	52,574	54,035	55,495	56,955
GS–13	52,099	53,835	55,572	57,308	59,044	60,781	62,517	64,254	65,990	67,726
GS–14	61,566	63,618	65,670	67,722	69,774	71,826	73,878	75,929	77,981	80,033
GS–15	72,418	74,833	77,247	79,661	82,075	84,490	86,904	89,318	91,732	94,147

SALARY TABLE NO. 95–HOU—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 8.53% FOR THE LOCALITY PAY AREA OF HOUSTON-GALVESTON-BRAZORIA, TX (NET INCREASE: 3.92%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$13,177	$13,616	$14,054	$14,491	$14,930	$15,188	$15,619	$16,055	$16,074	$16,478
GS–2	14,814	15,167	15,659	16,074	16,251	16,729	17,206	17,684	18,161	18,639
GS–3	16,166	16,705	17,244	17,784	18,323	18,863	19,402	19,941	20,481	21,020
GS–4	18,147	18,752	19,356	19,961	20,565	21,170	21,774	22,379	22,983	23,588
GS–5	20,303	20,980	21,657	22,334	23,012	23,689	24,366	25,043	25,721	26,398
GS–6	22,631	23,385	24,139	24,894	25,648	26,402	27,156	27,911	28,665	29,419
GS–7	25,147	25,985	26,823	27,661	28,499	29,337	30,175	31,012	31,850	32,688
GS–8	27,851	28,779	29,707	30,635	31,563	32,491	33,419	34,346	35,274	36,202
GS–9	30,763	31,788	32,814	33,840	34,865	35,891	36,916	37,942	38,968	39,993
GS–10	33,878	35,007	36,137	37,267	38,397	39,527	40,656	41,786	42,916	44,046
GS–11	37,220	38,461	39,701	40,942	42,182	43,423	44,663	45,904	47,144	48,385
GS–12	44,610	46,097	47,584	49,071	50,558	52,044	53,531	55,018	56,505	57,992
GS–13	53,047	54,815	56,583	58,351	60,119	61,887	63,655	65,423	67,191	68,959
GS–14	62,687	64,776	66,865	68,955	71,044	73,133	75,222	77,311	79,401	81,490
GS–15	73,736	76,195	78,653	81,111	83,569	86,027	88,486	90,944	93,402	95,860

SALARY TABLE NO. 95–HNT—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 4.39% FOR THE LOCALITY PAY AREA OF HUNTSVILLE, AL (NET INCREASE: 2.28%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,674	$13,097	$13,517	$13,938	$14,361	$14,608	$15,023	$15,442	$15,461	$15,850
GS–2	14,249	14,589	15,061	15,461	15,631	16,091	16,550	17,009	17,469	17,928
GS–3	15,549	16,068	16,587	17,105	17,624	18,143	18,662	19,181	19,699	20,218
GS–4	17,455	18,037	18,618	19,199	19,781	20,362	20,944	21,525	22,107	22,688
GS–5	19,528	20,180	20,831	21,482	22,134	22,785	23,437	24,088	24,739	25,391
GS–6	21,767	22,493	23,218	23,944	24,669	25,395	26,120	26,846	27,571	28,297
GS–7	24,188	24,994	25,800	26,606	27,412	28,218	29,024	29,829	30,635	31,441
GS–8	26,789	27,681	28,574	29,466	30,359	31,251	32,144	33,036	33,929	34,821
GS–9	29,589	30,576	31,562	32,549	33,535	34,522	35,508	36,495	37,481	38,468
GS–10	32,585	33,672	34,759	35,845	36,932	38,019	39,106	40,192	41,279	42,366
GS–11	35,801	36,994	38,187	39,380	40,573	41,766	42,960	44,153	45,346	46,539
GS–12	42,908	44,339	45,769	47,199	48,629	50,059	51,489	52,919	54,350	55,780
GS–13	51,024	52,724	54,425	56,125	57,826	59,526	61,227	62,927	64,628	66,328
GS–14	60,296	62,305	64,315	66,324	68,334	70,343	72,353	74,362	76,372	78,381
GS–15	70,924	73,288	75,652	78,017	80,381	82,746	85,110	87,475	89,839	92,204

SALARY TABLE NO. 95–IND—INCORPORATING THE 2.00 PERCENT GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 4.58 PERCENT FOR THE LOCALITY PAY AREA OF INDIANAPOLIS, IN (NET INCREASE: 2.89 PERCENT)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,697	$13,121	$13,542	$13,964	$14,387	$14,635	$15,050	$15,471	$15,489	$15,878
GS–2	14,275	14,615	15,089	15,489	15,660	16,120	16,580	17,040	17,500	17,961
GS–3	15,577	16,097	16,617	17,136	17,656	18,176	18,696	19,216	19,735	20,255
GS–4	17,487	18,069	18,652	19,234	19,817	20,399	20,982	21,564	22,147	22,729
GS–5	19,564	20,216	20,869	21,522	22,174	22,827	23,479	24,132	24,784	25,437
GS–6	21,807	22,534	23,261	23,988	24,714	25,441	26,168	26,895	27,622	28,349
GS–7	24,232	25,040	25,847	26,654	27,462	28,269	29,076	29,884	30,691	31,498
GS–8	26,837	27,731	28,626	29,520	30,414	31,308	32,202	33,096	33,991	34,885
GS–9	29,643	30,631	31,620	32,608	33,596	34,585	35,573	36,561	37,549	38,538
GS–10	32,645	33,733	34,822	35,911	36,999	38,088	39,177	40,265	41,354	42,443
GS–11	35,866	37,061	38,256	39,452	40,647	41,842	43,038	44,233	45,429	46,624
GS–12	42,987	44,419	45,852	47,285	48,718	50,150	51,583	53,016	54,449	55,881
GS–13	51,117	52,820	54,524	56,227	57,931	59,635	61,338	63,042	64,745	66,449
GS–14	60,405	62,419	64,432	66,445	68,458	70,471	72,484	74,498	76,511	78,524
GS–15	71,053	73,421	75,790	78,159	80,528	82,896	85,265	87,634	90,003	92,371

SALARY TABLE NO. 95–KC—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 3.97% FOR THE LOCALITY PAY AREA OF KANSAS CITY, MO-KS (NET INCREASE: 2.66%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,623	$13,044	$13,463	$13,882	$14,303	$14,550	$14,962	$15,380	$15,399	$15,786
GS–2	14,192	14,530	15,001	15,399	15,568	16,026	16,483	16,941	17,398	17,856
GS–3	15,486	16,003	16,520	17,037	17,553	18,070	18,587	19,103	19,620	20,137
GS–4	17,385	17,964	18,543	19,122	19,701	20,280	20,860	21,439	22,018	22,597
GS–5	19,450	20,098	20,747	21,396	22,045	22,694	23,342	23,991	24,640	25,289
GS–6	21,680	22,402	23,125	23,848	24,570	25,293	26,015	26,738	27,461	28,183
GS–7	24,091	24,894	25,696	26,499	27,301	28,104	28,907	29,709	30,512	31,315
GS–8	26,681	27,570	28,459	29,348	30,237	31,125	32,014	32,903	33,792	34,681
GS–9	29,470	30,453	31,435	32,418	33,400	34,383	35,365	36,348	37,330	38,313
GS–10	32,454	33,537	34,619	35,701	36,784	37,866	38,948	40,031	41,113	42,195
GS–11	35,657	36,845	38,033	39,222	40,410	41,598	42,787	43,975	45,164	46,352
GS–12	42,736	44,160	45,585	47,009	48,433	49,858	51,282	52,707	54,131	55,555
GS–13	50,818	52,512	54,206	55,899	57,593	59,287	60,980	62,674	64,368	66,061
GS–14	60,053	62,054	64,056	66,057	68,059	70,060	72,062	74,063	76,064	78,066
GS–15	70,638	72,993	75,348	77,703	80,058	82,413	84,768	87,123	89,478	91,833

SALARY TABLE NO. 95–LA—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 7.39% FOR THE LOCALITY PAY AREAS OF LOS ANGELES-REVERSIDE-ORANGE COUNTY, CA (INCLUDING SANTA BARBARA COUNTY AND ALL OF EDWARDS AIR FORCE BASE) (NET INCREASE: 3.64% FOR SANTA BARBARA CO./EDWARDS AFB)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$13,038	$13,473	$13,906	$14,339	$14,774	$15,028	$15,454	$15,886	$15,906	$16,305
GS–2	14,659	15,008	15,494	15,906	16,081	16,553	17,026	17,498	17,971	18,443
GS–3	15,996	16,529	17,063	17,597	18,131	18,664	19,198	19,732	20,266	20,799
GS–4	17,957	18,555	19,153	19,751	20,349	20,947	21,546	22,144	22,742	23,340
GS–5	20,089	20,760	21,430	22,100	22,770	23,440	24,110	24,780	25,450	26,120
GS–6	22,393	23,139	23,886	24,632	25,378	26,125	26,871	27,617	28,364	29,110
GS–7	24,883	25,712	26,541	27,370	28,200	29,029	29,858	30,687	31,516	32,345
GS–8	27,558	28,477	29,395	30,313	31,231	32,149	33,068	33,986	34,904	35,822
GS–9	30,440	31,455	32,469	33,484	34,499	35,514	36,529	37,544	38,558	39,573
GS–10	33,522	34,640	35,758	36,876	37,994	39,111	40,229	41,347	42,465	43,583
GS–11	36,829	38,057	39,284	40,512	41,739	42,967	44,194	45,422	46,649	47,877
GS–12	44,142	45,613	47,084	48,555	50,027	51,498	52,969	54,440	55,912	57,383
GS–13	52,490	54,239	55,989	57,738	59,488	61,237	62,986	64,736	66,485	68,235
GS–14	62,028	64,096	66,163	68,230	70,297	72,365	74,432	76,499	78,567	80,634

SALARY TABLE NO. 95–LA—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 7.39% FOR THE LOCALITY PAY AREAS OF LOS ANGELES-REVERSIDE-ORANGE COUNTY, CA (INCLUDING SANTA BARBARA COUNTY AND ALL OF EDWARDS AIR FORCE BASE) (NET INCREASE: 3.64% FOR SANTA BARBARA CO./EDWARDS AFB)—Continued

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–15	72,962	75,394	77,827	80,259	82,691	85,124	87,556	89,989	92,421	94,853

NOTE: General Schedule employees in the Los Angeles-Riverside-Orange County, CA, IGA area are entitled to higher rates of pay under salary table 95–IGA.

SALARY TABLE NO. 95–MFL—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 5.39% FOR THE LOCALITY PAY AREA OF MIAMI-FORT LAUDERDALE, FL (NET INCREASE: 4.28%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,795	$13,222	$13,647	$14,072	$14,499	$14,748	$15,167	$15,590	$15,609	$16,001
GS–2	14,386	14,728	15,206	15,609	15,781	16,245	16,709	17,172	17,636	18,100
GS–3	15,698	16,222	16,745	17,269	17,793	18,317	18,841	19,364	19,888	20,412
GS–4	17,622	18,209	18,796	19,383	19,970	20,557	21,144	21,731	22,318	22,905
GS–5	19,715	20,373	21,031	21,688	22,346	23,003	23,661	24,319	24,976	25,634
GS–6	21,976	22,708	23,441	24,173	24,906	25,638	26,371	27,103	27,836	28,568
GS–7	24,420	25,234	26,047	26,861	27,674	28,488	29,302	30,115	30,929	31,742
GS–8	27,045	27,946	28,847	29,748	30,650	31,551	32,452	33,353	34,254	35,155
GS–9	29,873	30,869	31,865	32,861	33,857	34,852	35,848	36,844	37,840	38,836
GS–10	32,897	33,995	35,092	36,189	37,286	38,383	39,480	40,577	41,674	42,771
GS–11	36,144	37,348	38,553	39,757	40,962	42,167	43,371	44,576	45,780	46,985
GS–12	43,320	44,763	46,207	47,651	49,095	50,539	51,983	53,426	54,870	56,314
GS–13	51,513	53,229	54,946	56,663	58,380	60,097	61,813	63,530	65,247	66,964
GS–14	60,873	62,902	64,931	66,960	68,988	71,017	73,046	75,075	77,103	79,132
GS–15	71,603	73,990	76,377	78,764	81,151	83,538	85,926	88,313	90,700	93,087

SALARY TABLE NO. 95–NY—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 7.30% FOR THE LOCALITY PAY AREA OF NEW YORK-NORTHERN NEW JERSEY-LONG ISLAND, NY-JN-CT-PA

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$13,027	$13,462	$13,894	$14,327	$14,761	$15,016	$15,442	$15,873	$15,892	$16,291
GS–2	14,646	14,995	15,481	15,892	16,067	16,539	17,011	17,483	17,956	18,428
GS–3	15,982	16,516	17,049	17,582	18,115	18,649	19,182	19,715	20,249	20,782
GS–4	17,942	18,539	19,137	19,735	20,332	20,930	21,528	22,125	22,723	23,321
GS–5	20,073	20,742	21,412	22,081	22,751	23,420	24,090	24,759	25,429	26,099
GS–6	22,374	23,120	23,866	24,611	25,357	26,103	26,849	27,594	28,340	29,086
GS–7	24,862	25,691	26,519	27,348	28,176	29,004	29,833	30,661	31,489	32,318
GS–8	27,535	28,453	29,370	30,288	31,205	32,122	33,040	33,957	34,875	35,792
GS–9	30,414	31,428	32,442	33,456	34,470	35,484	36,498	37,512	38,526	39,540
GS–10	33,494	34,611	35,728	36,845	37,962	39,079	40,196	41,313	42,430	43,547
GS–11	36,799	38,025	39,251	40,478	41,704	42,931	44,157	45,384	46,610	47,836
GS–12	44,105	45,575	47,045	48,515	49,985	51,455	52,925	54,395	55,865	57,335
GS–13	52,446	54,194	55,942	57,690	59,438	61,186	62,934	64,682	66,429	68,177
GS–14	61,976	64,042	66,108	68,173	70,239	72,304	74,370	76,435	78,501	80,566
GS–15	72,901	75,331	77,761	80,192	82,622	85,052	87,483	89,913	92,343	94,774

NOTE: General Schedule employees in the New York-Northern New Jersey-Long Island, NY–NJ–CT–PA locality pay area are entitled to higher rates of pay under salary table 95–IGA.

SALARY TABLE NO. 95–PHL—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 6.26% FOR THE LOCALITY PAY AREA OF PHILADELPHIA-WILMINGTON-ATLANTIC CITY, PA-NJ-DE-MD (NET INCREASE: 3.26%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,901	$13,331	$13,760	$14,188	$14,618	$14,870	$15,292	$15,719	$15,738	$16,133
GS–2	14,504	14,850	15,331	15,738	15,911	16,379	16,846	17,314	17,782	18,249
GS–3	15,827	16,356	16,884	17,412	17,940	18,468	18,996	19,524	20,052	20,580
GS–4	17,768	18,360	18,951	19,543	20,135	20,727	21,319	21,911	22,503	23,095
GS–5	19,878	20,541	21,204	21,867	22,530	23,193	23,856	24,519	25,183	25,846
GS–6	22,157	22,896	23,634	24,373	25,111	25,850	26,588	27,327	28,065	28,804
GS–7	24,622	25,442	26,262	27,082	27,903	28,723	29,543	30,364	31,184	32,004
GS–8	27,268	28,177	29,085	29,994	30,903	31,811	32,720	33,628	34,537	35,445
GS–9	30,119	31,124	32,128	33,132	34,136	35,140	36,144	37,148	38,153	39,157
GS–10	33,169	34,275	35,381	36,488	37,594	38,700	39,806	40,912	42,018	43,125
GS–11	36,442	37,656	38,871	40,086	41,300	42,515	43,729	44,944	46,158	47,373
GS–12	43,677	45,133	46,589	48,044	49,500	50,956	52,412	53,867	55,323	56,779
GS–13	51,938	53,669	55,400	57,131	58,862	60,593	62,324	64,055	65,786	67,517
GS–14	61,376	63,421	65,467	67,512	69,558	71,603	73,649	75,694	77,740	79,785
GS–15	72,194	74,601	77,008	79,414	81,821	84,228	86,635	89,042	91,448	93,855

SALARY TABLE NO. 95–POR—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 4.71% FOR THE LOCALITY PAY AREA OF PORTLAND-SALEM, OR-WA (NET INCREASE: 3.60%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,713	$13,137	$13,559	$13,981	$14,405	$14,653	$15,069	$15,490	$15,509	$15,898
GS–2	14,293	14,633	15,108	15,509	15,679	16,140	16,601	17,061	17,522	17,983
GS–3	15,597	16,117	16,637	17,158	17,678	18,199	18,719	19,239	19,760	20,280
GS–4	17,509	18,092	18,675	19,258	19,841	20,425	21,008	21,591	22,174	22,758
GS–5	19,588	20,241	20,895	21,548	22,202	22,855	23,508	24,162	24,815	25,469
GS–6	21,834	22,562	23,290	24,017	24,745	25,473	26,201	26,928	27,656	28,384
GS–7	24,262	25,071	25,879	26,687	27,496	28,304	29,113	29,921	30,729	31,538
GS–8	26,871	27,766	28,661	29,556	30,452	31,347	32,242	33,138	34,033	34,928
GS–9	29,680	30,670	31,659	32,649	33,638	34,628	35,617	36,607	37,596	38,586
GS–10	32,685	33,775	34,865	35,955	37,045	38,135	39,225	40,315	41,405	42,496
GS–11	35,910	37,107	38,304	39,501	40,698	41,894	43,091	44,288	45,485	46,682
GS–12	43,040	44,475	45,909	47,344	48,778	50,213	51,647	53,082	54,516	55,951
GS–13	51,180	52,886	54,592	56,297	58,003	59,709	61,415	63,120	64,826	66,532
GS–14	60,480	62,496	64,512	66,527	68,543	70,559	72,575	74,590	76,606	78,622
GS–15	71,141	73,513	75,884	78,256	80,628	82,999	85,371	87,743	90,114	92,486

SALARY TABLE NO. 95–RCH—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 4.00% FOR THE LOCALITY PAY AREA OF RICHMOND-PETERSBURG, VA (NET INCREASE: 2.90%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,627	$13,048	$13,467	$13,886	$14,307	$14,554	$14,967	$15,385	$15,403	$15,790
GS–2	14,196	14,534	15,005	15,403	15,573	16,031	16,488	16,946	17,403	17,861
GS–3	15,491	16,008	16,525	17,041	17,558	18,075	18,592	19,109	19,626	20,143
GS–4	17,390	17,969	18,548	19,128	19,707	20,286	20,866	21,445	22,024	22,603
GS–5	19,455	20,104	20,753	21,402	22,051	22,700	23,349	23,998	24,647	25,296
GS–6	21,686	22,409	23,132	23,854	24,577	25,300	26,023	26,746	27,468	28,191
GS–7	24,098	24,901	25,704	26,506	27,309	28,112	28,915	29,718	30,521	31,324
GS–8	26,688	27,578	28,467	29,356	30,245	31,134	32,024	32,913	33,802	34,691
GS–9	29,479	30,462	31,444	32,427	33,410	34,393	35,376	36,358	37,341	38,324
GS–10	32,464	33,546	34,629	35,712	36,794	37,877	38,959	40,042	41,125	42,207
GS–11	35,667	36,856	38,044	39,233	40,422	41,610	42,799	43,988	45,177	46,365
GS–12	42,748	44,173	45,598	47,023	48,447	49,872	51,297	52,722	54,147	55,571
GS–13	50,833	52,527	54,221	55,916	57,610	59,304	60,998	62,692	64,386	66,081
GS–14	60,070	62,072	64,074	66,076	68,078	70,080	72,082	74,084	76,086	78,088
GS–15	70,659	73,014	75,370	77,725	80,081	82,437	84,792	87,148	89,503	91,859

SALARY TABLE NO. 95–SAC—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 5.27% FOR THE LOCALITY PAY AREA OF SACRAMENTO-YOLO, CA (NET INCREASE: 3.55%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,781	$13,207	$13,631	$14,056	$14,482	$14,731	$15,149	$15,573	$15,592	$15,983
GS–2	14,369	14,711	15,188	15,592	15,763	16,226	16,690	17,153	17,616	18,079
GS–3	15,680	16,203	16,726	17,250	17,773	18,296	18,819	19,342	19,866	20,389
GS–4	17,602	18,189	18,775	19,361	19,948	20,534	21,120	21,707	22,293	22,879
GS–5	19,693	20,350	21,007	21,664	22,320	22,977	23,634	24,291	24,948	25,605
GS–6	21,951	22,683	23,414	24,146	24,877	25,609	26,341	27,072	27,804	28,536
GS–7	24,392	25,205	26,017	26,830	27,643	28,456	29,268	30,081	30,894	31,706
GS–8	27,014	27,914	28,815	29,715	30,615	31,515	32,415	33,315	34,215	35,115
GS–9	29,839	30,834	31,828	32,823	33,818	34,813	35,808	36,802	37,797	38,792
GS–10	32,860	33,956	35,052	36,148	37,243	38,339	39,435	40,531	41,627	42,723
GS–11	36,102	37,306	38,509	39,712	40,915	42,119	43,322	44,525	45,728	46,931
GS–12	43,270	44,712	46,155	47,597	49,039	50,481	51,923	53,366	54,808	56,250
GS–13	51,454	53,169	54,884	56,598	58,313	60,028	61,743	63,458	65,173	66,888
GS–14	60,804	62,830	64,857	66,883	68,910	70,936	72,963	74,989	77,016	79,042
GS–15	71,521	73,906	76,290	78,675	81,059	83,443	85,828	88,212	90,596	92,981

SALARY TABLE NO. 95–STL—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 4.28% FOR THE LOCALITY PAY AREA OF ST. LOUIS, MO-IL (NET INCREASE: 3.18%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,661	$13,083	$13,503	$13,923	$14,346	$14,593	$15,007	$15,426	$15,445	$15,833
GS–2	14,234	14,573	15,046	15,445	15,615	16,074	16,533	16,991	17,450	17,909
GS–3	15,533	16,051	16,569	17,087	17,606	18,124	18,642	19,160	19,679	20,197
GS–4	17,437	18,017	18,598	19,179	19,760	20,341	20,922	21,503	22,083	22,664
GS–5	19,508	20,158	20,809	21,460	22,110	22,761	23,412	24,063	24,713	25,364
GS–6	21,744	22,469	23,194	23,919	24,643	25,368	26,093	26,818	27,542	28,267
GS–7	24,163	24,968	25,773	26,578	27,383	28,188	28,993	29,798	30,603	31,408
GS–8	26,760	27,652	28,544	29,435	30,327	31,218	32,110	33,001	33,893	34,785
GS–9	29,558	30,544	31,529	32,515	33,500	34,485	35,471	36,456	37,442	38,427
GS–10	32,551	33,637	34,722	35,808	36,893	37,979	39,064	40,150	41,235	42,321
GS–11	35,763	36,955	38,147	39,339	40,531	41,722	42,914	44,106	45,298	46,490
GS–12	42,863	44,292	45,721	47,149	48,578	50,006	51,435	52,864	54,292	55,721
GS–13	50,970	52,669	54,367	56,066	57,765	59,464	61,162	62,861	64,560	66,258
GS–14	60,232	62,240	64,247	66,254	68,262	70,269	72,276	74,284	76,291	78,299
GS–15	70,849	73,211	75,573	77,935	80,297	82,659	85,021	87,382	89,744	92,106

SALARY TABLE NO. 95–SD—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 6.14% FOR THE LOCALITY PAY AREA OF SAN DIEGO, CA (NET INCREASE: 4.22%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,886	$13,316	$13,744	$14,172	$14,602	$14,853	$15,275	$15,701	$15,720	$16,115
GS–2	14,488	14,833	15,314	15,720	15,893	16,360	16,827	17,294	17,761	18,228
GS–3	15,810	16,337	16,865	17,392	17,920	18,447	18,975	19,502	20,030	20,557
GS–4	17,748	18,339	18,930	19,521	20,112	20,704	21,295	21,886	22,477	23,068
GS–5	19,856	20,518	21,180	21,843	22,505	23,167	23,829	24,492	25,154	25,816
GS–6	22,132	22,870	23,608	24,345	25,083	25,821	26,558	27,296	28,034	28,771
GS–7	24,594	25,413	26,233	27,052	27,871	28,691	29,510	30,330	31,149	31,968
GS–8	27,238	28,145	29,053	29,960	30,868	31,775	32,683	33,590	34,498	35,405
GS–9	30,085	31,088	32,091	33,094	34,097	35,100	36,104	37,107	38,110	39,113
GS–10	33,132	34,237	35,341	36,446	37,551	38,656	39,761	40,866	41,971	43,076
GS–11	36,401	37,614	38,827	40,040	41,253	42,467	43,680	44,893	46,106	47,319
GS–12	43,628	45,082	46,536	47,990	49,444	50,898	52,352	53,807	55,261	56,715
GS–13	51,879	53,608	55,337	57,066	58,795	60,524	62,253	63,982	65,711	67,440
GS–14	61,306	63,350	65,393	67,436	69,479	71,522	73,566	75,609	77,652	79,695
GS–15	72,113	74,517	76,921	79,325	81,729	84,133	86,537	88,941	91,345	93,749

SALARY TABLE NO. 95–SF—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 8.14% FOR THE LOCALITY PAY AREA OF SAN FRANCISCO-OAKLAND-SAN JOSE, CA (NET INCREASE: 2.13%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$13,129	$13,567	$14,003	$14,439	$14,877	$15,133	$15,562	$15,997	$16,017	$16,419
GS–2	14,761	15,113	15,602	16,017	16,193	16,669	17,145	17,620	18,096	18,572
GS–3	16,107	16,645	17,182	17,720	18,257	18,795	19,332	19,870	20,407	20,945
GS–4	18,082	18,684	19,287	19,889	20,491	21,094	21,696	22,298	22,901	23,503
GS–5	20,230	20,905	21,579	22,254	22,929	23,604	24,279	24,953	25,628	26,303
GS–6	22,549	23,301	24,052	24,804	25,556	26,307	27,059	27,810	28,562	29,314
GS–7	25,057	25,892	26,727	27,562	28,396	29,231	30,066	30,901	31,736	32,571
GS–8	27,751	28,675	29,600	30,525	31,449	32,374	33,298	34,223	35,148	36,072
GS–9	30,652	31,674	32,696	33,718	34,740	35,762	36,784	37,806	38,828	39,850
GS–10	33,756	34,882	36,007	37,133	38,259	39,385	40,510	41,636	42,762	43,888
GS–11	37,087	38,323	39,559	40,795	42,031	43,267	44,503	45,739	46,975	48,211
GS–12	44,450	45,931	47,413	48,894	50,376	51,857	53,339	54,820	56,302	57,784
GS–13	52,857	54,618	56,380	58,141	59,903	61,665	63,426	65,188	66,949	68,711
GS–14	62,462	64,543	66,625	68,707	70,788	72,870	74,952	77,034	79,115	81,197
GS–15	73,471	75,921	78,370	80,820	83,269	85,718	88,168	90,617	93,066	95,516

SALARY TABLE NO. 95–SEA—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 5.84% FOR THE LOCALITY PAY AREA OF SEATTLE-TACOMA-BREMERTON, WA (NET INCREASE: 3.88%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,850	$13,279	$13,705	$14,132	$14,560	$14,811	$15,231	$15,657	$15,676	$16,070
GS–2	14,447	14,791	15,271	15,676	15,848	16,314	16,780	17,246	17,711	18,177
GS–3	15,765	16,291	16,817	17,343	17,869	18,395	18,921	19,447	19,973	20,499
GS–4	17,698	18,287	18,877	19,466	20,056	20,645	21,235	21,824	22,414	23,003
GS–5	19,799	20,460	21,120	21,781	22,441	23,102	23,762	24,423	25,083	25,743
GS–6	22,070	22,805	23,541	24,277	25,012	25,748	26,483	27,219	27,954	28,690
GS–7	24,524	25,341	26,158	26,975	27,793	28,610	29,427	30,244	31,061	31,878
GS–8	27,161	28,066	28,971	29,875	30,780	31,685	32,590	33,495	34,400	35,305
GS–9	30,000	31,001	32,001	33,001	34,001	35,001	36,001	37,002	38,002	39,002
GS–10	33,038	34,140	35,242	36,343	37,445	38,547	39,649	40,751	41,852	42,954
GS–11	36,298	37,508	38,717	39,927	41,137	42,347	43,556	44,766	45,976	47,186
GS–12	43,504	44,954	46,404	47,854	49,305	50,755	52,205	53,655	55,105	56,555
GS–13	51,732	53,457	55,181	56,905	58,629	60,353	62,077	63,801	65,526	67,250
GS–14	61,133	63,171	65,208	67,245	69,283	71,320	73,358	75,395	77,433	79,470
GS–15	71,909	74,306	76,703	79,101	81,498	83,895	86,292	88,690	91,087	93,484

SALARY TABLE NO. 95–DCB—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 5.48% FOR THE LOCALITY PAY AREA OF WASHINGTON-BALTIMORE, DC-MD-VA-WV (NET INCREASE: 3.22%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,806	$13,234	$13,659	$14,084	$14,511	$14,761	$15,180	$15,604	$15,623	$16,015
GS–2	14,398	14,741	15,219	15,623	15,795	16,259	16,723	17,187	17,651	18,115
GS–3	15,711	16,235	16,760	17,284	17,808	18,332	18,857	19,381	19,905	20,429
GS–4	17,637	18,225	18,812	19,400	19,987	20,575	21,162	21,750	22,337	22,925
GS–5	19,732	20,390	21,049	21,707	22,365	23,023	23,681	24,340	24,998	25,656
GS–6	21,995	22,728	23,461	24,194	24,927	25,660	26,393	27,126	27,859	28,592
GS–7	24,441	25,255	26,069	26,884	27,698	28,512	29,327	30,141	30,955	31,770
GS–8	27,068	27,970	28,872	29,774	30,676	31,578	32,479	33,381	34,283	35,185
GS–9	29,898	30,895	31,892	32,889	33,885	34,882	35,879	36,876	37,873	38,869
GS–10	32,926	34,024	35,122	36,220	37,318	38,416	39,514	40,612	41,710	42,808
GS–11	36,174	37,380	38,586	39,791	40,997	42,203	43,408	44,614	45,819	47,025
GS–12	43,356	44,802	46,247	47,692	49,137	50,582	52,027	53,472	54,917	56,362
GS–13	51,557	53,275	54,993	56,711	58,430	60,148	61,866	63,584	65,303	67,021
GS–14	60,925	62,956	64,986	67,017	69,047	71,078	73,108	75,139	77,169	79,200
GS–15	71,664	74,053	76,442	78,832	81,221	83,610	85,999	88,388	90,777	93,166

SALARY TABLE NO. 95–RUS—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 3.74% FOR THE LOCALITY PAY AREA OF REST OF U.S. (NET INCREASE: 2.64%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,595	$13,015	$13,433	$13,851	$14,272	$14,517	$14,929	$15,346	$15,365	$15,751
GS–2	14,161	14,498	14,968	15,365	15,534	15,990	16,447	16,903	17,360	17,816
GS–3	15,452	15,968	16,483	16,999	17,514	18,030	18,546	19,061	19,577	20,092
GS–4	17,346	17,924	18,502	19,080	19,658	20,236	20,813	21,391	21,969	22,547
GS–5	19,407	20,054	20,701	21,349	21,996	22,643	23,291	23,938	24,585	25,233
GS–6	21,632	22,353	23,074	23,795	24,516	25,237	25,958	26,679	27,400	28,121
GS–7	24,038	24,838	25,639	26,440	27,241	28,042	28,843	29,644	30,445	31,245
GS–8	26,622	27,509	28,396	29,283	30,170	31,057	31,944	32,831	33,718	34,605
GS–9	29,405	30,385	31,366	32,346	33,326	34,307	35,287	36,268	37,248	38,228
GS–10	32,382	33,462	34,542	35,622	36,702	37,782	38,862	39,942	41,022	42,102
GS–11	35,578	36,763	37,949	39,135	40,321	41,506	42,692	43,878	45,064	46,249
GS–12	42,641	44,063	45,484	46,905	48,326	49,747	51,169	52,590	54,011	55,432
GS–13	50,706	52,396	54,086	55,776	57,466	59,156	60,846	62,536	64,225	65,915
GS–14	59,920	61,917	63,914	65,911	67,908	69,905	71,902	73,899	75,896	77,893
GS–15	70,482	72,832	75,181	77,531	79,881	82,231	84,580	86,930	89,280	91,629

1995 Salary Table—Interim Geographic Adjustments

The adjusted rates of pay in Salary Table No. 95–IGA are authorized by section 302 of FEPCA and Executive Order 12944. They reflect an adjustment of 8 percent in all rates of basic pay in the 1995 General Schedule. Regulations for administering interim geographic adjustments are found in 5 CFR part 531, subpart A.

The adjusted rates of pay in Salary Table No. 95–IGA are applicable only to General Schedule employees in the following two Consolidated Metropolitan Statistical Areas (CMSA's): New York-Northern New Jersey-Long Island, NY–NJ–CT–PA and Los Angeles-Riverside-Orange County, CA. Executive Order 12944 terminates IGA's for the San Francisco-Oakland-San Jose, CA CMSA because the locality payment in the San Francisco CMSA (8.14 percent) now exceeds the IGA (8.0 percent). These adjusted rates are considered basic pay for the same purposes as General Schedule locality rates of pay.

SALARY TABLE NO. 95–IGA—INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND THE 8% INTERIM GEOGRAPHIC ADJUSTMENTS

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$13,112	$13,550	$13,985	$14,420	$14,858	$15,114	$15,542	$15,976	$15,996	$16,398
GS–2	14,742	15,093	15,582	15,996	16,172	16,647	17,122	17,598	18,073	18,548
GS–3	16,087	16,623	17,160	17,697	18,234	18,770	19,307	19,844	20,381	20,917
GS–4	18,059	18,660	19,262	19,863	20,465	21,066	21,668	22,270	22,871	23,473
GS–5	20,204	20,877	21,551	22,225	22,899	23,573	24,247	24,921	25,595	26,269
GS–6	22,520	23,271	24,021	24,772	25,523	26,273	27,024	27,774	28,525	29,276
GS–7	25,025	25,858	26,692	27,526	28,360	29,193	30,027	30,861	31,695	32,529
GS–8	27,715	28,638	29,562	30,485	31,409	32,332	33,255	34,179	35,102	36,026
GS–9	30,613	31,633	32,654	33,674	34,695	35,716	36,736	37,757	38,777	39,798
GS–10	33,712	34,836	35,961	37,085	38,209	39,334	40,458	41,582	42,706	43,831
GS–11	37,039	38,273	39,507	40,742	41,976	43,211	44,445	45,680	46,914	48,149
GS–12	44,392	45,872	47,352	48,831	50,311	51,790	53,270	54,750	56,229	57,709
GS–13	52,788	54,548	56,307	58,066	59,826	61,585	63,344	65,103	66,863	68,622
GS–14	62,381	64,460	66,539	68,618	70,697	72,776	74,855	76,934	79,013	81,092
GS–15	73,376	75,822	78,269	80,715	83,161	85,607	88,053	90,500	92,946	95,392

NOTE: The adjusted rates of pay above apply only to General Schedule employees in the New York-Northern New Jersey-Long Island, NY-NJ-CT-PA CMSA and the Los Angeles-Riverside-Orange County, CA CMSA.

1995 Salary Tables—Law Enforcement Officers

Law enforcement officers (LEO's) are entitled to the greatest of (1) the applicable special salary rate under 5 U.S.C. 5305; (2) the applicable special law enforcement adjusted rate of pay; or (3) the applicable locality rate of pay.

Special pay adjustments for LEO's with duty stations in selected locations are authorized by section 404 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), as incorporated in section 529 of Public Law 101–509. These adjustments provide LEO's with the greatest pay entitlement in five metropolitan areas in which the adjustment ranges from 8 to 16 percent. (See Salary Tables Nos. 95–BOS (LEO), 95–LA (LEO), 95–NY (LEO), 95–SD (LEO), and 95–SF (LEO).)

Special salary rates for certain LEO's at grades GS–3 through GS–10 in Special Salary Rate Table No. 491 are authorized by section 403 of FEPCA. The 1995 salary tables for LEO's contain the rates of pay applicable to LEO's in each of the 27 locality pay areas. These rates of pay are computed based on the annual rates of basic pay of

the 1995 General Schedule (Salary Table No. 95–GS), including special salary rates for LEO's at grades GS–3 through GS–10 under section 403 of FEPCA, and incorporating the greater of the applicable locality pay adjustment authorized by the President on November 30, 1994, or the special pay adjustment for LEO's under section 404 of FEPCA. A copy of Special Salary Table No. 491 for LEO's is also provided below.

The special law enforcement adjusted rates of pay are considered basic pay for the same purposes as General Schedule locality rates of pay.

SPECIAL SALARY RATE TABLE NO. 491—LAW ENFORCEMENT OFFICERS

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–3	$17,877	$18,374	$18,871	$19,368	$19,865	$20,362	$20,859	$21,356	$21,853	$22,350
GS–4	20,063	20,620	21,177	21,734	22,291	22,848	23,405	23,962	24,519	25,076
GS–5	23,075	23,699	24,323	24,947	25,571	26,195	26,819	27,443	28,067	28,691
GS–6	24,327	25,022	25,717	26,412	27,107	27,802	28,497	29,192	29,887	30,582
GS–7	26,259	27,031	27,803	28,575	29,347	30,119	30,891	31,663	32,435	33,207
GS–8	27,372	28,227	29,082	29,937	30,792	31,647	32,502	33,357	34,212	35,067
GS–9	29,290	30,235	31,180	32,125	33,070	34,015	34,960	35,905	36,850	37,795
GS–10	32,256	33,297	34,338	35,379	36,420	37,461	38,502	39,543	40,584	41,625

SALARY TABLE NO. 95–ATL (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 4.66% FOR THE LOCALITY PAY AREA OF ATLANTA, GA (Net Increase: 2.79%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,707	$13,131	$13,552	$13,974	$14,398	$14,646	$15,062	$15,482	$15,501	$15,891
GS–2	14,286	14,626	15,100	15,501	15,672	16,132	16,593	17,053	17,514	17,974
GS–3	18,710	19,230	19,750	20,271	20,791	21,311	21,831	22,351	22,871	23,392
GS–4	20,998	21,581	22,164	22,747	23,330	23,913	24,496	25,079	25,662	26,245
GS–5	24,150	24,803	25,456	26,110	26,763	27,416	28,069	28,722	29,375	30,028
GS–6	25,461	26,188	26,915	27,643	28,370	29,098	29,825	30,552	31,280	32,007
GS–7	27,483	28,291	29,099	29,907	30,715	31,523	32,331	33,138	33,946	34,754
GS–8	28,648	29,542	30,437	31,332	32,227	33,122	34,017	34,911	35,806	36,701
GS–9	30,655	31,644	32,633	33,622	34,611	35,600	36,589	37,578	38,567	39,556
GS–10	33,759	34,849	35,938	37,028	38,117	39,207	40,296	41,386	42,475	43,565
GS–11	35,893	37,089	38,286	39,482	40,678	41,874	43,071	44,267	45,463	46,660
GS–12	43,019	44,453	45,887	47,321	48,755	50,189	51,622	53,056	54,490	55,924
GS–13	51,156	52,861	54,566	56,270	57,975	59,680	61,385	63,090	64,795	66,500
GS–14	60,452	62,466	64,481	66,496	68,510	70,525	72,540	74,555	76,569	78,584
GS–15	71,107	73,478	75,848	78,219	80,589	82,960	85,330	87,701	90,071	92,442

SALARY TABLE NO. 95–BOS (LEO) RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2% GENERAL INCREASE AND A 16% LEO SPECIAL PAY ADJUSTMENT FOR THE BOSTON-WORCESTER-LAWRENCE, MA-NH-ME-CT CMSA (NET INCREASE: 2.00%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$14,084	$14,553	$15,021	$15,488	$15,958	$16,233	$16,694	$17,160	$17,181	$17,612
GS–2	15,834	16,211	16,736	17,181	17,370	17,880	18,391	18,901	19,411	19,922
GS–3	20,737	21,314	21,890	22,467	23,043	23,620	24,196	24,773	25,349	25,926
GS–4	23,273	23,919	24,565	25,211	25,858	26,504	27,150	27,796	28,442	29,088
GS–5	26,767	27,491	28,215	28,939	29,662	30,386	31,110	31,834	32,558	33,282
GS–6	28,219	29,026	29,832	30,638	31,444	32,250	33,057	33,863	34,669	35,475
GS–7	30,460	31,356	32,251	33,147	34,043	34,938	35,834	36,729	37,625	38,520
GS–8	31,752	32,743	33,735	34,727	35,719	36,711	37,702	38,694	39,686	40,678
GS–9	33,976	35,073	36,169	37,265	38,361	39,457	40,554	41,650	42,746	43,842
GS–10	37,417	38,625	39,832	41,040	42,247	43,455	44,662	45,870	47,077	48,285
GS–11	39,782	41,108	42,434	43,760	45,086	46,412	47,737	49,063	50,389	51,715
GS–12	47,681	49,270	50,859	52,448	54,037	55,627	57,216	58,805	60,394	61,983
GS–13	56,698	58,588	60,478	62,367	64,257	66,147	68,036	69,926	71,816	73,705
GS–14	67,002	69,235	71,468	73,701	75,934	78,167	80,400	82,633	84,866	87,099
GS–15	78,812	81,439	84,066	86,694	89,321	91,949	94,576	97,203	99,831	102,458

SALARY TABLE NO. 95–CHI (LEO)—Rates of Pay for Law Enforcement Officers (LEO'S) Including Special Salary Rates at GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 6.92% FOR THE LOCALITY PAY AREA OF CHICAGO-GARY-KENOSHA, IL-IN-WI (NET INCREASE: 3.53%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,981	$13,414	$13,845	$14,276	$14,709	$14,962	$15,387	$15,817	$15,836	$16,234
GS–2	14,595	14,942	15,426	15,836	16,010	16,481	16,951	17,422	17,892	18,362
GS–3	19,114	19,645	20,177	20,708	21,240	21,771	22,302	22,834	23,365	23,897
GS–4	21,451	22,047	22,642	23,238	23,834	24,429	25,025	25,620	26,216	26,811
GS–5	24,672	25,339	26,006	26,673	27,341	28,008	28,675	29,342	30,009	30,676
GS–6	26,010	26,754	27,497	28,240	28,983	29,726	30,469	31,212	31,955	32,698
GS–7	28,076	28,902	29,727	30,552	31,378	32,203	33,029	33,854	34,680	35,505
GS–8	29,266	30,180	31,094	32,009	32,923	33,837	34,751	35,665	36,579	37,494
GS–9	31,317	32,327	33,338	34,348	35,358	36,369	37,379	38,390	39,400	40,410
GS–10	34,488	35,601	36,714	37,827	38,940	40,053	41,166	42,279	43,392	44,505
GS–11	36,668	37,890	39,112	40,335	41,557	42,779	44,001	45,223	46,445	47,667
GS–12	43,948	45,413	46,878	48,343	49,808	51,272	52,737	54,202	55,667	57,132
GS–13	52,260	54,002	55,744	57,486	59,227	60,969	62,711	64,452	66,194	67,936
GS–14	61,757	63,815	65,873	67,932	69,990	72,048	74,106	76,164	78,223	80,281
GS–15	72,643	75,064	77,486	79,908	82,329	84,751	87,173	89,595	92,016	94,438

SALARY TABLE NO. 95–CIN (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GA–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 5.33% FOR THE LOCALITY PAY AREA OF CINCINNATI-HAMILTON, OH-KY-IN (NET INCREASE: 3.09%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,788	$13,215	$13,639	$14,064	$14,490	$14,740	$15,158	$15,581	$15,600	$15,992
GS–2	14,378	14,720	15,197	15,600	15,772	16,236	16,699	17,162	17,626	18,089
GS–3	18,830	19,353	19,877	20,400	20,924	21,447	21,971	22,494	23,018	23,541
GS–4	21,132	21,719	22,306	22,892	23,479	24,066	24,652	25,239	25,826	26,413
GS–5	24,305	24,962	25,619	26,277	26,934	27,591	28,248	28,906	29,563	30,220
GS–6	25,624	26,356	27,088	27,820	28,552	29,284	30,016	30,748	31,480	32,212
GS–7	27,659	28,472	29,285	30,098	30,911	31,724	32,537	33,351	34,164	34,977
GS–8	28,831	29,731	30,632	31,533	32,433	33,334	34,234	35,135	36,035	36,936
GS–9	30,851	31,847	32,842	33,837	34,833	35,828	36,823	37,819	38,814	39,809
GS–10	33,975	35,072	36,168	37,265	38,361	39,458	40,554	41,651	42,747	43,844
GS–11	36,123	37,327	38,531	39,735	40,939	42,143	43,346	44,550	45,754	46,958
GS–12	43,295	44,738	46,181	47,624	49,067	50,510	51,953	53,396	54,839	56,282
GS–13	51,483	53,199	54,915	56,631	58,347	60,062	61,778	63,494	65,210	66,926
GS–14	60,839	62,866	64,894	66,921	68,949	70,977	73,004	75,032	77,059	79,087
GS–15	71,562	73,948	76,334	78,719	81,105	83,491	85,877	88,262	90,648	93,034

SALARY TABLE NO. 95–CLE (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 4.23% FOR THE LOCALITY PAY AREA OF CLEVELAND-AKRON, OH (NET INCREASE: 2.88%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,655	$13,077	$13,497	$13,917	$14,339	$14,586	$15,000	$15,419	$15,438	$15,825
GS–2	14,227	14,566	15,038	15,438	15,607	16,066	16,525	16,983	17,442	17,900
GS–3	18,633	19,151	19,669	20,187	20,705	21,223	21,741	22,259	22,777	23,295
GS–4	20,912	21,492	22,073	22,653	23,234	23,814	24,395	24,976	25,556	26,137
GS–5	24,051	24,701	25,352	26,002	26,653	27,303	27,953	28,604	29,254	29,905
GS–6	25,356	26,080	26,805	27,529	28,254	28,978	29,702	30,427	31,151	31,876
GS–7	27,370	28,174	28,979	29,784	30,588	31,393	32,198	33,002	33,807	34,612
GS–8	28,530	29,421	30,312	31,203	32,095	32,986	33,877	34,768	35,659	36,550
GS–9	30,529	31,514	32,499	33,484	34,469	35,454	36,439	37,424	38,409	39,394
GS–10	33,620	34,705	35,790	36,876	37,961	39,046	40,131	41,216	42,301	43,386
GS–11	35,746	36,937	38,128	39,320	40,511	41,702	42,894	44,085	45,276	46,468
GS–12	42,843	44,271	45,699	47,127	48,555	49,982	51,410	52,838	54,266	55,694
GS–13	50,946	52,643	54,341	56,039	57,737	59,435	61,133	62,831	64,529	66,227

SALARY TABLE NO. 95–CLE (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 4.23% FOR THE LOCALITY PAY AREA OF CLEVELAND-AKRON, OH (NET INCREASE: 2.88%)—Continued

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–14	60,203	62,210	64,216	66,223	68,229	70,235	72,242	74,248	76,255	78,261
GS–15	70,815	73,176	75,537	77,897	80,258	82,619	84,980	87,341	89,701	92,062

SALARY TABLE NO. 95–COL (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 15.30% FOR THE LOCALITY PAY AREA OF COLUMBUS, OH (NET INCREASE: 4.19%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,784	$13,211	$13,635	$14,060	$14,486	$14,736	$15,154	$15,577	$15,596	$15,988
GS–2	14,373	14,716	15,193	15,596	15,768	16,231	16,694	17,158	17,621	18,084
GS–3	18,824	19,348	19,871	20,395	20,918	21,441	21,965	22,488	23,011	23,535
GS–4	21,126	21,713	22,299	22,886	23,472	24,059	24,645	25,232	25,819	26,405
GS–5	24,298	24,955	25,612	26,269	26,926	27,583	28,240	28,897	29,555	30,212
GS–6	25,616	26,348	27,080	27,812	28,544	29,276	30,007	30,739	31,471	32,203
GS–7	27,651	28,464	29,277	30,089	30,902	31,715	32,528	33,341	34,154	34,967
GS–8	28,823	29,723	30,623	31,524	32,424	33,324	34,225	35,125	36,025	36,926
GS–9	30,842	31,837	32,833	33,828	34,823	35,818	36,813	37,808	38,803	39,798
GS–10	33,966	35,062	36,158	37,254	38,350	39,446	40,543	41,639	42,735	43,831
GS–11	36,113	37,316	38,520	39,723	40,927	42,131	43,334	44,538	45,741	46,945
GS–12	43,283	44,725	46,168	47,610	49,053	50,496	51,938	53,381	54,823	56,266
GS–13	51,469	53,184	54,899	56,615	58,330	60,045	61,761	63,476	65,191	66,907
GS–14	60,821	62,848	64,875	66,902	68,929	70,956	72,983	75,010	77,037	79,065
GS–15	71,542	73,927	76,312	78,697	81,082	83,467	85,852	88,237	90,622	93,007

SALARY TABLE NO. 95–DFW (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 5.65% FOR THE LOCALITY PAY AREA OF DALLAS-FORT WORTH, TX (NET INCREASE: 3.41%)

[Effective January 1995]

	Annual Rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,827	$13,255	$13,681	$14,106	$14,534	$14,785	$15,204	$15,629	$15,648	$16,041
GS–2	14,421	14,765	15,243	15,648	15,820	16,285	16,750	17,215	17,679	18,144
GS–3	18,887	19,412	19,937	20,462	20,987	21,512	22,038	22,563	23,088	23,613
GS–4	21,197	21,785	22,374	22,962	23,550	24,139	24,727	25,316	25,904	26,493
GS–5	24,379	25,038	25,697	26,357	27,016	27,675	28,334	28,994	29,653	30,312
GS–6	25,701	26,436	27,170	27,904	28,639	29,373	30,107	30,841	31,576	32,310
GS–7	27,743	28,558	29,374	30,189	31,005	31,821	32,636	33,452	34,268	35,083
GS–8	28,919	29,822	30,725	31,628	32,532	33,435	34,338	35,242	36,145	37,048
GS–9	30,945	31,943	32,942	33,940	34,938	35,937	36,935	37,934	38,932	39,930
GS–10	34,078	35,178	36,278	37,378	38,478	39,578	40,677	41,777	42,877	43,977
GS–11	36,233	37,440	38,648	39,855	41,063	42,271	43,478	44,686	45,893	47,101
GS–12	43,426	44,874	46,321	47,769	49,216	50,663	52,111	53,558	55,006	56,453
GS–13	51,640	53,361	55,082	56,803	58,524	60,245	61,966	63,687	65,408	67,129
GS–14	61,023	63,057	65,091	67,125	69,158	71,192	73,226	75,260	77,294	79,327
GS–15	71,780	74,173	76,566	78,959	81,352	83,745	86,138	88,530	90,923	93,316

Salary Table No. 95–DAY (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S) INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 5.19% FOR THE LOCALITY PAY AREA OF DAYTON-SPRINGFIELD, OH (NET INCREASE: 3.40%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,771	$13,197	$13,621	$14,045	$14,471	$14,720	$15,138	$15,561	$15,580	$15,971
GS–2	14,358	14,700	15,177	15,580	15,751	16,214	16,677	17,140	17,602	18,065
GS–3	18,805	19,328	19,850	20,373	20,896	21,419	21,942	22,464	22,987	23,510
GS–4	21,104	21,690	22,276	22,862	23,448	24,034	24,620	25,206	25,792	26,377
GS–5	24,273	24,929	25,585	26,242	26,898	27,555	28,211	28,867	29,524	30,180
GS–6	25,590	26,321	27,052	27,783	28,514	29,245	29,976	30,707	31,438	32,169
GS–7	27,622	28,434	29,246	30,058	30,870	31,682	32,494	33,306	34,118	34,930
GS–8	28,793	29,692	30,591	31,491	32,390	33,289	34,189	35,088	35,988	36,887
GS–9	30,810	31,804	32,798	33,792	34,786	35,780	36,774	37,768	38,763	39,757
GS–10	33,930	35,025	36,120	37,215	38,310	39,405	40,500	41,595	42,690	43,785
GS–11	36,075	37,277	38,480	39,682	40,884	42,087	43,289	44,491	45,693	46,896
GS–12	43,237	44,678	46,120	47,561	49,002	50,443	51,884	53,325	54,766	56,207
GS–13	51,415	53,128	54,842	56,555	58,269	59,982	61,696	63,410	65,123	66,837
GS–14	60,758	62,783	64,808	66,832	68,857	70,882	72,907	74,932	76,957	78,982
GS–15	71,467	73,850	76,232	78,615	80,997	83,380	85,762	88,145	90,528	92,910

SALARY TABLE NO. 95–DEN (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO's), Including Special Salary Rates at GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 5.75% FOR THE LOCALITY PAY AREA OF DENVER-BOULDER-GREELEY, CO (NET INCREASE: 3.18%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,839	$13,267	$13,694	$14,120	$14,548	$14,799	$15,218	$15,644	$15,663	$16,056
GS–2	14,435	14,779	15,258	15,663	15,835	16,300	16,766	17,231	17,696	18,162
GS–3	18,905	19,431	19,956	20,482	21,007	21,533	22,058	22,584	23,110	23,635
GS–4	21,217	21,806	22,395	22,984	23,573	24,162	24,751	25,340	25,929	26,518
GS–5	24,402	25,062	25,722	26,381	27,041	27,701	28,361	29,021	29,681	30,341
GS–6	25,726	26,461	27,196	27,931	28,666	29,401	30,136	30,871	31,606	32,340
GS–7	27,769	28,585	29,402	30,218	31,034	31,851	32,667	33,484	34,300	35,116
GS–8	28,946	29,850	30,754	31,658	32,563	33,467	34,371	35,275	36,179	37,083
GS–9	30,974	31,974	32,973	33,972	34,972	35,971	36,970	37,970	38,969	39,968
GS–10	34,111	35,212	36,312	37,413	38,514	39,615	40,716	41,817	42,918	44,018
GS–11	36,267	37,476	38,684	39,893	41,102	42,311	43,519	44,728	45,937	47,145
GS–12	43,467	44,916	46,365	47,814	49,263	50,711	52,160	53,609	55,058	56,506
GS–13	51,688	53,411	55,134	56,856	58,579	60,302	62,024	63,747	65,470	67,192
GS–14	61,081	63,117	65,153	67,188	69,224	71,260	73,295	75,331	77,367	79,402
GS–15	71,848	74,243	76,638	79,033	81,429	83,824	86,219	88,614	91,010	93,405

SALARY TABLE NO. 95–DET (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 6.59% FOR THE LOCALITY PAY AREA OF DETROIT-ANN ARBOR-FLINT, MI (NET INCREASE: 3.70%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,941	$13,373	$13,802	$14,232	$14,664	$14,916	$15,339	$15,768	$15,787	$16,184
GS–2	14,550	14,896	15,379	15,787	15,961	16,430	16,899	17,368	17,837	18,306
GS–3	19,055	19,585	20,115	20,644	21,174	21,704	22,234	22,763	23,293	23,823
GS–4	21,385	21,979	22,573	23,166	23,760	24,354	24,947	25,541	26,135	26,729
GS–5	24,596	25,261	25,926	26,591	27,256	27,921	28,586	29,251	29,917	30,582
GS–6	25,930	26,671	27,412	28,153	28,893	29,634	30,375	31,116	31,857	32,597
GS–7	27,989	28,812	29,635	30,458	31,281	32,104	32,927	33,750	34,572	35,395
GS–8	29,176	30,087	30,999	31,910	32,821	33,733	34,644	35,555	36,467	37,378
GS–9	31,220	32,227	33,235	34,242	35,249	36,257	37,264	38,271	39,278	40,286
GS–10	34,382	35,491	36,601	37,710	38,820	39,930	41,039	42,149	43,258	44,368
GS–11	36,555	37,773	38,992	40,210	41,428	42,647	43,865	45,083	46,302	47,520
GS–12	43,813	45,273	46,733	48,194	49,654	51,114	52,574	54,035	55,495	56,955
GS–13	52,099	53,835	55,572	57,308	59,044	60,781	62,517	64,254	65,990	67,726

SALARY TABLE NO. 95–DET (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 6.59% FOR THE LOCALITY PAY AREA OF DETROIT-ANN ARBOR-FLINT, MI (NET INCREASE: 3.70%)—Continued

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–14	61,566	63,618	65,670	67,722	69,774	71,826	73,878	75,929	77,981	80,033
GS–15	72,418	74,833	77,247	79,661	82,075	84,490	86,904	89,318	91,732	94,147

SALARY TABLE NO. 95–HOU (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 8.53% FOR THE LOCALITY PAY AREA OF HOUSTON-GALVESTON-BRAZORIA, TX (NET INCREASE: 3.92%)

[Effective January 1995]

	Annual Rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$13,177	$13,616	$14,054	$14,491	$14,930	$15,188	$15,619	$16,055	$16,074	$16,478
GS–2	14,814	15,167	15,659	16,074	16,251	16,729	17,206	17,684	18,161	18,639
GS–3	19,402	19,941	20,481	21,020	21,559	22,099	22,638	23,178	23,717	24,256
GS–4	21,774	22,379	22,983	23,588	24,192	24,797	25,401	26,006	26,610	27,215
GS–5	25,043	25,721	26,398	27,075	27,752	28,429	29,107	29,784	30,461	31,138
GS–6	26,402	27,156	27,911	28,665	29,419	30,174	30,928	31,682	32,436	33,191
GS–7	28,499	29,337	30,175	31,012	31,850	32,688	33,526	34,364	35,202	36,040
GS–8	29,707	30,635	31,563	32,491	33,419	34,346	35,274	36,202	37,130	38,058
GS–9	31,788	32,814	33,840	34,865	35,891	36,916	37,942	38,968	39,993	41,019
GS–10	35,007	36,137	37,267	38,397	39,527	40,656	41,786	42,916	44,046	45,176
GS–11	37,220	38,461	39,701	40,942	42,182	43,423	44,663	45,904	47,144	48,385
GS–12	44,610	46,097	47,584	49,071	50,558	52,044	53,531	55,018	56,505	57,992
GS–13	53,047	54,815	56,583	58,351	60,119	61,887	63,655	65,423	67,191	68,959
GS–14	62,687	64,776	66,865	68,955	71,044	73,133	75,222	77,311	79,401	81,490
GS–15	73,736	76,195	78,653	81,111	83,569	86,027	88,486	90,944	93,402	95,860

SALARY TABLE NO. 95–HNT (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 8.53% FOR THE LOCALITY PAY AREA OF HUNTSVILLE, AL (NET INCREASE: 2.28%)

[Effective January 1995]

	Annual Rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,674	$13,097	$13,517	$13,938	$14,361	$14,608	$15,023	$15,442	$15,461	$15,850
GS–2	14,249	14,589	15,061	15,461	15,631	16,091	16,550	17,009	17,469	17,928
GS–3	18,662	19,181	19,699	20,218	20,737	21,256	21,775	22,294	22,812	23,331
GS–4	20,944	21,525	22,107	22,688	23,270	23,851	24,432	25,014	25,595	26,177
GS–5	24,088	24,739	25,391	26,042	26,694	27,345	27,996	28,648	29,299	29,951
GS–6	25,395	26,120	26,846	27,571	28,297	29,023	29,748	30,474	31,199	31,925
GS–7	27,412	28,218	29,024	29,829	30,635	31,441	32,247	33,053	33,859	34,665
GS–8	28,574	29,466	30,359	31,251	32,144	33,036	33,929	34,821	35,714	36,606
GS–9	30,576	31,562	32,549	33,535	34,522	35,508	36,495	37,481	38,468	39,454
GS–10	33,672	34,759	35,845	36,932	38,019	39,106	40,192	41,279	42,366	43,452
GS–11	35,801	36,994	38,187	39,380	40,573	41,766	42,960	44,153	45,346	46,539
GS–12	42,908	44,339	45,769	47,199	48,629	50,059	51,489	52,919	54,350	55,780
GS–13	51,024	52,724	54,425	56,125	57,826	59,526	61,227	62,927	64,628	66,328
GS–14	60,296	62,305	64,315	66,324	68,334	70,343	72,353	74,362	76,372	78,381
GS–15	70,924	73,288	75,652	78,017	80,381	82,746	85,110	87,475	89,839	92,204

SALARY TABLE NO. 95–IND (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 4.58% FOR THE LOCALITY PAY AREA OF INDIANAPOLIS, IN (NET INCREASE: 2.89%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,697	$13,121	$13,542	$13,964	$14,387	$14,635	$15,050	$15,471	$15,489	$15,878
GS–2	14,275	14,615	15,089	15,489	15,660	16,120	16,580	17,040	17,500	17,961
GS–3	18,696	19,216	19,735	20,255	20,775	21,295	21,814	22,334	22,854	23,374
GS–4	20,982	21,564	22,147	22,729	23,312	23,894	24,477	25,059	25,642	26,224
GS–5	24,132	24,784	25,437	26,090	26,742	27,395	28,047	28,700	29,352	30,005
GS–6	25,441	26,168	26,895	27,622	28,349	29,075	29,802	30,529	31,256	31,983
GS–7	27,462	28,269	29,076	29,884	30,691	31,498	32,306	33,113	33,921	34,728
GS–8	28,626	29,520	30,414	31,308	32,202	33,096	33,991	34,885	35,779	36,673
GS–9	30,631	31,620	32,608	33,596	34,585	35,573	36,561	37,549	38,538	39,526
GS–10	33,733	34,822	35,911	36,999	38,088	39,177	40,265	41,354	42,443	43,531
GS–11	35,866	37,061	38,256	39,452	40,647	41,842	43,038	44,233	45,429	46,624
GS–12	42,987	44,419	45,852	47,285	48,718	50,150	51,583	53,016	54,449	55,881
GS–13	51,117	52,820	54,524	56,227	57,931	59,635	61,338	63,042	64,745	66,449
GS–14	60,405	62,419	64,432	66,445	68,458	70,471	72,484	74,498	76,511	78,524
GS–15	71,053	73,421	75,790	78,159	80,528	82,896	85,265	87,634	90,003	92,371

SALARY TABLE NO. 95–KC (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 3.97% FOR THE LOCALITY PAY AREA OF KANSAS CITY, MO-KS (NET INCREASE: 2.66%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,623	$13,044	$13,463	$13,882	$14,303	$14,550	$14,962	$15,380	$15,399	$15,786
GS–2	14,192	14,530	15,001	15,399	15,568	16,026	16,483	16,941	17,398	17,856
GS–3	18,587	19,103	19,620	20,137	20,654	21,170	21,687	22,204	22,721	23,237
GS–4	20,860	21,439	22,018	22,597	23,176	23,755	24,334	24,913	25,492	26,072
GS–5	23,991	24,640	25,289	25,937	26,586	27,235	27,884	28,532	29,181	29,830
GS–6	25,293	26,015	26,738	27,461	28,183	28,906	29,628	30,351	31,074	31,796
GS–7	27,301	28,104	28,907	29,709	30,512	31,315	32,117	32,920	33,723	34,525
GS–8	28,459	29,348	30,237	31,125	32,014	32,903	33,792	34,681	35,570	36,459
GS–9	30,453	31,435	32,418	33,400	34,383	35,365	36,348	37,330	38,313	39,295
GS–10	33,537	34,619	35,701	36,784	37,866	38,948	40,031	41,113	42,195	43,278
GS–11	35,657	36,845	38,033	39,222	40,410	41,598	42,787	43,975	45,164	46,352
GS–12	42,736	44,160	45,585	47,009	48,433	49,858	51,282	52,707	54,131	55,555
GS–13	50,818	52,512	54,206	55,899	57,593	59,287	60,980	62,674	64,368	66,061
GS–14	60,053	62,054	64,056	66,057	68,059	70,060	72,062	74,063	76,064	78,066
GS–15	70,638	72,993	75,348	77,703	80,058	82,413	84,768	87,123	89,478	91,833

SALARY TABLE NO. 95–LA (LEO 1)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2% GENERAL INCREASE AND A 16% LEO SPECIAL PAY ADJUSTMENT FOR THE LOS ANGELES-RIVERSIDE-ORANGE COUNTY, CA CMSA (NET INCREASE: 2.00%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$14,084	$14,553	$15,021	$15,488	$15,958	$16,233	$16,694	$17,160	$17,181	$17,612
GS–2	15,834	16,211	16,736	17,181	17,370	17,880	18,391	18,901	19,411	19,922
GS–3	20,737	21,314	21,890	22,467	23,043	23,620	24,196	24,773	25,349	25,926
GS–4	23,273	23,919	24,565	25,211	25,858	26,504	27,150	27,796	28,442	29,088
GS–5	26,767	27,491	28,215	28,939	29,662	30,386	31,110	31,834	32,558	33,282
GS–6	28,219	29,026	29,832	30,638	31,444	32,250	33,057	33,863	34,669	35,475
GS–7	30,460	31,356	32,251	33,147	34,043	34,938	35,834	36,729	37,625	38,520
GS–8	31,752	32,743	33,735	34,727	35,719	36,711	37,702	38,694	39,686	40,678
GS–9	33,976	35,073	36,169	37,265	38,361	39,457	40,554	41,650	42,746	43,842
GS–10	37,417	38,625	39,832	41,040	42,247	43,455	44,662	45,870	47,077	48,285
GS–11	39,782	41,108	42,434	43,760	45,086	46,412	47,737	49,063	50,389	51,715
GS–12	47,681	49,270	50,859	52,448	54,037	55,627	57,216	58,805	60,394	61,983
GS–13	56,698	58,588	60,478	62,367	64,257	66,147	68,036	69,926	71,816	73,705
GS–14	67,002	69,235	71,468	73,701	75,934	78,167	80,400	82,633	84,866	87,099

SALARY TABLE NO. 95–LA (LEO 1)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2% GENERAL INCREASE AND A 16% LEO SPECIAL PAY ADJUSTMENT FOR THE LOS ANGELES-RIVERSIDE-ORANGE COUNTY, CA CMSA (NET INCREASE: 2.00%)—Continued

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–15	78,812	81,439	84,066	86,694	89,321	91,949	94,576	97,203	99,831	102,458

NOTE: This salary table applies only to law enforcement officers whose official duty stations are located within the Los Angeles-Riverside-Orange County, CA CMSA. Law enforcement officers whose official duty stations are located in Santa Barbara County or that portion of Edwards Air Force Base outside the Los Angeles-Riverside-Orange County, CA CMSA are entitled to the rates of pay under salary table 95–LA (LEO 2).

SALARY TABLE NO. 95–LA (LEO 2)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S)T4 Including Special Salary Rates at GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 7.39% FOR THE LOCALITY PAY AREA OF LOS ANGELES-RIVERSIDE-ORANGE COUNTY, CA (INCLUDING SANTA BARBARA COUNTY AND ALL OF EDWARDS AIR FORCE BASE) (NET INCREASE: 3.64%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$13,038	$13,473	$13,906	$14,339	$14,774	$15,028	$15,454	$15,886	$15,906	$16,305
GS–2	14,659	15,008	15,494	15,906	16,081	16,553	17,026	17,498	17,971	18,443
GS–3	19,198	19,732	20,266	20,799	21,333	21,867	22,400	22,934	23,468	24,002
GS–4	21,546	22,144	22,742	23,340	23,938	24,536	25,135	25,733	26,331	26,929
GS–5	24,780	25,450	26,120	26,791	27,461	28,131	28,801	29,471	30,141	30,811
GS–6	26,125	26,871	27,617	28,364	29,110	29,857	30,603	31,349	32,096	32,842
GS–7	28,200	29,029	29,858	30,687	31,516	32,345	33,174	34,003	34,832	35,661
GS–8	29,395	30,313	31,231	32,149	33,068	33,986	34,904	35,822	36,740	37,658
GS–9	31,455	32,469	33,484	34,499	35,514	36,529	37,544	38,558	39,573	40,588
GS–10	34,640	35,758	36,876	37,994	39,111	40,229	41,347	42,465	43,583	44,701
GS–11	36,829	38,057	39,284	40,512	41,739	42,967	44,194	45,422	46,649	47,877
GS–12	44,142	45,613	47,084	48,555	50,027	51,498	52,969	54,440	55,912	57,383
GS–13	52,490	54,239	55,989	57,738	59,488	61,237	62,986	64,736	66,485	68,235
GS–14	62,028	64,096	66,163	68,230	70,297	72,365	74,432	76,499	78,567	80,634
GS–15	72,962	75,394	77,827	80,259	82,691	85,124	87,556	89,989	92,421	94,853

NOTES: This salary table applies only to law enforcement officers whose official duty stations are located in Santa Barbara County or that portion of Edwards Air Force Base outside the Los Angeles-Riverside-Orange County, CA CMSA. Law enforcement officers whose official duty stations are located within the Los Angeles-Riverside-Orange County, CA CMSA are entitled to the rates of pay under salary table 95–LA (LEO 1).

SALARY TABLE NO. 95–MFL (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 5.39% FOR THE LOCALITY PAY AREA OF MIAMI-FORT LAUDERDALE, FL (NET INCREASE: 4.28%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,795	$13,222	$13,647	$14,072	$14,499	$14,748	$15,167	$15,590	$15,609	$16,001
GS–2	14,386	14,728	15,206	15,609	15,781	16,245	16,709	17,172	17,636	18,100
GS–3	18,841	19,364	19,888	20,412	20,936	21,460	21,983	22,507	23,031	23,555
GS–4	21,144	21,731	22,318	22,905	23,492	24,080	24,667	25,254	25,841	26,428
GS–5	24,319	24,976	25,634	26,292	26,949	27,607	28,265	28,922	29,580	30,237
GS–6	25,638	26,371	27,103	27,836	28,568	29,301	30,033	30,765	31,498	32,230
GS–7	27,674	28,488	29,302	30,115	30,929	31,742	32,556	33,370	34,183	34,997
GS–8	28,847	29,748	30,650	31,551	32,452	33,353	34,254	35,155	36,056	36,957
GS–9	30,869	31,865	32,861	33,857	34,852	35,848	36,844	37,840	38,836	39,832
GS–10	33,995	35,092	36,189	37,286	38,383	39,480	40,577	41,674	42,771	43,869
GS–11	36,144	37,348	38,553	39,757	40,962	42,167	43,371	44,576	45,780	46,985
GS–12	43,320	44,763	46,207	47,651	49,095	50,539	51,983	53,426	54,870	56,314
GS–13	51,513	53,229	54,946	56,663	58,380	60,097	61,813	63,530	65,247	66,964
GS–14	60,873	62,902	64,931	66,960	68,988	71,017	73,046	75,075	77,103	79,132
GS–15	71,603	73,990	76,377	78,764	81,151	83,538	85,926	88,313	90,700	93,087

SALARY TABLE NO. 95–NY (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2% GENERAL INCREASE AND A 16% LEO SPECIAL PAY ADJUSTMENT FOR NEW YORK-NORTHERN NEW JERSEY-LONG ISLAND, NY-NJ-CT-PA CMSA (NET INCREASE: 2.00%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$14,084	$14,553	$15,021	$15,488	$15,958	$16,233	$16,694	$17,160	$17,181	$17,612
GS–2	15,834	16,211	16,736	17,181	17,370	17,880	18,391	18,901	19,411	19,922
GS–3	20,737	21,314	21,890	22,467	23,043	23,620	24,196	24,773	25,349	25,926
GS–4	23,273	23,919	24,565	25,211	25,858	26,504	27,150	27,796	28,442	29,088
GS–5	26,767	27,491	28,215	28,939	29,662	30,386	31,110	31,834	32,558	33,282
GS–6	28,219	29,026	29,832	30,638	31,444	32,250	33,057	33,863	34,669	35,475
GS–7	30,460	31,356	32,251	33,147	34,043	34,938	35,834	36,729	37,625	38,520
GS–8	31,752	32,743	33,735	34,727	35,719	36,711	37,702	38,694	39,686	40,678
GS–9	33,976	35,073	36,169	37,265	38,361	39,457	40,554	41,650	42,746	43,842
GS–10	37,417	38,625	39,832	41,040	42,247	43,455	44,662	45,870	47,077	48,285
GS–11	39,782	41,108	42,434	43,760	45,086	46,412	47,737	49,063	50,389	51,715
GS–12	47,681	49,270	50,859	52,448	54,037	55,627	57,216	58,805	60,394	61,983
GS–13	56,698	58,588	60,478	62,367	64,257	66,147	68,036	69,926	71,816	73,705
GS–14	67,002	69,235	71,468	73,701	75,934	78,167	80,400	82,633	84,866	87,099
GS–15	78,812	81,439	84,066	86,694	89,321	91,949	94,576	97,203	99,831	102,458

SALARY TABLE NO. 95–PHL (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 6.26% FOR THE LOCALITY PAY AREA OF PHILADELPHIA-WILMINGTON-ATLANTIC CITY, PA-NJ-DE-MD (NET INCREASE: 3.26%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,901	$13,331	$13,760	$14,188	$14,618	$14,870	$15,292	$15,719	$15,738	$16,133
GS–2	14,504	14,850	15,331	15,738	15,911	16,379	16,846	17,314	17,782	18,249
GS–3	18,996	19,524	20,052	20,580	21,109	21,637	22,165	22,693	23,221	23,749
GS–4	21,319	21,911	22,503	23,095	23,686	24,278	24,870	25,462	26,054	26,646
GS–5	24,519	25,183	25,846	26,509	27,172	27,835	28,498	29,161	29,824	30,487
GS–6	25,850	26,588	27,327	28,065	28,804	29,542	30,281	31,019	31,758	32,496
GS–7	27,903	28,723	29,543	30,364	31,184	32,004	32,825	33,645	34,465	35,286
GS–8	29,085	29,994	30,903	31,811	32,720	33,628	34,537	35,445	36,354	37,262
GS–9	31,124	32,128	33,132	34,136	35,140	36,144	37,148	38,153	39,157	40,161
GS–10	34,275	35,381	36,488	37,594	38,700	39,806	40,912	42,018	43,125	44,231
GS–11	36,442	37,656	38,871	40,086	41,300	42,515	43,729	44,944	46,158	47,373
GS–12	43,677	45,133	46,589	48,044	49,500	50,956	52,412	53,867	55,323	56,779
GS–13	51,938	53,669	55,400	57,131	58,862	60,593	62,324	64,055	65,786	67,517
GS–14	61,376	63,421	65,467	67,512	69,558	71,603	73,649	75,694	77,740	79,785
GS–15	72,194	74,601	77,008	79,414	81,821	84,228	86,635	89,042	91,448	93,855

SALARY TABLE NO. 95–POR (LEO) RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO's), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 4.71% FOR THE LOCALITY PAY AREA OF PORTLAND-SALEM, OR-WA (NET INCREASE: 3.60%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,713	$13,137	$13,559	$13,981	$14,405	$14,653	$15,069	$15,490	$15,509	$15,898
GS–2	14,293	14,633	15,108	15,509	15,679	16,140	16,601	17,061	17,522	17,983
GS–3	18,719	19,239	19,760	20,280	20,801	21,321	21,841	22,362	22,882	23,403
GS–4	21,008	21,591	22,174	22,758	23,341	23,924	24,507	25,091	25,674	26,257
GS–5	24,162	24,815	25,469	26,122	26,775	27,429	28,082	28,736	29,389	30,042
GS–6	25,473	26,201	26,928	27,656	28,384	29,111	29,839	30,567	31,295	32,022
GS–7	27,496	28,304	29,113	29,921	30,729	31,538	32,346	33,154	33,963	34,771
GS–8	28,661	29,556	30,452	31,347	32,242	33,138	34,033	34,928	35,823	36,719
GS–9	30,670	31,659	32,649	33,638	34,628	35,617	36,607	37,596	38,586	39,575
GS–10	33,775	34,865	35,955	37,045	38,135	39,225	40,315	41,405	42,496	43,586
GS–11	35,910	37,107	38,304	39,501	40,698	41,894	43,091	44,288	45,485	46,682

SALARY TABLE NO. 95–POR (LEO) RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 4.71% FOR THE LOCALITY PAY AREA OF PORTLAND-SALEM, OR-WA (NET INCREASE: 3.60%)—Continued

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–12	43,040	44,475	45,909	47,344	48,778	50,213	51,647	53,082	54,516	55,951
GS–13	51,180	52,886	54,592	56,297	58,003	59,709	61,415	63,120	64,826	66,532
GS–14	60,480	62,496	64,512	66,527	68,543	70,559	72,575	74,590	76,606	78,622
GS–15	71,141	73,513	75,884	78,256	80,628	82,999	85,371	87,743	90,114	92,486

SALARY TABLE NO. 95–RCH (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 4.00% FOR THE LOCALITY PAY AREA OF RICHMOND-PETERSBURG, VA (NET INCREASE: 2.90%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,627	$13,048	$13,467	$13,886	$14,307	$14,554	$14,967	$15,385	$15,403	$15,790
GS–2	14,196	14,534	15,005	15,403	15,573	16,031	16,488	16,946	17,403	17,861
GS–3	18,592	19,109	19,626	20,143	20,660	21,176	21,693	22,210	22,727	23,244
GS–4	20,866	21,445	22,024	22,603	23,183	23,762	24,341	24,920	25,500	26,079
GS–5	23,998	24,647	25,296	25,945	26,594	27,243	27,892	28,541	29,190	29,839
GS–6	25,300	26,023	26,746	27,468	28,191	28,914	29,637	30,360	31,082	31,805
GS–7	27,309	28,112	28,915	29,718	30,521	31,324	32,127	32,930	33,732	34,535
GS–8	28,467	29,356	30,245	31,134	32,024	32,913	33,802	34,691	35,580	36,470
GS–9	30,462	31,444	32,427	33,410	34,393	35,376	36,358	37,341	38,324	39,307
GS–10	33,546	34,629	35,712	36,794	37,877	38,959	40,042	41,125	42,207	43,290
GS–11	35,667	36,856	38,044	39,233	40,422	41,610	42,799	43,988	45,177	46,365
GS–12	42,748	44,173	45,598	47,023	48,447	49,872	51,297	52,722	54,147	55,571
GS–13	50,833	52,527	54,221	55,916	57,610	59,304	60,998	62,692	64,386	66,081
GS–14	60,070	62,072	64,074	66,076	68,078	70,080	72,082	74,084	76,086	78,088
GS–15	70,659	73,014	75,370	77,725	80,081	82,437	84,792	87,148	89,503	91,859

SALARY TABLE NO. 95–SAC (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 5.27% FOR THE LOCALITY PAY AREA OF SACRAMENTO-YOLO, CA (NET INCREASE: 3.55%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,781	$13,207	$13,631	$14,056	$14,482	$14,731	$15,149	$15,573	$15,592	$15,983
GS–2	14,369	14,711	15,188	15,592	15,763	16,226	16,690	17,153	17,616	18,079
GS–3	18,819	19,342	19,866	20,389	20,912	21,435	21,958	22,481	23,005	23,528
GS–4	21,120	21,707	22,293	22,879	23,466	24,052	24,638	25,225	25,811	26,398
GS–5	24,291	24,948	25,605	26,262	26,919	27,575	28,232	28,889	29,546	30,203
GS–6	25,609	26,341	27,072	27,804	28,536	29,267	29,999	30,730	31,462	32,194
GS–7	27,643	28,456	29,268	30,081	30,894	31,706	32,519	33,332	34,144	34,957
GS–8	28,815	29,715	30,615	31,515	32,415	33,315	34,215	35,115	36,015	36,915
GS–9	30,834	31,828	32,823	33,818	34,813	35,808	36,802	37,797	38,792	39,787
GS–10	33,956	35,052	36,148	37,243	38,339	39,435	40,531	41,627	42,723	43,819
GS–11	36,102	37,306	38,509	39,712	40,915	42,119	43,322	44,525	45,728	46,931
GS–12	43,270	44,712	46,155	47,597	49,039	50,481	51,923	53,366	54,808	56,250
GS–13	51,454	53,169	54,884	56,598	58,313	60,028	61,743	63,458	65,173	66,888
GS–14	60,804	62,830	64,857	66,883	68,910	70,936	72,963	74,989	77,016	79,042
GS–15	71,521	73,906	76,290	78,675	81,059	83,443	85,828	88,212	90,596	92,981

SALARY TABLE NO. 95–STL (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 4.28% FOR THE LOCALITY PAY AREA OF ST. LOUIS, MO-IL (NET INCREASE: 3.18%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,661	$13,083	$13,503	$13,923	$14,346	$14,593	$15,007	$15,426	$15,445	$15,833
GS–2	14,234	14,573	15,046	15,445	15,615	16,074	16,533	16,991	17,450	17,909
GS–3	18,642	19,160	19,679	20,197	20,715	21,233	21,752	22,270	22,788	23,307
GS–4	20,922	21,503	22,083	22,664	23,245	23,826	24,407	24,988	25,568	26,149
GS–5	24,063	24,713	25,364	26,015	26,665	27,316	27,967	28,618	29,268	29,919
GS–6	25,368	26,093	26,818	27,542	28,267	28,992	29,717	30,441	31,166	31,891
GS–7	27,383	28,188	28,993	29,798	30,603	31,408	32,213	33,018	33,823	34,628
GS–8	28,544	29,435	30,327	31,218	32,110	33,001	33,893	34,785	35,676	36,568
GS–9	30,544	31,529	32,515	33,500	34,485	35,471	36,456	37,442	38,427	39,413
GS–10	33,637	34,722	35,808	36,893	37,979	39,064	40,150	41,235	42,321	43,407
GS–11	35,763	36,955	38,147	39,339	40,531	41,722	42,914	44,106	45,298	46,490
GS–12	42,863	44,292	45,721	47,149	48,578	50,006	51,435	52,864	54,292	55,721
GS–13	50,970	52,669	54,367	56,066	57,765	59,464	61,162	62,861	64,560	66,258
GS–14	60,232	62,240	64,247	66,254	68,262	70,269	72,276	74,284	76,291	78,299
GS–15	70,849	73,211	75,573	77,935	80,297	82,659	85,021	87,382	89,744	92,106

SALARY TABLE NO. 95–SD (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2% GENERAL INCREASE AND A 8% LEO SPECIAL PAY ADJUSTMENT FOR THE SAN DIEGO, CA METROPOLITAN STATISTICAL AREA (NET INCREASE: 2.00%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$13,112	$13,550	$13,985	$14,420	$14,858	$15,114	$15,542	$15,976	$15,996	$16,398
GS–2	14,742	15,093	15,582	15,996	16,172	16,647	17,122	17,598	18,073	18,548
GS–3	19,307	19,844	20,381	20,917	21,454	21,991	22,528	23,064	23,601	24,138
GS–4	21,668	22,270	22,871	23,473	24,074	24,676	25,277	25,879	26,481	27,082
GS–5	24,921	25,595	26,269	26,943	27,617	28,291	28,965	29,638	30,312	30,986
GS–6	26,273	27,024	27,774	28,525	29,276	30,026	30,777	31,527	32,278	33,029
GS–7	28,360	29,193	30,027	30,861	31,695	32,529	33,362	34,196	35,030	35,864
GS–8	29,562	30,485	31,409	32,332	33,255	34,179	35,102	36,026	36,949	37,872
GS–9	31,633	32,654	33,674	34,695	35,716	36,736	37,757	38,777	39,798	40,819
GS–10	34,836	35,961	37,085	38,209	39,334	40,458	41,582	42,706	43,831	44,955
GS–11	37,039	38,273	39,507	40,742	41,976	43,211	44,445	45,680	46,914	48,149
GS–12	44,392	45,872	47,352	48,831	50,311	51,790	53,270	54,750	56,229	57,709
GS–13	52,788	54,548	56,307	58,066	59,826	61,585	63,344	65,103	66,863	68,622
GS–14	62,381	64,460	66,539	68,618	70,697	72,776	74,855	76,934	79,013	81,092
GS–15	73,376	75,822	78,269	80,715	83,161	85,607	88,053	90,500	92,946	95,392

SALARY TABLE NO. 95–SF (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A 16% LEO SPECIAL PAY ADJUSTMENT FOR THE SAN FRANCISCO-OAKLAND-SAN JOSE, CA CMSA (NET INCREASE: 2.00%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$14,084	$14,553	$15,021	$15,488	$15,958	$16,233	$16,694	$17,160	$17,181	$17,612
GS–2	15,834	16,211	16,736	17,181	17,370	17,880	18,391	18,901	19,411	19,922
GS–3	20,737	21,314	21,890	22,467	23,043	23,620	24,196	24,773	25,349	25,926
GS–4	23,273	23,919	24,565	25,211	25,858	26,504	27,150	27,796	28,442	29,088
GS–5	26,767	27,491	28,215	28,939	29,662	30,386	31,110	31,834	32,558	33,282
GS–6	28,219	29,026	29,832	30,638	31,444	32,250	33,057	33,863	34,669	35,475
GS–7	30,460	31,356	32,251	33,147	34,043	34,938	35,834	36,729	37,625	38,520
GS–8	31,752	32,743	33,735	34,727	35,719	36,711	37,702	38,694	39,686	40,678
GS–9	33,976	35,073	36,169	37,265	38,361	39,457	40,554	41,650	42,746	43,842
GS–10	37,417	38,625	39,832	41,040	42,247	43,455	44,662	45,870	47,077	48,285
GS–11	39,782	41,108	42,434	43,760	45,086	46,412	47,737	49,063	50,389	51,715
GS–12	47,681	49,270	50,859	52,448	54,037	55,627	57,216	58,805	60,394	61,983
GS–13	56,698	58,588	60,478	62,367	64,257	66,147	68,036	69,926	71,816	73,705

SALARY TABLE NO. 95–SF (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A 16% LEO SPECIAL PAY ADJUSTMENT FOR THE SAN FRANCISCO-OAKLAND-SAN JOSE, CA CMSA (NET INCREASE: 2.00%)—Continued

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–14	67,002	69,235	71,468	73,701	75,934	78,167	80,400	82,633	84,866	87,099
GS–15	78,812	81,439	84,066	86,694	89,321	91,949	94,576	97,203	99,831	102,458

SALARY TABLE NO. 95–SEA (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 5.84% FOR THE LOCALITY PAY AREA OF SEATTLE-TACOMA-BREMERTON, WA (NET INCREASE: 3.88%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,850	$13,279	$13,705	$14,132	$14,560	$14,811	$15,231	$15,657	$15,676	$16,070
GS–2	14,447	14,791	15,271	15,676	15,848	16,314	16,780	17,246	17,711	18,177
GS–3	18,921	19,447	19,973	20,499	21,025	21,551	22,077	22,603	23,129	23,655
GS–4	21,235	21,824	22,414	23,003	23,593	24,182	24,772	25,361	25,951	26,540
GS–5	24,423	25,083	25,743	26,404	27,064	27,725	28,385	29,046	29,706	30,367
GS–6	25,748	26,483	27,219	27,954	28,690	29,426	30,161	30,897	31,632	32,368
GS–7	27,793	28,610	29,427	30,244	31,061	31,878	32,695	33,512	34,329	35,146
GS–8	28,971	29,875	30,780	31,685	32,590	33,495	34,400	35,305	36,210	37,115
GS–9	31,001	32,001	33,001	34,001	35,001	36,001	37,002	38,002	39,002	40,002
GS–10	34,140	35,242	36,343	37,445	38,547	39,649	40,751	41,852	42,954	44,056
GS–11	36,298	37,508	38,717	39,927	41,137	42,347	43,556	44,766	45,976	47,186
GS–12	43,504	44,954	46,404	47,854	49,305	50,755	52,205	53,655	55,105	56,555
GS–13	51,732	53,457	55,181	56,905	58,629	60,353	62,077	63,801	65,526	67,250
GS–14	61,133	63,171	65,208	67,245	69,283	71,320	73,358	75,395	77,433	79,470
GS–15	71,909	74,306	76,703	79,101	81,498	83,895	86,292	88,690	91,087	93,484

SALARY TABLE NO. 95–DCB (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 5.48% FOR THE LOCALITY PAY AREA OF WASHINGTON-BALTIMORE, DC-MD-VA-WV (INCLUDING ST. MARY'S COUNTY, MD (NET INCREASE: 3.22%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,806	$13,234	$13,659	$14,084	$14,511	$14,761	$15,180	$15,604	$15,623	$16,015
GS–2	14,398	14,741	15,219	15,623	15,795	16,259	16,723	17,187	17,651	18,115
GS–3	18,857	19,381	19,905	20,429	20,954	21,478	22,002	22,526	23,051	23,575
GS–4	21,162	21,750	22,337	22,925	23,513	24,100	24,688	25,275	25,863	26,450
GS–5	24,340	24,998	25,656	26,314	26,972	27,630	28,289	28,947	29,605	30,263
GS–6	25,660	26,393	27,126	27,859	28,592	29,326	30,059	30,792	31,525	32,258
GS–7	27,698	28,512	29,327	30,141	30,955	31,770	32,584	33,398	34,212	35,027
GS–8	28,872	29,774	30,676	31,578	32,479	33,381	34,283	35,185	36,087	36,989
GS–9	30,895	31,892	32,889	33,885	34,882	35,879	36,876	37,873	38,869	39,866
GS–10	34,024	35,122	36,220	37,318	38,416	39,514	40,612	41,710	42,808	43,906
GS–11	36,174	37,380	38,586	39,791	40,997	42,203	43,408	44,614	45,819	47,025
GS–12	43,356	44,802	46,247	47,692	49,137	50,582	52,027	53,472	54,917	56,362
GS–13	51,557	53,275	54,993	56,711	58,430	60,148	61,866	63,584	65,303	67,021
GS–14	60,925	62,956	64,986	67,017	69,047	71,078	73,108	75,139	77,169	79,200
GS–15	71,664	74,053	76,442	78,832	81,221	83,610	85,999	88,388	90,777	93,166

SALARY TABLE NO. 95–RUS (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 2.00% GENERAL INCREASE AND A LOCALITY PAYMENT OF 3.74% FOR THE LOCALITY PAY AREA OF REST OF U.S. (NET INCREASE: 2.64%)

[Effective January 1995]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,595	$13,015	$13,433	$13,851	$14,272	$14,517	$14,929	$15,346	$15,365	$15,751
GS–2	14,161	14,498	14,968	15,365	15,534	15,990	16,447	16,903	17,360	17,816
GS–3	18,546	19,061	19,577	20,092	20,608	21,124	21,639	22,155	22,670	23,186
GS–4	20,813	21,391	21,969	22,547	23,125	23,703	24,280	24,858	25,436	26,014
GS–5	23,938	24,585	25,233	25,880	26,527	27,175	27,822	28,469	29,117	29,764
GS–6	25,237	25,958	26,679	27,400	28,121	28,842	29,563	30,284	31,005	31,726
GS–7	27,241	28,042	28,843	29,644	30,445	31,245	32,046	32,847	33,648	34,449
GS–8	28,396	29,283	30,170	31,057	31,944	32,831	33,718	34,605	35,492	36,379
GS–9	30,385	31,366	32,346	33,326	34,307	35,287	36,268	37,248	38,228	39,209
GS–10	33,462	34,542	35,622	36,702	37,782	38,862	39,942	41,022	42,102	43,182
GS–11	35,578	36,763	37,949	39,135	40,321	41,506	42,692	43,878	45,064	46,249
GS–12	42,641	44,063	45,484	46,905	48,326	49,747	51,169	52,590	54,011	55,432
GS–13	50,706	52,396	54,086	55,776	57,466	59,156	60,846	62,536	64,225	65,915
GS–14	59,920	61,917	63,914	65,911	67,908	69,905	71,902	73,899	75,896	77,893
GS–15	70,482	72,832	75,181	77,531	79,881	82,231	84,580	86,930	89,280	91,629

1995 Salary Tables—Senior Executive Service, Senior-Level and Scientific or Professional Positions, Administrative Law Judges, and Members of the Boards of Contract Appeals

Executive Order 12944 reflects a decision by the President not to increase the rates of basic pay for members of the Senior Executive Service (SES) in 1995. Like administrative law judges and Contract Appeals Board members, SES members (including SES members in the Federal Bureau of Investigation and the Drug Enforcement Administration) will receive no across-the-board increase in basic pay in 1995. In accordance with 5 U.S.C. 5376, the minimum rate of basic pay for senior-level (SL) and scientific or professional (ST) positions will increase by 2 percent (to $81,529) because of the 2-percent General Schedule pay adjustment, while the maximum rate of basic pay remains unchanged ($115,700), since the rate for level IV of the Executive Schedule remains unchanged.

Under 5 U.S.C. 5304(h) and Executive Order 12883 of November 29, 1993, the President's Pay Agent has extended locality-based comparability payments to members of the Senior Executive Service, administrative law judges, members of the Boards of Contract Appeals, employees in senior-level and scientific or professional positions, members of the Foreign Service, and members of the Senior Foreign Service. The locality rates of pay for affected individuals (other than the Foreign Service and Senior Foreign Service) are shown on Salary Tables Nos. 95–ES (LOC), 95–SL/ST (LOC), 95–ALJ (LOC), and 95–BCA (LOC). These rates of pay are computed based on the scheduled rates of pay for these positions and reflect the locality payments authorized by the President on November 30, 1994. Salary Tables Nos. 95–ES (LEO) and 95–SL/ST (LEO) contain the special law enforcement adjusted rates of pay for SES members and for employees in senior-level and scientific or professional positions whose official duty stations are located in five special pay adjustment areas. These rates of pay were authorized by section 404 of FEPCA. (The Pay Agent also extended locality payments to certain single-agency categories of non-General Schedule employees. Individual agencies are responsible for calculating these locality payments.)

The locality rates of pay and the special law enforcement adjusted rates of pay are considered basic pay for the same purposes as General Schedule locality rates of pay.

Rates of Basic Pay for Members of the Senior Executive Service, Employees in Senior-Level and Scientific or Professional Positions, Administrative Law Judges, and Members of the Boards of Contract Appeals

Effective January 1995

SALARY TABLE NO. 95–ES—RATES OF BASIC PAY FOR MEMBERS OF THE SENIOR EXECUTIVE SERVICE (SES)

	Annual rate
ES–1	$92,900
ES–2	97,400
ES–3	101,800
ES–4	107,300
ES–5	111,800
ES–6	115,700

SALARY TABLE NO. 95–SL/ST—RATES OF BASIC PAY FOR EMPLOYEES IN SENIOR-LEVEL (SL) AND SCIENTIFIC OR PROFESSIONAL (ST) POSITIONS

	Annual rate
Minimum	$81,529
Maximum	115,700

SALARY TABLE NO. 95–ALJ—RATES OF BASIC PAY FOR ADMINISTRATIVE LAW JUDGES (ALJ) POSITIONS

	Annual rate
AL–3/A	$75,205
AL–3/B	80,990
AL–3/C	86,775
AL–3/D	92,560
AL–3/E	98,345
AL–3/F	104,130
AL–2	109,915
AL–1	115,700

SALARY TABLE NO. 95–BCA—RATES OF PAY FOR MEMBERS OF THE BOARDS OF CONTRACT APPEALS (BCA)

	Annual rate
Chairman	$115,700
Vice Chairman	112,229
Other Members	108,758

LOCALITY RATES OF PAY FOR MEMBERS OF THE SENIOR EXECUTIVE SERVICE AND EMPLOYEES IN SENIOR-LEVEL AND SCIENTIFIC OR PROFESSIONAL POSITIONS

[Effective January 1995]

Locality pay area	Salary Table No. 95–ES (LOC)—Senior Executive Service (SES)						Salary Table No. 95–SL/ST (LOC)—Senior-Level (SL) and scientific or professional (ST) positions	
	ES–1	ES–2	ES–3	ES–4	ES–5	ES–6	Minimum	Maximum
Atlanta, GA	$97,229	$101,939	$106,544	$112,300	$117,010	$121,092	$85,328	$121,092
Boston-Worcester-Lawrence, MA-NH-ME-CT	99,375	104,189	108,895	114,779	119,592	*123,100	87,212	*123,100
Chicago-Gary-Kenosha, IL-IN-WI	99,329	104,140	108,845	114,725	119,537	*123,100	87,171	*123,100
Cincinnati-Hamilton, OH-KY-IN	97,852	102,591	107,226	113,019	117,759	121,867	85,874	121,867
Cleveland-Akron, OH	96,830	101,520	106,106	111,839	116,529	120,594	84,978	120,594
Columbus, OH	97,824	102,562	107,195	112,987	117,725	121,832	85,850	121,832
Dallas-Fort Worth, TX	98,149	102,903	107,552	113,362	118,117	122,237	86,135	122,237
Dayton-Springfield, OH	97,722	102,455	107,083	112,869	117,602	121,705	85,760	121,705
Denver-Boulder-Greeley, CO	98,242	103,001	107,654	113,470	118,229	122,353	86,217	122,353
Detroit-Ann Arbor-Flint, MI	99,022	103,819	108,509	114,371	119,168	*123,100	86,902	*123,100
Houston-Galveston-Brazoria, TX	100,824	105,708	110,484	116,453	121,337	*123,100	88,483	*123,100
Huntsville, AL	96,978	101,676	106,269	112,010	116,708	120,779	85,108	120,779
Indianapolis, IN	97,155	101,861	106,462	112,214	116,920	120,999	85,263	120,999
Kansas City, MO-KS	96,588	101,267	105,841	111,560	116,238	120,293	84,766	120,293
Los Angeles-Riverside-Orange County, CA	99,765	104,598	109,323	115,229	120,062	*123,100	87,554	*123,100
Miami-Fort Lauderdale, FL	97,907	102,650	107,287	113,083	117,826	121,936	85,923	121,936
New York-N. New Jersey-Long Island, NY-NJ-CT-PA	99,682	104,510	109,231	115,133	119,961	*123,100	87,481	*123,100
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	98,716	103,497	108,173	114,017	118,799	122,943	86,633	122,943
Portland-Salem, OR-WA	97,276	101,988	106,595	112,354	117,066	121,149	85,369	121,149
Richmond-Petersburg, VA	96,616	101,296	105,872	111,592	116,272	120,328	84,790	120,328
Sacramento-Yolo, CA	97,796	102,533	107,165	112,955	117,692	121,797	85,826	121,797
St. Louis, MO-IL	96,876	101,569	106,157	111,892	116,585	120,652	85,018	120,652
San Diego, CA	98,604	103,380	108,051	113,888	118,665	122,804	86,535	122,804
San Francisco-Oakland-San Jose, CA	100,462	105,328	110,087	116,034	120,901	*123,100	88,165	*123,100
Seattle-Tacoma-Bremerton, WA	98,325	103,088	107,745	113,566	118,329	122,457	86,290	122,457
Washington-Baltimore, DC-MD-VA-WV	97,991	102,738	107,379	113,180	117,927	122,040	85,997	122,040
Rest of U.S	96,374	101,043	105,607	111,313	115,981	120,027	84,578	120,027

*Rate limited to the rate for level III of the Executive Schedule (5 U.S.C. 5304(g)(2)).

NOTE: Law enforcement officers in the Boston, Los Angeles, New York, and San Francisco CSMA's and in the San Diego MSA are entitled to the rates on Salary Tables Nos. 95–ES (LEO) or 95–SL/ST (LEO), as appropriate.

LOCALITY RATES OF PAY FOR ADMINISTRATIVE LAW JUDGES AND MEMBERS OF BOARDS OF CONTRACT APPEALS

[Effective January 1995]

Locality pay area	Salary Table No. 95–ALJ (LOC)—Administrative Law Judges								Salary table No. 95–BCA (LOC)—members of boards of contract appeals (BCA)		
	AL–3/A	AL–3/B	AL–3/C	AL–3/D	AL–3/E	AL–3/F	AL–2	AL–1	Chairman	Vice chairman	Other members
Atlanta, GA	$78,710	$84,764	$90,819	$96,873	$102,928	$108,982	$115,037	$121,092	$121,092	$117,459	$113,826
Boston-Worcester-Lawrence, MA-NH-ME-CT	80,447	86,635	92,823	99,011	105,200	111,388	117,576	*123,100	*123,100	120,051	116,338
Chicago-Gary-Kenosha, IL-IN-WI	80,409	86,595	92,780	98,965	105,150	111,336	117,521	*123,100	*123,100	119,995	116,284
Cincinnati-Hamilton, OH-KY-IN	79,213	85,307	91,400	97,493	103,587	109,680	115,773	121,867	121,867	118,211	114,555
Cleveland-Akron, OH	78,386	84,416	90,446	96,475	102,505	108,535	114,564	120,594	120,594	116,976	113,358
Columbus, OH	79,191	85,282	91,374	97,466	103,557	109,649	115,740	121,832	121,832	118,177	114,522
Dallas-Fort Worth, TX	79,454	85,566	91,678	97,790	103,901	110,013	116,125	122,237	122,237	118,570	114,903
Dayton-Springfield, OH	79,108	85,193	91,279	97,364	103,449	109,534	115,620	121,705	121,705	118,054	114,403
Denver-Boulder-Greeley, CO	79,529	85,647	91,765	97,882	104,000	110,117	116,235	122,353	122,353	118,682	115,012
Detroit-Ann Arbor-Flint, MI	80,161	86,327	92,493	98,660	104,826	110,992	117,158	*123,100	*123,100	119,625	115,925
Houston-Galveston-Brazoria, TX	81,620	87,898	94,177	100,455	106,734	113,012	119,291	*123,100	*123,100	121,802	118,035
Huntsville, AL	78,506	84,545	90,584	96,623	102,662	108,701	114,740	120,779	120,779	117,156	113,532
Indianapolis, IN	78,649	84,699	90,749	96,799	102,849	108,899	114,949	120,999	120,999	117,369	113,739
Kansas City, MO-KS	78,191	84,205	90,220	96,235	102,249	108,264	114,279	120,293	120,293	116,684	113,076
Los Angeles-Riverside-Orange County, CA	80,763	86,975	93,188	99,400	105,613	111,825	118,038	*123,100	*123,100	120,523	116,795
Miami-Fort Lauderdale, FL	79,259	85,355	91,452	97,549	103,646	109,743	115,839	121,936	121,936	118,278	114,620
New York-N. New Jersey-Long Island, NY-NJ-CT-PA	80,695	86,902	93,110	99,317	105,524	111,731	117,939	*123,100	*123,100	120,422	116,697
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	79,913	86,060	92,207	98,354	104,501	110,649	116,796	122,943	122,943	119,255	115,566
Portland-Salem, OR-WA	78,747	84,805	90,862	96,920	102,977	109,035	115,092	121,149	121,149	117,515	113,881
Richmond-Petersburg, VA	78,213	84,230	90,246	96,262	102,279	108,295	114,312	120,328	120,328	116,718	113,108
Sacramento-Yolo, CA	79,168	85,258	91,348	97,438	103,528	109,618	115,708	121,797	121,797	118,143	114,490
St. Louis, MO-IL	78,424	84,456	90,489	96,522	102,554	108,587	114,619	120,652	120,652	117,032	113,413
San Diego, CA	79,823	85,963	92,103	98,243	104,383	110,524	116,664	122,804	122,804	119,120	115,436
San Francisco-Oakland-San Jose, CA	81,327	87,583	93,838	100,094	106,350	112,606	118,862	*123,100	*123,100	121,364	117,611
Seattle-Tacoma-Bremerton, WA	79,597	85,720	91,843	97,966	104,088	110,211	116,334	122,457	122,457	118,783	115,109
Washington-Baltimore, DC-MD-VA-WV	79,326	85,428	91,530	97,632	103,734	109,836	115,938	122,040	122,040	118,379	114,718
Rest of U.S.	78,018	84,019	90,020	96,022	102,023	108,024	114,026	120,027	120,027	116,426	112,826

*Rate limited to the rate for level III of the Executive Schedule (5 U.S.C. 5304(g)(2)).

SPECIAL LAW ENFORCEMENT ADJUSTED RATES OF PAY FOR MEMBERS OF THE SENIOR EXECUTIVE SERVICE AND EMPLOYEES IN SENIOR-LEVEL AND SCIENTIFIC OR PROFESSIONAL POSITIONS

[Effective January 1995]

Special pay adjustment area	Salary table No. 95–ES (LEO)—senior executive service (SES)						Salary table No. 95–SL/ST (LEO)—senior-level (SL) and scientific or professional (ST) positions	
	ES–1	ES–2	ES–3	ES–4	ES–5	ES–6	Minimum	Maximum
Boston-Worcester-Lawrence, MA-NH-ME-CT	$107,764	$112,984	$118,088	*$123,100	*$123,100	*$123,100	$94,574	*$123,100
Los Angeles-Riverside-Orange County, CA **	107,764	112,984	118,088	*123,100	*123,100	*123,100	94,574	*123,100
New York-N. New Jersey-Long Island, NY-NJ-CT-PA	107,764	112,984	118,088	*123,100	*123,100	*123,100	94,574	*123,100
San Diego, CA	100,332	105,192	109,944	115,884	120,744	*123,100	88,051	*123,100
San Francisco-Oakland-San Jose, CA	107,764	112,984	118,088	*123,100	*123,100	*123,100	94,574	*123,100

*Rate limited to the rate for level III of the Executive Schedule (5 U.S.C. 5304(g)(2)).

**Does not include Santa Barbara County or that portion of Edwards Air Force Base outside the Los Angeles-Riverside-Orange County, CA CMSA.

1995 Salary Table—Executive Schedule

The scheduled rates of pay for the Executive Schedule are authorized by 5 U.S.C. 5318 and Executive Order 12944 of December 28, 1994. Public Law 103–329 bars an increase in the rates of pay for the Executive Schedule in 1995.

Rates of Pay for the Executive Schedule

Effective Since January 1993

SALARY TABLE NO. 95–EX—EXECUTIVE SCHEDULE (EX)

	Annual rate
Level I	$148,400
Level II	133,600
Level III	123,100
Level IV	115,700
Level V	108,200

Definitions of 1995 Locality Pay Areas

The Pay Agent's report to the President adopted the recommendations made by the Federal Salary Council concerning the boundaries of pay localities for the purpose of locality-based comparability payments. The Council recommended a total of 27 locality pay areas for 1995, including ''Rest of U.S.'' (RUS).

The Federal Salary Council recommended dropping 5 of the 28 locality pay areas established by the Pay Agent for 1994 and combining them with RUS: Memphis, TN-AR-MS; Norfolk-Virginia Beach-Newport News, VA-NC; Oklahoma City, OK; Salt Lake City-Ogden, UT; and San Antonio, TX. These five areas will become part of RUS and will receive the same locality pay percentage as RUS in 1995—3.74 percent. The Council also recommended adding four new locality pay areas in 1995 and removing them from RUS: Columbus, OH; Miami-Fort Lauderdale, FL; Portland-Salem, OR-WA; and Richmond-Petersburg, VA. These areas will receive a higher locality pay percentage than RUS for 1995—4.00 to 5.39 percent.

The definitions of the locality pay areas follow. Unless otherwise noted, all of the components listed below are counties. The geographic codes appear in *Worldwide Geographic Location Codes,* 1993. The geographic codes listed for the majority of the pay areas consist of a two-digit State and three-digit county identifier. Where applicable, city codes were added to the geographic code. Those areas are identified by a two-digit State, four-digit city, and three-digit county code. The District of Columbia is identified by its State code only. The percentage rate of the locality-based comparability payment is listed by the name of the pay area.

In parts of the Boston and New York pay areas, nine-digit codes are used. This list covers all locations within the boundaries of the pay areas that are listed in *Worldwide Geographic Location Codes.* Some minor civil divisions, which are part of the Office of Management and Budget definition of a CMSA, do not appear here because they have no geographic code. In some instances, there are multiple locations within a single minor civil division that have a geographic code. Each is listed separately here.

Atlanta, GA, 4.66%

13–013 Barrow
13–015 Bartow
13–045 Carroll
13–057 Cherokee
13–063 Clayton
13–067 Cobb
13–077 Coweta
13–089 DeKalb
13–097 Douglas
13–113 Fayette
13–117 Forsyth
13–121 Fulton
13–135 Gwinnett
13–151 Henry
13–217 Newton
13–223 Paulding
13–227 Pickens
13–247 Rockdale
13–255 Spalding
13–297 Walton

Boston-Worcester-Lawrence, MA-NH-ME-CT; 6.97%

Massachusetts

25–009 *all of Essex County*
25–017 *all of Middlesex County*
25–021 *all of Norfolk County*
25–023 *all of Plymouth County*
25–025 *all of Suffolk County*

Part of Bristol County:

250007005 Acushnet
250039005 Assonet
250096005 Berkley
250188005 Chartley
250251005 Dartmouth
250254005 Dighton
250281005 East Freetown
250299005 Easton
250315005 Fairhaven
250385005 Freetown
250670005 Mansfield
250850005 New Bedford
250911005 North Dartmouth
250912005 North Dighton
250913005 North Easton
250924005 Norton
251064005 Raynham
251062005 Raynham Center
251135005 Segreganset
251219005 South Dartmouth
251225005 South Easton
251280005 Taunton

Part of Hampden County:

250489013 Holland

Part of Worcester County:

250032027 Ashburnham
250055027 Auburn
250079027 Barre
250080027 Barre Plains
250098027 Berlin
250110027 Blackstone
250117027 Bolton
250123027 Boylston
250150027 Brookfield
250185027 Charlton
250186027 Charlton City
250189027 Charlton Depot
250220027 Clinton
250252027 Douglas
250263027 Dudley
250272027 East Brookfield
250280027 East Douglas
250297027 East Princeton
250332027 Fayville
250350027 Fitchburg
250390027 Gardner
250436027 Grafton
250467027 Harvard
250480027 Holden
250510027 Hopedale
250555027 Jefferson
250565027 Lancaster
250585027 Leicester
250610027 Leominster
250619027 Linwood
250640027 Lunenburg
250664027 Manchaug
250745027 Mendon
250780027 Milford
250785027 Millbury
250820027 Millville
250834027 Morningdale
250900027 Northborough
250902027 Northbridge
250910027 N. Brookfield
250916027 N. Grafton
250918027 N. Oxford
250927027 N. Uxbridge
250944027 Oakdale
250943027 Oakham
250980027 Oxford
250999027 Paxton
251045027 Princeton
251080027 Rochdale
251100027 Rutland
251172027 Shrewsbury
251200027 South Barre
251203027 South Berlin
251204027 Southborough
251210027 Southbridge
251228027 South Grafton
251240027 South Lancaster
251260027 Spencer
251273027 Sterling
251266027 Sterling Junction
251271027 Still River
251278027 Sturbridge
251269027 Sutton
251283027 Templeton

251310027 Upton
251320027 Uxbridge
251376027 Waterville
251380027 Webster
251390027 Westborough
251395027 West Boylston
251410027 West Brookfield
251439027 Westminster
251455027 West Upton
251470027 Whitinsville
251500027 Winchendon
251520027 Worcester

New Hampshire

Part of Hillsborough County:

330011011 Amherst
330018011 Bedford
330031011 Brookline
330160011 Goffstown
330180011 Greenville
330234011 Hollis
330240011 Hudson
330299011 Litchfield
330310011 Manchester
330324011 Mason
330334011 Merrimack
330340011 Milford
330344011 Mont Vernon
330350011 Nashua
330357011 New Ipswich
330401011 Pelham
330434011 Reeds Ferry
330509011 Weare
330540011 Wilton

Part of Merrimack County

330236013 Hooksett

Part of Rockingham County:

330012015 Atkinson
330013015 Auburn
330025015 Brentwood
330032015 Candia
330045015 Chester
330087015 Danville
330085015 Derry
330105015 East Derry
330108015 East Hampstead
330112015 East Kingston
330123015 Epping
330130015 Exeter
330153015 Fremont
330176015 Greenland
330195015 Hampstead
330200015 Hampton
330199015 Hampton Beach
330201015 Hampton Falls
330252015 Kensington
330255015 Kingston
330305015 Londonderry
330355015 New Castle
330354015 Newfields
330356015 Newington
330370015 Newmarket
330381015 Newton
330382015 Newton Junction
330391015 North Hampton
330384015 North Salem
330417015 Plaistow
330430015 Portsmouth
330435015 Raymond
330445015 Rye
330447015 Rye Beach
330448015 Salem
330462015 Sandown
330466015 Seabrook
330474015 South Danville
330475015 South Hampton
330478015 Stratham
330533015 West Rye
330527015 Westville
330551015 Windham

Part of Strafford County:

330029017 Barrington
330090017 Dover
330100017 Durham
330140017 Farmington
330281017 Lee
330311017 Madbury
330342017 Milton
330345017 Milton Mills
330440017 Rochester
330443017 Rollinsford
330470017 Somersworth

Maine

Part of York County:

230450031 Berwick
231445031 Cape Neddick
232450031 Eliot
234250031 Kittery
234300031 Kitterypoint
237450031 South Berwick
239800031 York
239900031 York Beach
239950031 York Harbor

Connecticut

Part of Windham County:

090231015 Fabyan
090259015 Grosvenordale
090373015 Mechanicsville
090500015 N. Grosvenordale
090603015 Quinebaug
090749015 Thompson

Chicago-Gary-Kenosha, IL-IN-WI, 6.92%

Illinois

17–031 Cook
17–037 DeKalb
17–043 DuPage
17–063 Grundy
17–089 Kane
17–091 Kankakee
17–093 Kendall
17–097 Lake
17–111 McHenry
17–197 Will

Indiana

18–089 Lake
18–127 Porter

Wisconsin

55–059 Kenosha

Cincinnati-Hamilton, OH-KY-IN, 5.33%

Ohio

39–015 Brown
39–017 Butler
39–025 Clermont
39–061 Hamilton
39–165 Warren

Kentucky

21–015 Boone
21–037 Campbell
21–077 Gallatin
21–081 Grant
21–117 Kenton
21–191 Pendleton

Indiana

18–029 Dearborn
18–115 Ohio

Cleveland-Akron, OH, 4.23%

39–007 Ashtabula
39–035 Cuyahoga
39–055 Geauga
39–085 Lake
39–093 Lorain
39–103 Medina
39–133 Portage
39–153 Summit

Columbus, OH, 5.30%

39–041 Delaware
39–045 Fairfield
39–049 Franklin
39–089 Licking
39–097 Madison
39–129 Pickaway

Dallas-Fort Worth, TX 5.65%

48–085 Collin
48–113 Dallas
48–121 Denton
48–139 Ellis
48–213 Henderson
48–221 Hood
48–231 Hunt
48–251 Johnson
48–257 Kaufman
48–367 Parker
48–397 Rockwall
48–439 Tarrant

Dayton-Springfield, OH, 5.19%

39–023 Clark
39–057 Greene
39–109 Miami
39–113 Montgomery

Denver-Boulder-Greeley, CO, 5.75%

08–001 Adams
08–005 Arapahoe
08–013 Boulder
08–031 Denver
08–035 Douglas
08–059 Jefferson
08–123 Weld

Detroit-Ann Arbor-Flint, MI, 6.59%

26–049 Genesee
26–087 Lapeer
26–091 Lenawee
26–093 Livingston

26–099 Macomb
26–115 Monroe
26–125 Oakland
26–147 St. Clair
26–161 Washtenaw
26–163 Wayne

Houston-Galveston-Brazoria, TX, 8.53%

48–039 Brazoria
48–071 Chambers
48–157 Fort Bend
48–167 Galveston
48–201 Harris
48–291 Liberty
48–339 Montgomery
48–473 Waller

Huntsville, AL, 4.39%

01–083 Limestone
01–089 Madison

Indianapolis, IN, 4.58%

18–011 Boone
18–057 Hamilton
18–059 Hancock
18–063 Hendricks
18–081 Johnson
18–095 Madison
18–097 Marion
18–109 Morgan
18–145 Shelby

Kansas City, MO-KS, 3.97%

Missouri

29–037 Cass
29–047 Clay
29–049 Clinton
29–095 Jackson
29–107 Lafayette
29–165 Platte
29–177 Ray

Kansas

20–091 Johnson
20–103 Leavenworth
20–121 Miami
20–209 Wyandotte

Los Angeles-Riverside-Orange County, CA, 7.39%*

06–037 Los Angeles
06–059 Orange
06–065 Riverside
06–071 San Bernardino
06–083 Santa Barbara
06–111 Ventura
061077029 Edwards Air Force Base

Miami-Fort Lauderdale, FL, 5.39%

12–011 Broward
12–025 Dade

New York-Northern New Jersey-Long Island, NY-NJ-CT-PA, 7.30%*

New York

36–005 Bronx
36–027 Dutchess
36–047 Kings
36–059 Nassau
36–061 New York
36–071 Orange
36–079 Putnam
36–081 Queens
36–085 Richmond
36–087 Rockland
36–103 Suffolk
36–119 Westchester

New Jersey

34–003 Bergen
34–013 Essex
34–017 Hudson
34–019 Hunterdon
34–021 Mercer
34–023 Middlesex
34–025 Monmouth
34–027 Morris
34–029 Ocean
34–031 Passaic
34–035 Somerset
34–037 Sussex
34–039 Union
34–041 Warren

Connecticut

09–001 *all of Fairfield County*
09–009 *all of New Haven County*

Part of Litchfield County

090051005 Bethlehem
090083005 Bridgewater
090247005 Gaylordsville
090372005 Marble Dale
090450005 New Milford
090454005 New Preston
090535005 Oakville
090629005 Roxbury
090740005 Thomaston
090802005 Washington
090805005 Washington Depot
090817005 Watertown
090857005 Woodbury

Part of Middlesex County

090130007 Clinton
090332007 Killingworth

Pennsylvania

42–103 Pike

Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD, 6.26%

Pennsylvania

42–017 Bucks
42–029 Chester
42–045 Delaware
42–091 Montgomery
42–101 Philadelphia

New Jersey

34–001 Atlantic
34–005 Burlington
34–007 Camden
34–009 Cape May
34–011 Cumberland
34–015 Gloucester
34–033 Salem

Delaware

10–003 New Castle

Maryland

24–015 Cecil

Portland-Salem, OR-WA, 4.71%

Oregon

41–005 Clackamas
41–009 Columbia
41–047 Marion
41–051 Multnomah
41–053 Polk
41–067 Washington
41–071 Yamhill

Washington

53–011 Clark

Richmond-Petersburg, VA, 4.00%

51–036 Charles City
51–041 Chesterfield
51–053 Dinwiddie
51–075 Goochland
51–085 Hanover
51–087 Henrico
51–127 New Kent
51–145 Powhatan
51–149 Prince George
51–570 Colonia Heights city
51–670 Hopewell city
51–730 Petersburg city
51–760 Richmond city

Sacramento-Yolo, CA, 5.27%

06–017 El Dorado
06–061 Placer
06–067 Sacramento
06–113 Yolo

St. Louis, MO-IL, 4.28%

Missouri

Part of Crawford County:

297630055 Sullivan City
29–071 Franklin
29–099 Jefferson
29–113 Lincoln
29–183 St. Charles
29–189 St. Louis
29–219 Warren
29–510 St. Louis city

Illinois

17–027 Clinton
17–083 Jersey
17–119 Madison
17–133 Monroe
17–163 St. Clair

San Diego, CA, 6.14%

06–073 San Diego

San Francisco-Oakland-San Jose, CA, 8.14%

06–001 Alameda′
06–013 Contra Costa
06–041 Marin

*GS employees in the Los Angeles and New York CMSA's will continue to receive the 8-percent interim geographic adjustments authorized since 1991, but will also receive the 2 percent general increase.

06–055 Napa
06–075 San Francisco
06–081 San Mateo
06–085 Santa Clara
06–087 Santa Cruz
06–095 Solano
06–097 Sonoma

Seattle-Tacoma-Bremerton, WA, 5.84%

53–029 Island
53–033 King
53–035 Kitsap
53–053 Pierce
53–061 Snohomish
53–067 Thurston

Washington-Baltimore, DC-MD-VA-WV, 5.48%

11 District of Columbia

Maryland

24–003 Anne Arundel
24–005 Baltimore
24–009 Calvert
24–013 Carroll
24–017 Charles
24–021 Frederick
24–025 Harford
24–027 Howard
24–031 Montgomery
24–033 Prince George's
24–035 Queen Anne's
24–037 St. Marys
24–043 Washington
24–510 Baltimore city

Virginia

51–013 Arlington
51–043 Clarke
51–047 Culpeper
51–059 Fairfax
51–061 Fauquier
51–099 King George
51–107 Loudoun
51–153 Prince William
51–177 Spotsylvania
51–179 Stafford
51–187 Warren
51–510 Alexandria city
51–600 Fairfax city
51–610 Falls Church city
51–630 Fredericksburg city
51–683 Manassas city
51–685 Manassas Park city

West Virginia

54–003 Berkeley
54–037 Jefferson

Rest of U.S., 3.74%

Those portions of the 48 contiguous States and the District of Columbia not located within another locality pay area.

[FR Doc. 95–2819 Filed 2–6–95; 8:45 am]

BILLING CODE 6301–01–P

federal register

Tuesday
February 7, 1995

Part IV

Environmental Protection Agency

40 CFR Part 261

Regulatory Determination on Cement Kiln Dust; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA 530–Z95–003; FRL–5149–6]

RIN 2050–AD99

Regulatory Determination on Cement Kiln Dust

AGENCY: Environmental Protection Agency.

ACTION: Regulatory determination.

SUMMARY: Today's action presents the Environmental Protection Agency's (EPA) regulatory determination on cement kiln dust (CKD) waste. This action is required by the Resource Conservation and Recovery Act (RCRA). EPA has concluded that additional control of CKD is warranted in order to protect the public from human health risks and to prevent environmental damage resulting from current disposal of this waste. The primary environmental concerns to be addressed through additional controls are documented damages to ground water and potable water supplies, and potential human health risks from inhalation of airborne CKD and ingestion via food chain pathways. The Agency has decided to take a common sense approach in imposing such controls. In order to avoid duplication among regulatory programs, the Agency will use, as appropriate, its various authorities under the Clean Air Act, Clean Water Act, and RCRA to address the relevant pathways of potential contaminant releases from CKD.

Under Subtitle C of RCRA, the Agency will develop a tailored set of standards for CKD that controls releases to ground water. The tailored standards will protect human health and the environment, while imposing a minimal burden on the regulated community. Until the tailored regulations are published by the Agency, CKD will retain the Bevill exemption and the status of CKD under RCRA Subtitle C will remain unchanged. Those cement manufacturing facilities that burn RCRA hazardous waste in their kilns will still be required to test their CKD to see that it remains unaffected by the combustion of hazardous waste.

EPA has not included an evaluation of clinker or other products or by-products of cement production in this regulatory determination. In the absence of the CKD regulatory exemption, under certain regulatory scenarios clinker produced from re-introduced CKD could be considered a hazardous waste. However, as part of the regulations that EPA will promulgate as a result of today's determination, EPA intends to exclude clinker from regulation as a derived-from hazardous waste when CKD is re-introduced. At this time, EPA has no indication that such clinker poses an unacceptable threat to human health or the environment.

ADDRESSES: Copies of this regulatory determination and the supporting record docket are available for public inspection and copying at the RCRA docket, 401 M Street, SW., Washington, DC, Room M2616, 2nd floor, Waterside Mall. The docket number for this action is F–94–RCKD–FFFFF. The docket is open from 9 to 4 p.m., Monday through Friday, except federal holidays. In order to access the docket, please call (202) 260–9327 to make an appointment. Copies are free up to 100 pages and thereafter cost $0.15/page.

This document and the Response to Public Comments document are also available on the EPA's Clean-up Information Bulletin Board (CLU–IN). To access CLU–IN with a modem of up to 28,800 baud, dial (301) 589–8366. First-time users will be asked to input some initial registration information. Next, select ''D'' (download) from the main menu. Input the file name ''CKD6.ZIP'' to download this notice. Input the file names ''CKD7.ZIP'' and ''CKD8.ZIP'' to download the two files that contain the two response to public comments documents. Follow the on-line instructions to complete the download. More information about the download procedure is located in Bulletin 104; to read this bulletin type ''B 104'' from the main menu. For additional help with these instructions, telephone the CLU–IN help line at (301) 589–8368.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline at (800) 424–9346 or (703) 412–9810; for technical information contact Bill Schoenborn, U.S. Environmental Protection Agency (5302W), 401 M Street SW., Washington, DC 20460, at (703) 308–8483.

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I. Background

A. Statutory Authority

EPA is issuing today's notice under the authority of section 3001(b)(3)(C) of the Resource Conservation and Recovery Act (RCRA), as amended. This section requires that, after completing the Report to Congress (RTC) mandated by section 8002(o) of RCRA, the EPA Administrator must determine whether Subtitle C regulation of CKD waste is warranted. The RTC documents EPA's study of CKD. It was signed by the Administrator on December 30, 1993.

B. Public Comment Process

After submitting the RTC to Congress, EPA provided the public with an opportunity to comment on the report and the appropriateness of regulating CKD under RCRA Subtitle C (59 FR 709, 1/6/94). The public comment period lasted until February 22, 1994 (59 FR 709, 1/6/94). Due to numerous requests to lengthen the comment period, EPA extended the comment period to March 8, 1994 (59 FR 6640, 2/11/94). To ensure that all interested parties had an opportunity to present their views, EPA not only held a public hearing in Washington, DC, but also held a series of public meetings with representatives of the cement industry, the hazardous waste treatment industry, regional and state environmental authorities, and citizen groups.

EPA received approximately 1,100 written comments, 18 videotapes, and a number of photographs prior to the close of the RTC comment period. All individual comments and a transcript from the public hearing are available for public inspection in the RTC docket (Docket No. F–94–RCKA–FFFFF). The docket also contains a summary of all the comments presented at the public

meetings and public hearing, as well as those submitted in writing.

To supplement the information included in the CKD RTC, the Agency analyzed the public comments and undertook several additional data collection and analysis efforts. The new data generated by EPA were placed into the RCRA docket for public inspection and comment and a Notice of Data Availability (NODA) was published in the September 14, 1994, **Federal Register** (59 FR 47133). The Agency provided a 30-day comment period for review of the new data and analyses. The principal new documents placed in the docket addressed the following issues: Additional CKD damage cases; environmental justice; analysis of CKD generation and characteristics data; costs of CKD management alternatives; and human health and environmental risks posed by CKD management.

Subsequent to issuing the NODA, EPA identified certain errors and, in a supplemental errata document, corrected certain portions of the new data pertinent to additional assessments of potential risk from CKD waste. EPA published a correction Notice on October 11, 1994 (59 FR 51440) that identified the corrections and provided a public comment period on the corrected materials until November 10, 1994.

In preparing both of these Notices, the Agency made a special effort to make the data accessible to the public. In addition to placing this information in the RCRA docket, the Agency posted data files in electronic format on EPA's Superfund electronic bulletin board (CLU–IN) and made these data available on disk upon request.

Today's decision is based on the RTC and the data and analyses that underlie the report, as well as on public comments received during the public hearing and public meetings, or in written form submitted during the comment periods, and EPA analyses of these comments.

C. Stakeholder Comments

The Agency received over 1,100 public comments on the RTC on Cement Kiln Dust and subsequent Technical Background Documents from individual companies and trade organizations representing the cement industry and their affiliated consultants, suppliers, and waste fuel blenders; individual companies and trade groups representing the hazardous waste incineration industry, and their associated consultants; other companies that handle CKD; public interest groups; and private citizens.

Comments were received on a wide variety of topics discussed in the RTC and NODA including cement production and CKD generation and characteristics; current and alternative CKD management practices; documented damage and potential danger to human health and the environment; existing regulatory controls on CKD management; and cost and economic impacts of alternatives to current CKD disposal practices. The following is a brief summary of the major positions presented in the public comments. (A detailed response to all of the comments is included in two background documents that are identified below.)

Companies and groups representing the cement manufacturing industry generally stated that CKD exhibits low inherent toxicity and poses minimal risk to human health and the environment. They argued for continued management of CKD using existing Federal and State authorities, and urged the Agency to work with the cement industry to develop voluntary standards for the management of all CKD.

Commenters from companies that handle CKD stated that CKD has numerous beneficial uses (e.g., as a liming agent or sewage sludge stabilizer) which would be detrimentally affected by regulation of CKD as a hazardous waste.

Companies and groups representing the hazardous waste treatment industry generally argued for an aggressive regulatory determination for CKD. These commenters generally favored removing the exemption and immediately imposing hazardous waste regulations for the management of CKD, especially dust from kilns that burn hazardous waste.

Public interest groups generally stated that current industry management of CKD from kilns that burn hazardous waste causes chronic human health problems and extensive environmental damages, including degraded water and air quality, affecting local residents around cement manufacturing facilities. These commenters generally argued for immediate adoption of hazardous waste regulations for CKD generated from hazardous waste-burning kilns.

Most of the comments from public citizens were from residents living around cement manufacturing facilities, and the commenters were divided in their position on CKD. Some commenters expressed concern over potential loss of jobs at plants in their communities if CKD is regulated as a hazardous waste. Others commenters, generally residents who live around cement plants that burn hazardous waste, stated that releases of CKD from plants in their communities are a visual nuisance, degrade the air and vegetation, and cause health problems for themselves and their neighbors.

EPA has carefully reviewed all comments in arriving at today's final determination. The Agency has prepared a detailed summary of comments received, along with responses, in two background documents that are available for viewing in the RCRA docket. The first document, titled *Summary of and Responses to Comments on the Report to Congress,* presents the public comments and the Agency's response to these comments on the *Report to Congress on Cement Kiln Dust;* the second document, titled *Summary of and Responses to Comments on the Notice of Data Availability,* presents the public comments and the Agency's response to the material announced in the NODA.

II. Major Findings of the RTC and NODA

In this section, EPA briefly restates some of the basic technical findings presented in the RTC, as well as new insights presented in the technical background documents announced in the NODA. These findings are generally presented in categories that correspond to the study factors listed in RCRA section 8002(o).

A. Sources and Volumes of Waste

Information received by the Agency since publication of the RTC (in comments and from additional research) suggests that, as of 1992, the domestic cement industry consisted of 111 plants operated by 46 companies. The five largest cement clinker producing states are California, Texas, Pennsylvania, Missouri, and Michigan. The cement industry burns large amounts of high Btu fuels, primarily coal and other fossil fuels, during the manufacturing process. In 1990 and in 1992, 23 facilities also burned hazardous waste as fuels.

Based on an analysis of existing data, including data collected by the Portland Cement Association and separately by EPA under RCRA section 3007 authority from operators of cement manufacturing facilities, the Agency has determined that, nationally, cement plants generate large quantities of CKD. In particular, EPA has estimated that in 1990, the generation of gross CKD (i.e., CKD that is collected by air-pollution control devices) was 12.7 million metric tons. There are, however, wide variations among kilns and plants in the amount of gross CKD generated per ton of clinker.

In addition, there are also wide variations among kilns and plants in the amount of net CKD (i.e., CKD that is either disposed or used beneficially off-site) that is generated. For example, 25 percent of the facilities produce essentially no net CKD, while 10 plants (about 10 percent of the population) generate 40 percent of all net CKD.

Finally, the Agency also found that the burning of hazardous waste is correlated with the volume of dust that is actually disposed. Kilns that burn hazardous waste remove from the kiln system an average of 75 to 104 percent more dust per ton of clinker than kilns that do not burn hazardous waste. Regression modeling conducted by EPA for the NODA analyses showed a consistent, statistically significant association between hazardous waste fuel burning in cement kilns and increased CKD generation on a gross, net, and disposed basis. EPA's work does not establish the cause of this statistical relationship between hazardous waste fuel burning and CKD generation. The Agency, however, believes that increased CKD generation is maybe due either to the burning of hazardous waste, or to some other plant-specific operating factors such as the composition of the raw material feed.

B. Current and Alternative CKD Management Practices

Most of the gross CKD—8.2 million metric tons, or 64 percent—was recycled directly back into the kiln or raw feed system in 1990. For that portion of CKD that is disposed, standard industry practice is to place it in piles, quarries, or landfills, most of which are unlined and uncovered. Some active piles are also managed underwater or adjacent to surface water and/or agricultural lands. Although most CKD removed from the kiln system is disposed on-site, some is sold for off-site beneficial use. For example, in 1990, about 7 percent of CKD generated (897,000 metric tons) was sold for off-site use, most of it as a waste stabilizer, liming agent, or materials additive.

Cost-effective opportunities may exist, however, to further reduce the amount of CKD that is disposed by recycling it back into the kiln. The Agency has identified a number of pollution prevention opportunities, including flue gas desulfurization, fluid-bed dust recovery, and leaching with water, that may, in some instances, represent low-cost and potentially profitable alternatives to CKD disposal. In addition, the Agency has received some evidence, in comments from cement companies, that raw material substitution may be a highly effective means of increasing CKD recycling rates. This may be done by controlling the input of contaminants (in raw materials and fuels) to the kiln system, thereby reducing or eliminating the need to purge the kiln system of contaminants by removing larger volumes of CKD from the system.

C. Existing Regulatory Controls

Federal statutes that potentially affect CKD management include the Clean Air Act (CAA), Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Regulations developed under authority of the CAA and CWA impose controls on releases of CKD to the air (via stack or fugitive dust emissions, 40 CFR Part 50) and water (National Pollution Discharge Elimination System (NPDES), 40 CFR Part 122, point source effluent discharges, and 40 CFR Part 411, effluent guidelines for cement manufacturing facilities), respectively. Under both RCRA and CERCLA, the Federal government can respond where the release of CKD or its constituents may present an imminent and substantial danger to human health or the environment. CKD that is not directly recycled is also subject to regulation under Subtitle D of RCRA as a solid waste. In addition, CKD generating facilities that burn RCRA hazardous waste in kilns are subject to the RCRA Boiler and Industrial Furnace (BIF) rule (40 CFR part 266) and other RCRA requirements if the CKD from that combustion is ''significantly affected'' by the hazardous waste fuel. See 40 CFR 266.112.

For states with the highest cement production capacity (California, Michigan, Pennsylvania, and Texas), the Agency has found that CKD waste is subject to some regulation under State and local laws, but the requirements vary significantly from State to State. For example, California regulates CKD as a non-RCRA hazardous waste, but has suspended enforcement of the management requirements for CKD that fails the State's hazardous waste corrosivity test, pending the results of further study of CKD and other cementitious materials. Pennsylvania regulates CKD as a residual waste, requiring facilities to comply with site-specific disposal requirements and waste reduction strategies, which are both periodically updated by the State. In contrast, Michigan and Texas both consider CKD an industrial non-hazardous waste. Michigan requires permits, ground water monitoring, and regular reports of ground water sampling results, whereas Texas issues non-enforceable guidance.[1]

D. Waste Characteristics

While CKD itself does not exhibit the RCRA Subtitle C hazardous waste characteristic of corrosivity (40 CFR 261.22)[2], EPA's data show that mixtures of CKD and water often exhibit the characteristic of corrosivity. In particular, runoff from precipitation that contacts CKD storage and waste piles generates considerable volumes of wastewater. EPA data show that the pH level in such precipitation runoff typically exceeds 12.5 standard units, the standard for the corrosivity characteristic for hazardous wastes (40 CFR 261.22).

In addition, EPA's analyses of CKD show that CKD does contain certain metals listed in Appendix 8 (''Hazardous Constituents'') part 261 of RCRA. Table 1 presents the range of total concentration levels for a number of other toxic metals EPA has observed in CKD.

TABLE 1.—Measured Metals Levels in CKD[1]

[Mg/kg (parts per million), total basis]

Metal	No. of samples	Min.	Mean	Max.
Antimony	52	0.09	11.5	102
Arsenic	60	0.26	14.1	80.7
Barium	59	0.43	181	900
Beryllium	53	0.1	1.03	6.2

[1] Texas is in the process of developing on-site management standards for cement kiln dust and expects to propose them in 1995.

[2] EPA hazardous waste identification rules do not include a characteristic or definition for solid corrosives.

TABLE 1.—Measured Metals Levels in CKD [1]—Continued

[Mg/kg (parts per million), total basis]

Metal	No. of samples	Min.	Mean	Max.
Cadmium	61	0.065	9.7	44.9
Chromium	61	3.9	31.2	105
Lead [2]	63	3.1	287	2,620
Mercury	57	0.003	0.33	2.9
Nickel	45	3	19.9	55
Selenium	52	0.1	12.2	103
Silver	56	0.25	5.9	40.7
Thallium	57	0.44	33.6	450

[1] Metals data sources include 1992 APCA survey, EPA sampling data, and public comments on the RTC.
[2] The median value for lead is 113 mg/kg.

For many of the toxic metals, the concentrations detected in kiln dust were not significantly different whether the dust is generated from kilns that burn or do not burn hazardous waste. However, for lead, cadmium, and chromium, the mean concentration found in CKD generated by kilns that burn hazardous waste is measurably higher than in CKD from those kilns that do not burn hazardous waste; conversely, thallium and barium concentrations are measurably higher in CKD from kilns that do not burn hazardous waste.[3] [4]

With respect to organics, volatile and semi-volatile compounds were generally not found in CKD. However, levels of 2,3,7,8-substituted dioxin, and 2,3,7,8-substituted dibenzofuran were detected, although the concentrations were generally low—ranging from 0.5 to 20 ppt for dioxin and non-detected to 470 ppt for furan. The calculated 2,3,7,8–TCDD TEQ values for the facilities sampled by EPA ranged from non-detected to 9 ppt.

Note: EPA sampling data for one cement plant reported a total dioxins concentration in CKD as high as 16 ppb, with a TEQ value for the managed CKD of 195 ppt. The total dioxins level measured for this plant were at least 2½ times higher than those found at any of the other plants sampled by EPA.

In terms of potential constituent solubility and release, leach test results show that no significant distinction can be made between CKD generated from kilns that burn hazardous waste and those that do not burn hazardous waste. (This finding was corroborated for metals in CKD by leachate test results submitted to the Agency by the cement industry.) For example, laboratory analysis of CKD using the Toxicity Characteristic Leaching Procedure (TCLP) shows that trace metal concentrations rarely exceed RCRA toxicity limits, whether or not the CKD is generated at kilns that burn hazardous waste.[5]

E. Documented Evidence of Damage

Migration of potentially hazardous constituents, including metals, has occurred from CKD waste sites. In the RTC and subsequent NODA, EPA identified 14 cases of damage (10 documented and 4 potential) to surface water and ground water and 36 cases of documented damage to air from CKD waste.[6] By damage, the Agency means that metal constituents have contaminated ground water and/or surface water, and/or air above a federal or state standard (e.g., a maximum concentration limit). Constituents of concern that have been released to ground and surface waters include arsenic, chromium, and lead, among others. When ground water and surface water exceedances do occur, the magnitude of the exceedance is variable, going as high as two orders of magnitude above the standard. Environmental damage generally affects the area in the immediate vicinity of the waste disposal site. However, in some cases, nearby wetlands and streams that are off-site were also affected. For example, excessive discharges from two facilities in Mason City, Iowa caused severe degradation of the aquatic habitat in nearby Calmus Creek. Observed releases are commonly chronic at sites at which exceedances have been documented. However, most of the documented surface water damage cases occurred prior to 1991, which was before implementation of NPDES general stormwater permits.

Information on environmental quality, on which this evidence is based, is limited by available data from each of the 127 sites evaluated. For those sites for which data were available, files contained information on releases, but little human exposure data. Significantly, releases to ground water were observed at all sites for which EPA has received ground water monitoring data; if there had been additional ground water monitoring data from other sites, further evidence of leaching and contamination would likely have been found. While the Agency has no documented data on contaminant transport off-site, or documented data on human exposure and risk at the point of drinking water use, this is because the drinking water wells at these sites are currently located far enough away, and/or tap aquifers are isolated enough, to be unlikely to intersect contaminated ground water. To the extent that wells would be drilled closer to the sites or the contamination spreads, there is potential that the wells would tap CKD-contaminated ground water. Waste disposal practices at sites where water damages have been documented include management in waste piles, abandoned quarries, or landfills, all of which were unlined. Air damages are cited as primarily due to mechanical failure of dust handling equipment.

[3] The differences cited are those discernible at a 95 percent confidence level.

[4] While lead, cadmium, and chromium were observed to be higher in CKD from facilities that burn hazardous waste, generally the difference in mean constituent concentrations by themselves are not enough (i.e., do not differ by more than a factor of about 2) to result in discernible risk estimates between facilities that do and do not burn hazardous waste, after considering other site-specific factors affecting exposure (e.g., proximity of exposure points, topography). The concentrations of barium, chromium, and nickel in CKD are within the typical range found in U.S. soils.

[5] A separate issue raised by commenters is whether the TCLP adequately depicts the potential for metals to leach from CKD. See the background document to this Notice entitled *Summary of and Response to Comments on the Report to Congress* in the RCRA docket for a discussion of this issue.

[6] EPA received many comments on the specific damage cases described in both the RTC and subsequent NODA. Based on review of the damage cases, except for only one reassessment, the Agency believes the information received does not contradict the Agency's basic conclusions regarding any of the damage cases.

F. Potential Risks to Human Health and the Environment

Based on an extensive data base compiled from industry sources, Agency field visits, RCRA section 3007 information requests, information submitted in comments, literature reviews, and other public sources, the Agency conducted a series of risk screening and site-specific risk modeling studies to evaluate potential risks from on-site management and off-site uses of CKD. Methodologies and results of these studies were documented in Chapter 6 of the RTC and its related technical background document and in two subsequent EPA technical background documents titled Human Health and Environmental Risk Assessment in Support of the Regulatory Determination on Cement Kiln Dust (August 31, 1994) and Supplemental Errata Document for the Technical Background Document for the Notice of Data Availability on Cement Kiln Dust (September 30, 1994). Principal findings from these studies include the following:

- Among a sample of 83 plants for which EPA had sufficient data to conduct a site-specific risk screening evaluation for metals in CKD, the Agency predicted only low or negligible risk potential from on-site management of CKD via conventional direct pathways of constituent transport and exposure (drinking water, incidental direct ingestion, chemical inhalation) via ground water contamination, surface water runoff to streams or lakes, or windblown dust. However, there are three principal and important qualifications to these direct pathway findings:
- As noted above, EPA has found empirical evidence of ground water contamination near the management unit at each cement manufacturing facility where ground water quality data exist; these sites are located in both areas of karst and non-karst terrain.
- According to U.S. Geological Survey maps and other sources, about half of all cement plant sites are underlain by limestone formations in areas of karst landscape. These limestone formations may have fissures caused by rock dissolution along joints or bedding planes with hydraulic characteristics that allow leachate to directly enter ground water aquifers without substantial dilution or attenuation. Available ground water pathway modeling techniques are not applicable under these conditions. This does not necessarily mean that ground water contamination will occur at these cement plants (although that would be consistent with some of the damage cases); however, it should be regarded as a significant qualification to the general findings of low or negligible risk from the ground water pathway risk modeling results.
- In its follow-up work leading to the NODA, EPA did find evidence of possible risk to human health due to the fine particulate nature of inhaled dust. Although the Agency's direct inhalation exposure modeling studies described in the RTC did not indicate significant risk from inhaled chemical constituents in CKD, subsequent screening-level modeling on a small number of plants did indicate that windblown dust from uncontrolled CKD waste management units could exceed EPA's health-based fine particulate (10 micron or less) National Ambient Air Quality Standard (NAAQS) at plant boundaries, and potentially at nearby residences. Results from a more recent extension of this work to a larger sample of 52 cement plants suggest that 28 of the plants could exceed NAAQS standards at plant boundaries, if the plants do not have effective dust control mechanisms.[7] Although quantitative risks presently can not be estimated, these initial modeling results relating to fine particulates suggest cause for concern and argue for further attention to this source of fugitive dust.
- The Agency also modeled health risks via indirect food-chain pathways (i.e., risks from ingestion of crop or livestock products or fish containing CKD-derived chemical contaminants). These contaminants reach the food chain as part of storm water run-off and/or wind erosion from uncontrolled CKD storage or disposal areas to nearby water bodies and farm fields. The Agency's indirect pathway methodology is relatively new, complex, and still under refinement and peer review. Therefore, the reported results must be regarded as preliminary and subject to substantial uncertainties. However, the methodology represents the best available approach for evaluating these potential risk pathways of interest.

EPA's indirect food chain risk modeling estimated that potential individual cancer risks in the 1×10^{-5} (1 in 100,000) to 1×10^{-3} (1 in 1,000) range to highly exposed subsistence farmers and subsistence fishers from CKD metals (principally arsenic) could occur at about 12 percent of the 83 cement plants studied. Similar risk levels due to dioxins are also possible at some additional sites, although the Agency's data base on dioxin concentrations in CKD was not extensive enough to conduct a similar large sample study. In addition, about 18 percent of the plants (mostly the same plants with the higher estimates for cancer risks) were estimated to have potential non-cancer hazard ratios greater than 0.1 for highly exposed potential farmer/fisher individuals. That is, they would contribute enough of a toxic metal such as cadmium, chromium, or thallium through a possible food source (fish, vegetable, or beef and milk source) to equal one-tenth of a subsistence individual's allowable health-based-standard intake from all sources. In a few instances, a toxic metal food chain exposure was estimated to exceed a non-cancer health based standard by more than a factor of 100. Preliminary analysis presented in the September 1994 technical background document also suggested possibilities for elevation of blood lead levels in children living near uncontrolled CKD piles, due to food chain exposures.

These indirect pathway risk estimates are based on current standard Agency methods to account for toxic metals and dioxins to be bio-concentrated in plant and animal components of foods for human consumption. The Agency did not have direct data on local food consumption patterns for backyard gardeners, subsistence farmers, or recreational or subsistence fishermen in areas of potential exposure. In this instance, standard Agency assumptions (as documented in the RTC and background document) regarding consumption rates of home-grown beef, dairy products, vegetables and family-caught fish were used to estimate exposures to these potentially affected consumers.

The particular sites selected for indirect pathway analysis from among the 83 plants in EPA's study were carefully screened with respect to the potential for CKD releases from currently active piles and exposures via land, air, and surface water pathways. Proximity to nearby streams or lakes (for possible risk via fish ingestion) and distance to actual farm fields and rural dwellings likely to have gardens (for potential exposures from home grown vegetables and/or beef and milk) were determined from a variety of sources, including company-provided maps, U.S. Geological Survey maps, and aerial photographs.

[7] Documentation and detailed results of five case study facilities are documented in the technical background document for the NODA on human health and environmental risk assessment (see 59 FR 47133). The documentation and detailed results of the more recent work are presented in the Technical Background Document on Potential Risks from Cement Kiln Dust in support of the Cement Kiln Dust Regulatory Determination, January, 1995. This document is located in the RCRA docket No. F–95–RCKD–FFFFF.

EPA's risk assessment work did not explicitly consider the potential for changes in population around CKD management units, which would alter future direct and indirect exposure potentials. Proximity to the source is one of the more important determinants of risk, and many cement plants are experiencing encroachment by human populations.

• The Agency also studied several off-site beneficial uses of waste dust. Most current off-site uses, such as for waste stabilization or general construction, are either currently regulated (under RCRA for hazardous waste stabilization, or under the Clean Water Act in the case of municipal sewage sludge) or appear to present low risk due to low exposure potential. However, one current use—as a lime/fertilizer substitute on agricultural fields—was found to present some potential for indirect food chain risk under plausible exposure modeling assumptions for highly exposed farmers.

As reported in the RTC and the December 1993 technical background document, median industry-wide CKD constituent concentration values for metals and dioxins did not yield cancer or non-cancer human health risks of concern when modeled using current Agency indirect food chain modeling procedures and a normal land application rate of two tons of CKD per acre every three to five years. However, cancer risks for subsistence farming in excess of 1×10^{-4} (1 in 10,000) were estimated when high-end (upper 95th percentile) reported constituent concentration levels for metals and dioxins were used.

Again, these indirect exposure results should be reviewed with caution due to the substantial uncertainties involved in this risk modeling methodology, which is still under refinement and peer review. The Agency believes, the results do suggest the need for further study regarding possible human health implications from this current off-site use of CKD.

G. Environmental Justice

As part of its analysis of risks to human health posed by CKD, the Agency investigated whether there are environmental justice issues associated with the management of CKD. Executive Order 12989, dated February 11, 1994, and titled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' directs federal agencies to consider environmental justice issues. The Agency's risk modeling results indicate that subsistence farmers and subsistence fish consumers would be most susceptible to the risks posed by the management of CKD.[8] In the RTC, EPA solicited comment on the prevalence of these activities around existing cement manufacturing facilities. The Agency also requested comment on environmental justice issues (i.e., the fair treatment of people of all cultures, incomes, and educational levels with respect to protection from environmental hazards) associated with the management of CKD.

As part of the NODA, EPA announced the availability of a report titled Race, Ethnicity, and Poverty Status of Populations Living Near Cement Kilns in the United States. The report includes numerous analyses and summaries of the demographics data, and is available in the RCRA docket. One analysis indicated that, of the facilities studied, approximately three-fourths of the sites have a minority population at or below the national average of 24 percent living within one mile of the facility while the remaining sites had minority populations higher than the national average living within a mile of the site. With regard to poverty level, approximately 54 percent of the facilities had less than 13 percent of the population (national average) living below the poverty level within one mile of the facility while 46 percent of the facilities had more than 13 percent of the population living below the poverty level within one mile of the facility.

H. Potential Costs and Impacts of Subtitle C Regulation

The analysis presented in the RTC indicates that if CKD were managed as a RCRA hazardous waste under the full Subtitle C regulatory scheme, including minimum technology (RCRA section 3004(o)) and land disposal restriction requirements (RCRA section 3004(d–g)), there would most likely be significant compliance costs for a substantial number of cement plants. Costs would, however, vary considerably, depending on individual plant efficiencies in converting raw materials into finished cement. For the 25 percent or so of U.S. cement plants that presently generate little or no wasted dust for on-site disposal, compliance costs for CKD would be negligible. For the remaining 75 percent, the Agency estimates the annualized incremental compliance costs at between $2 million and $14 million per year per plant (not including corrective action), depending on an individual plant's current CKD quantity and local landfill construction conditions. This range for typical annual plant costs translates into $3 to $28 per ton of cement, or 6 to 56 percent of a plant's annual gross value of sales (at a nominal selling price of $50 per ton of cement).

Such high costs are a result of the relatively high waste-to-product ratios among plants in this industry and the high unit compliance costs for the full Subtitle C technology. Costs at individual plants might be reduced if facility operators could decrease net waste generation rates by improving basic plant efficiencies, substituting lower alkali raw materials, or implementing dust reclamation and recycling technologies, as discussed in Chapters 8 and 9 of the RTC. The extent to which these pollution prevention options can be implemented economically, however, is uncertain.

For those facilities with high CKD generation rates that cannot reduce their waste-to-product ratios economically, costs for the full Subtitle C scenario would be prohibitively high, and a substantial portion of the industry could become noncompetitive. Projected impacts under this regulatory scenario suggest a substantial curtailment of domestic cement capacity and production, a shift in market share towards the more efficient domestic producers, higher prices for cement in most regions of the country, and substantially increased imports. Important secondary impacts on regional construction industries and on small communities affected by cement industry employment losses also would be projected.

The costs of managing CKD as a hazardous waste would be reduced if certain Subtitle C requirements (e.g., land disposal restrictions, minimum technology requirements for managing CKD) were modified. In the RTC, the Agency speculated that plant-level costs under this scenario might amount to one-third to one-half the cost of full Subtitle C for typical plants with median to high CKD generation rates. Alternative, more tailored standards were estimated to require even lower compliance costs, particularly for favorably located plants or plants already employing available containment measures. Depending upon specific requirements, the costs for these types of controls generally were less than one percent of the industry cement sales value, although they could be higher for some facilities located in areas of karst terrain, which might

[8] For purposes of this report, subsistence farmers and subsistence fish consumers are those whose diets are very heavily dependent on home-grown foods or locally caught fish. Particularly high exposures to contaminants can result from bioaccumulation of toxic constituents in the locally-grown farm products or fish, compounded by a high proportion of these foods in the diet.

require more extensive ground water protection measures.

In addition to these two lower-cost versions of a possible Subtitle C land management option, the cement industry suggested, in public comment, a ''voluntary contingent management practice'' proposal, that was estimated by industry representatives to cost between $5 and $14 per ton of CKD at various plants and to average about $10 per ton. Although EPA has not been able to confirm these estimates, this land disposal technology would, using the industry's cost figures, require an average industry-wide compliance cost of about one percent of gross cement sales.

Though by no means negligible, costs averaging one per cent of sales would not imply the dire consequences for the industry that would be suggested by the full Subtitle C regulatory scenario.

In addition, cost effective dust reduction and reclamation options remain a possibility under any of the regulatory scenarios discussed. Industry representatives in public comment have challenged the efficacy and cost effectiveness of these waste reduction and recovery options. Nevertheless, operational prototypes do exist and technologies such as the Passamaquoddy flue-gas scrubber and alkali leaching (both described in Chapter 8 of the RTC) do show benefits in stack gas pollution control and/or by-product sales to help offset capital and operating costs, as well as reducing basic raw material requirements. Further examination of the economics of the Passamaquoddy recovery scrubber, as reported in the September NODA document, indicated that prospective unit costs for plants with lower CKD quantities would be higher than originally estimated in the RTC. However, otherwise, the Agency continues to believe that this and other alternatives can potentially serve as technically and economically viable options to land disposal of CKD, at least for some plants.

I. Regulatory Options

Based on the findings of the RTC, the Agency considered a number of options for the management of CKD. These options represent a range of requirements for management of CKD waste. From these, the Agency chose to highlight five specific options, including three in which CKD would be managed under RCRA Subtitle C. (For more detail on the options, see 59 FR 709, 1/6/94.) The specific options are:

Option 1: Retain the CKD exemption.

Option 2: Retain the CKD exemption, but the Agency would enter into voluntary agreements with the industry whereby they would implement dust recycling technologies, reduce waste, and monitor and control CKD management and use.

Option 3: Remove the CKD exemption, but delay implementation for some period of time (e.g., two years) that would allow industry time to employ pollution prevention measures.

Option 4: Remove the CKD exemption, and implement the compliance measures within six months.

Option 5: Promulgate tailored regulatory standards for the management of CKD waste under Subtitle C of RCRA.

In presenting this list of options, the Agency noted that control of CKD under Subtitle C may not be warranted or appropriate if other statutes administered by EPA (such as the Clean Water Act, Clean Air Act, or Toxic Substances Control Act) are better suited to address the concerns identified in the RTC. The Agency indicated that these statutes were also being considered in the Agency's decision to either retain or remove the CKD exemption.

III. Applying the Decision Rationale in Making the Regulatory Determination

In its decision making process, the Agency's approach was the same as for previous special waste determinations [9]. As explained in the RTC, the study factors were evaluated in a step-wise sequence to arrive at a decision. This approach allows EPA to make a systematic evaluation of the information presented in the RTC, the notices, and in all public comments. The Agency has carefully evaluated all comments received in making its decision. (All of the comments received on the RTC, the NODA, and the correction notice are addressed in the background documents titled *Analysis of and Responses to Comments on the Report to Congress on Cement Kiln Dust and Analysis of and Consolidated Responses to Comments on the Notice of Data Availability*, which are available in the RCRA docket.)

The Agency considers its step-wise methodology to be consistent with Congressional intent that EPA consider all the study factors listed in RCRA section 8002(o). In addition, EPA received no substantive comments on the RTC that disagreed with any aspect of its decision methodology. Therefore, no changes have been made in the approach.

The step-wise process that the Agency applied to the available information is presented below.

A. Step 1: Does Management of CKD Pose Human Health and Environmental Problems? Might Current Practices Cause Problems in the Future?

The initial component of the Agency's decision making process is to determine whether CKD either has or may adversely impact human health or the environment. To resolve these issues, EPA has posed the following key questions:

Substep 1. Has CKD as Currently Managed, Caused Documented Human Health Impacts or Environmental Damage?

The Agency has determined that CKD has caused documented impacts (and may continue to cause impacts) at levels of concern. As explained in the RTC, danger to human health and the environment is defined to include various effects associated with the management of CKD, including acute and chronic human health effects, significant impairment of natural resources (e.g., contamination of a source of drinking water), degradation of natural ecosystems and habitats, and detrimental impacts to terrestrial or aquatic fauna. A case is considered proven if damages are documented as part of a scientific investigation, administrative ruling, or court decision. In its examination of cases of damage to human health and the environment, the Agency identified fourteen cases of ground water and/or surface water contamination (10 documented and 4 potential), including two sites that are listed on the CERCLA (Superfund) National Priorities List (NPL). In each case, there is information available to indicate that on-site surface water and/or ground water has been affected by CKD management units. Typical impacts include elevated pH, total dissolved solids, and sulfate above secondary federal or state concentration limits as well as elevated levels of certain potentially toxic metals such as arsenic, cadmium, chromium, and lead that are above primary drinking water MCLs.

One of the NPL sites with ground water damage is in an area of karst terrain. The RTC described a release at this site of contaminants to ground and surface water through a ''blowout'' (i.e., sudden discharge) into a nearby creek that resulted in increased turbidity and an abrupt decline in stream biota

[9] For a discussion of EPA's approach in combining the RCRA study factors, see the discussion of the Agency's approach in the Final Regulatory Determination and Final Rule for Special Wastes From Mineral Processing (56 FR 27300, June 13, 1991).

downstream of the release. An investigation by the facility showed waste kiln dust to be the original source of contamination. Since the site is in an area of karst terrain, it is both logical and reasonable to believe that the waste dust rapidly migrated through discrete channels in the bedrock, with minimal attenuation, to the point of the blowout. The fact that this occurred at the site suggests EPA's MMSOILS ground water model is not suitable for karst type terrain, since the model assumes ground water migration through bedrock that is uniformly porous, and lacks discrete channels.

Of particular concern to the Agency is the extent of documented contamination of ground water. Even though limited information exists on ground water contamination due to a lack of monitoring programs at most sites, each case with available information on ground water shows contamination at levels of concern. Only 17% of all cement manufacturing facilities have ground water monitoring systems around their dust management units. These plants are considered to be representative of the industry. Thus, the Agency considers it likely that more damages exist, even though it did not conduct a detailed investigation of ground water beneath all CKD waste management units.

Environmental damages can also be attributed to particulate emissions of CKD from quarries, haul roads, and CKD handling equipment (screws, conveyors, and trucks), and are traceable to kilns that do and do not burn hazardous waste. Several commenters on the RTC indicated that air dispersion of CKD was a significant source of pollution to local residents living around cement manufacturing facilities. In addition, the RTC identified numerous citizen complaints of excessive particulate matter from cement plant operations collecting on cars, lawns, gardens, chairs, and other personal property of area residents. While developing the RTC, the Agency reviewed numerous letters in state files from residents living near cement kilns who complained of fugitive dust emissions (which may be due to release of CKD from plant operations and/or dust disposal piles). Although the Agency recognizes that dust from mining and quarry operations could contribute to the particulate emissions from a cement plant, other evidence (i.e., damage cases) indicates that fugitive CKD emissions are a substantial contributor to environmental damages in the form of air quality degradation.

Substep 2. Does EPA's Analysis Indicate That CKD Could Pose Significant Risk to Human Health or the Environment At Any of the Sites that Generate It (or In Off-Site Use), Under Either Current Management Practices or Plausible Management Scenarios?

The Agency's analysis indicates that there are potential risks warranting concern, from both current on-site management practices and certain off-site beneficial uses. In the RTC and NODA documents, the Agency reported on plant-specific risk screening and quantitative risk modeling conducted to evaluate potential risks from current and plausible future management of CKD. As summarized in the findings above, current on-site land management practices appear generally to pose relatively low risks to human health via direct pathways of contaminant transport and exposure.

However, with respect to possible ground water contamination, a large percentage of cement plants (and CKD management units at those cement plants) are located in areas of karst terrain, many of which may be underlain by bedrock with hydrological characteristics conducive to relatively direct leachate transport to off-site locations. In karst aquifers, contaminants can potentially migrate long distances through open conduits with little of the filtration, adsorption, and dispersion that are typical of contaminant dispersal in porous bedrock.

In addition, modeling of windblown dust from CKD management areas suggests that dust piles, when uncontrolled (i.e., uncovered and dry), may typically release sufficient quantities of fine particulates to exceed health-based National Ambient Air Quality Standards (NAAQS) at plant boundaries, and sometimes as far away as nearby residences.

The Agency's quantitative modeling of ''indirect'' food chain pathways, both aquatic and agricultural, indicates potential human health effects, both cancer and non-cancer. A wide range of chemical constituents, including arsenic, cadmium, chromium, barium, thallium, lead, and dioxins, were indicated as constituents of concern at various plants. Because some CKD disposal units are located near, and in some instances immediately adjacent to, farm fields, rural residences with gardens, or surface waters containing fish, there is potential for indirect risk from the consumption of CKD-contaminated beef, vegetables and fish, as well as ingestion of CKD-contaminated water during recreational swimming.

Although limited by available data and assessment methodology, the Agency's risk assessment studies also indicated potentials for adverse aquatic ecological effects due to possible chemical releases to streams and lakes adjacent to some cement plants. Aquatic ecological damages due to siltation and sedimentation were not specifically studied in the risk assessment, but were observed in field visits and reported as a problem in damage case documents and in public comments.

The Agency's risk assessment for off-site beneficial uses of CKD indicated that, except for direct application as a lime/fertilizer substitute, most off-site uses do not pose significant risks. Direct cropland application, however, occurs at a number of locations in the country and is essentially unregulated at the state and federal levels. Analysis suggests that, at plausible application rates, CKD that contain sufficiently high concentrations of arsenic or other metals or dioxins (as documented in the Agency's CKD constituent data base), could cause food chain risks of concern that may warrant some type of regulation for these off-site uses.

Substep 3. Does CKD Exhibit Any of the Characteristics of Hazardous Waste?

Although all of the toxicity characteristic (TC) metals (arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver) were detected in CKD, CKD exhibits the toxicity characteristic infrequently, and only for certain metals. This is based analysis of the CKD analytical data available to the Agency. Although CKD itself is not corrosive under EPA's rules because it is a solid, water-CKD mixtures are highly alkaline. Data presented in the RTC indicate that the pH of CKD leachates (using standard EPA leach test procedures) are typically between 11 and 13 standard units. In addition, the elevated pH of a CKD-water mixture is a prominent factor in 10 out of 14 cases of damage (documented and potential) to surface water and/or ground water. In six of these cases, including the ground water damages described for the two plants listed on the NPL, CKD-water mixtures are reported to have a pH exceeding the EPA standard of 12.5 for corrosive hazardous waste (40 CFR 261.22).

The results of Step 1 of the decision process indicate that CKD has posed and may continue to pose risks to human health and the environment under plausible management scenarios. Releases have occurred and may continue to occur as a result of current

management practices (e.g., management of CKD in unlined, uncovered piles near shallow ground water and surface water bodies), posing risk to human health and the environment.

B. Step 2: Is More Stringent Regulation Necessary and Desirable?

EPA evaluated State and Federal regulations pertaining to CKD waste. The Agency has determined that the answer to this question is yes, more stringent regulation of CKD is necessary and desirable.

Substep 1. Are Current Practices Adequate to Limit Contaminant Release and Associated Risk?

The Agency has determined that current practices are inadequate to limit contaminant releases and associated risks. CKD is now managed primarily on-site in non-engineered landfills, piles, and ponds. Many piles and landfills lack liners, leachate controls, or run-on/run-off collection systems. In addition, while dust suppression measures exist at many facilities, it appears that they are generally ineffective at controlling airborne releases of CKD.

Substep 2. Are Current Federal and State Regulatory Controls Adequate to Address the Management of CKD?

The Agency has determined that Federal and State regulatory controls need to be improved for the proper management of CKD. Some existing regulations do apply to CKD piles, but are rarely tailored to the cement industry. In addition, problems with repeated releases of CKD to the environment suggest that implementation of existing regulations is uneven.

The Agency has analyzed the application of regulations and standards under the Clean Air Act (CAA) for cement manufacturing facilities. Implementation of the CAA requirements varies from State to State. In addition to the baseline Federal requirements,[10] each of the four States studied in the RTC selectively implements more stringent standards on a case-by-case basis. For example, California regulates two more pollutants than required under the NAAQS. Pennsylvania has fugitive dust controls as a permit condition and discourages the open storage of CKD.

The Agency believes that there are adequate existing authorities in the Clean Air Act to address risks via the air pathway posed by the management of CKD. However, there appears to be a need for increased regulation and implementation under the Clean Air Act. The Agency has information that indicates releases of particulate emissions at cement plants are common, persistent, and continuing. The RTC documents 21 incidents of CKD releases at 13 facilities. With the exception of one case that involved fugitive dust emissions from a CKD pile, all cases involved visible emissions violations (opacity) related to equipment malfunctions associated with CKD handling equipment (kilns, baghouses, screw conveyors)[11]. In addition, persistent releases of CKD are documented in the Agency's NODA for one facility in Pennsylvania. This facility was cited for 16 air emissions violations between March 1983 and June 1989. Also, significant releases of airborne particulates at other facilities were frequently observed first-hand by Agency staff during the course of this study[12].

Numeric standards for point source discharges of wastewater from cement facilities have been established under the Clean Water Act, and are administered through the NPDES permit program (40 CFR part 122) along with industry-tailored effluent limitations for runoff from materials storage piles (40 CFR part 411). Indirect discharges via publicly owned treatment works (POTWs) are subject to general pretreatment standards under 40 CFR part 403. Wastewater discharges from individual facilities may also be subject to state water quality standards and state or local effluent discharge standards.

In addition, EPA proposed a multi-sector stormwater general permit under the NPDES program on November 19, 1993 (58 FR 61146). The proposed permit contains limits to control effluent discharges specific to the cement industry (among other industries) and requires each plant to develop facility-specific pollution prevention plans and demonstrate best management practices (BMP) to minimize the contact between stormwater runoff and CKD or other pollutant sources, or else remove CKD (or other constituents) before the stormwater is discharged. This permit will be in addition to previously issued and effective storm water baseline general permits that were issued in 1992 by EPA and between 1991 and 1993 by the 40 states with authorized NPDES programs. The final multi-sector storm water general permit is expected to be issued by EPA in early 1995.

With respect to ground water, there are no Federal standards that are adequate to address the risks posed by CKD via the ground water pathway. The Safe Drinking Water Act (42 U.S.C. 300 f–j) protects drinking water by setting maximum contaminant levels (MCLs) for toxic contaminants, including metals. However, drinking water standards are only protective at the point of consumption. Public water supply wells are protected through the wellhead protection program under the SDWA (41 U.S.C. 300h–7(e)).

Of the states studied in the RTC, three (California, Michigan, and Pennsylvania) have primacy for implementing the NPDES program. The program in Texas is administered by EPA but incorporates more stringent Texas water quality requirements. These four states have ground water protection programs that set non-degradation of ground water quality as a goal. In addition, Texas implements an EPA-approved wellhead protection program.

Water quality regulations vary from state to state. California's water quality program includes long range resource planning, annual inspection of all facilities, and compliance with stringent surface water and ground water quality standards. The California program also grants broad enforcement authority to its State Water Resources Control Boards. Pennsylvania and Michigan inspect major industrial dischargers (including some cement plants) annually, and enforce permit requirements. In addition, Michigan requires compliance with ground water quality standards. Pennsylvania approaches ground water protection through permit requirements for wastewater and stormwater discharges, but has no separate ground water quality standards. In Texas, cement plants are considered ''minor'' facilities and are not inspected annually like all facilities that have major discharges, unless the facility burns hazardous waste, has a past record of environmental violations, or has a complaint filed against it. However, Texas is considering requiring

[10] The Clean Air Act is implemented through the State implementation plan (SIP). As explained in the RTC, the Clean Air Act as amended (see section 110(a)(2)) requires an acceptable SIP to contain detailed provisions to address: Emission limitations and control measures; monitoring requirements, review of new and modified sources for compliance with new source performance standards, prevention of significant deterioration, and non-attainment review; adequate legal authority; and a permit program.

[11] One plant has submitted a video to the Agency that indicates that its CKD management practices have changed.

[12] A general description of these emissions can be found in the EPA CKD sampling trip reports which are located in the support section of the RCRA docket on the Report to Congress, Docket No. F–94–RCKA–FFFFF.

subsurface investigations at all facilities that dispose of CKD as part of an effort to establish minimum technical standards for the on-site management of CKD.

The Clean Water Act, through existing effluent guideline regulations, NPDES permits, water quality standards, and existing and forthcoming storm water permits, provide considerable authority to control risks associated with contamination of surface waters by the management of CKD.[13] However, EPA has identified releases of CKD to surface waters, and to ground water as well. In its investigation of CKD waste, the Agency uncovered 14 cases of water damage, of which seven involved ground water. Both ground water and surface water damages were major factors cited for including two CKD disposal units on the CERCLA NPL. Furthermore, only 17% of all CKD management units nationwide have ground water monitoring systems, while 25 of 91 cement manufacturing facilities (27 percent) were reported in a 1991 industry survey to be located within one mile of a public drinking water well.

Based on the above analysis, the Agency believes the following factors warrant additional environmental controls for CKD: (1) The general lack of current regulations applicable to contaminant discharges to ground water for protection of human health and the environment; (2) the general lack of ground water monitoring systems at CKD disposal units; and (3) the existence of damages to ground water and air that are persistent and continuing, and for which no requirements exist to address the risks posed via these pathways.

At the federal level, authorities exist to address site-specific problems posing imminent and substantial danger to human health or the environment under RCRA section 7003 and CERCLA sections 104 and 106. However, the Agency believes that cost-effective controls that prevent contamination are preferable to cleaning up after contamination and damages occur.

C. Step 3: What Would Be the Operational and Economic Consequences of A Decision To Regulate Under Subtitle C?

The Agency has determined that industry-wide regulation of CKD under full Subtitle C, including land disposal restrictions, would impose extremely high costs on a substantial portion of the U.S. cement industry. While the Agency believes that CKD waste minimization and reclamation/recycling options exist that could limit the cost exposure for many plants, there is considerable uncertainty and disagreement at this time regarding their general technical availability and ability to serve as low cost substitutes for land management of CKD.

Thus, it is likely that full Subtitle C regulation could impose compliance costs in excess of 20 percent of sales value for a significant part of the industry and a resulting inability to compete. Expected economic consequences include a combination of reduced domestic cement capacity and production, sharply higher prices for cement (particularly in interior regions of the country), and substantially increased imports. Substantial adverse secondary effects on regional construction industries and on communities experiencing losses in cement industry-related employment could also be expected.

Thus, based on the factors in RCRA section 3001(b)(3) and section 8002(o), full RCRA Subtitle C regulation is unwarranted. However, the Agency also believes that special Subtitle C regulations tailored to local cement plant conditions could be developed using the broad regulatory flexibility provided by RCRA, including section 2002, section 3001(b)(3)(C), and section 3004(x). These regulations could be based on either technology or performance standards or a combination of both. These regulations could be implemented at far lower cost at most plant locations requiring controls to prevent contamination of ground water. In addition, regulations for CKD to prevent releases to the air can be improved or implemented under CAA authority, and releases to surface water are regulated under CWA authority. These authorities provide the Agency with additional flexibility to prevent releases of CKD to the environment, while at the same time minimizing the burden on the regulated community.

The cement industry's voluntary CKD management proposal, submitted as a comment on the RTC, tends to support this conclusion. This tailored program for constructing and operating CKD monofills would include the following site-specific features: a hydrogeological assessment, water inflow modeling, ground water monitoring, surface water management in accord with NPDES and storm water discharge permits, run-on/run-off controls, fugitive dust emissions control measures, personnel training, a written closure plan, financial assurance, and post-closure care, including security and maintenance and repair of the cap and vegetation as suggested by periodic inspections. Thus, special tailored standards under Subtitle C of RCRA as well as under other Agency authorities can be expected to pose far less dire consequences for the U.S. cement industry and the economy as a whole than would regulation under full Subtitle C.

IV. Regulatory Determination for Cement Kiln Dust

Pursuant to RCRA sections 3001(b)(3)(C) and 8002(o), EPA has determined that additional control of CKD is warranted. The Agency's concerns about the harm to human health and the environment posed by CKD suggest the need for regulation under RCRA Subtitle C authority. However, the Agency recognizes that certain of these areas of concern (those related to releases to air and surface waters) are more appropriately controlled under other EPA-administered statutes. In order to avoid unnecessary duplication among regulatory programs, EPA would rather use the other existing regulatory programs to control risks where appropriate, and develop a more creative, affordable, and common sense approach that would control the adverse effects of CKD.

The Agency will develop, promulgate, and implement regulations for CKD as necessary to protect human health and the environment by using a variety of statutes. This regulatory program will apply to CKD from all cement manufacturing facilities, regardless of the type(s) of fuels used in the manufacturing process, or other factors. In particular, the Agency will develop and implement additional controls/activities to limit releases to the air using its Clean Air Act authority. For surface waters, the Agency believes that existing regulations and the planned general permit under the NPDES permitting program will provide an adequate mechanism for controlling point source discharges and for managing storm water that contains CKD. Thus, no additional water controls, beyond these already planned, are considered necessary.

The Agency will evaluate the need for additional controls for a limited number of off-site uses of CKD (such as use as a lime fertilizer on agricultural fields) in its regulatory proposal. However, for most off-site uses (e.g., in waste stabilization or certain construction uses) EPA's current record indicates there are no significant risks. The Agency will restrict its focus to those

[13] In fact, the Agency believes that once the storm water permits are fully implemented, no further water permits or regulations will be needed to address releases to surface water.

off-site uses for which there are significant risks.

With respect to ground water, the Agency will use its authority under Subtitle C of RCRA to address these concerns. The Agency will use its broad authority provided by RCRA section 2002(a), section 3001(b)(3)(C), and section 3004(x) to develop a program tailored to local cement plant conditions to control the specific risks identified while minimizing compliance costs. Until the Subtitle C tailored rules take effect, the Agency will retain the Bevill exemption. The Bevill exemption will be removed when final regulations under RCRA authority take effect.

The Agency believes that subjecting CKD waste to the full RCRA Subtitle C program would be prohibitively burdensome on the cement industry, and is not a feasible regulatory option under the factors cited in RCRA section 8002(o). Although EPA at this time is not proposing the specifics of a RCRA regulatory program for CKD, EPA intends to apply only those components of Subtitle C that are necessary, based on our current knowledge of the cement industry and the human health and environmental concerns associated with CKD, to achieve a common sense result with respect to the hazards posed by CKD on a site-specific basis. The Agency anticipates that any such standards would be designed to be protective, yet minimally burdensome, and may not necessarily apply to all facilities or may not apply to all facilities in the same manner or to the same extent.

The specific RCRA Subtitle C components that EPA believes may deserve particular scrutiny in developing a minimal, tailored approach, including site-specific considerations, include the following: facility-wide corrective action under section 3004(u); land disposal restriction requirements (LDRs) under sections 3004 (c), (d), (e), (f) and (g); minimum technology standards under section 3004(o); and permit requirements under section 3005. EPA believes that most of the concerns addressed by the land disposal restrictions program, permit requirements, and the minimum technology standards might be best addressed through management standards developed specifically for CKD, and the Agency will carefully study those possibilities as an alternative to some or all LDRs and minimum technology standards. Moreover, because the costs for including all solid waste management units under facility-wide corrective action at all cement plants may be prohibitively burdensome on the cement industry, EPA intends to explore less burdensome, site-specific, tailored approaches to identifying and correcting problems that may occur from existing CKD piles and preventing problems arising from future CKD management. This may include ground water monitoring, a reliance on existing response authorities under RCRA section 7003 and CERCLA (or state response authorities), or may focus on site-specific factors, such as geography and hydrology, in determining the need for corrective action requirements. Because most of the Agency's ground water concerns are associated with potential contamination in areas of limestone with karst features, EPA will focus on tailored standards for CKD disposal in karst terrain. The Agency believes that concerns about contamination in non-karst areas can be addressed through the adoption by industry of good CKD waste management practices.

In addition, EPA believes it is appropriate to consider other RCRA Subtitle C requirements to see if, and to what extent, they are necessary to address the human health and environmental concerns discussed in this regulatory determination. In doing so, EPA will also consider the costs associated with those Subtitle C requirements. EPA intends to develop a regulatory program for CKD waste only after full participation by the various stakeholders. Consistent with the spirit of that commitment, EPA at this time is neither definitively limiting the scope of, nor determining that any particular elements necessarily will be included in any proposed CKD regulatory program.

Finally, as discussed in the RTC, CKD is often re-introduced into the kiln as a substitute for raw material in clinker production. In the absence of the CKD regulatory exemption, under certain regulatory scenarios clinker produced from re-introduced CKD could be considered a hazardous waste under the derived-from rule (40 CFR 261.3(c)(2)(i)). As part of the regulations that EPA will promulgate as a result of today's determination, EPA intends to propose exclusion of clinker from regulation as a derived-from hazardous waste when CKD is reintroduced. When reintroduced, CKD does not contribute any constituents to clinker production that are not already present in the production process. Furthermore, at this time, EPA has no indication that such clinker poses unacceptable threats to human health or the environment.

V. Next Steps

This section provides an overview of the Agency's plans for developing and issuing tailored regulations for CKD. The Agency recognizes that the selection of a regulatory approach for CKD waste may involve difficult choices and policy decisions with wide-ranging economic and environmental implications. EPA believes that the development of regulations under multiple statutes (without duplication among regulatory programs) that adequately address the risks identified in the RTC, yet are economically affordable to the industry, should involve participation by all interested parties. To this end, EPA is announcing a regulation development process designed to encourage involvement by all stakeholders. The regulation development process will be conducted in similar fashion to the Agency's Common Sense Initiative, notably with early-on participation by all stakeholders. This process will be directed towards development of environmentally protective regulations that provide for highly flexible methods to administer and implement them. The Agency's concern for minimizing the burden on State and local regulatory authorities and minimizing compliance costs and resource burdens on the regulated community will be an important principle in the regulation development process.

EPA will begin this process by conducting a series of meetings with interested parties, including industry, government, and public interest groups. The initial meetings with the parties will be used to solicit technical information and approaches that will facilitate the Agency's analysis of regulatory options (e.g., CKD management technologies, cost information, and economic information). The Agency plans to conduct the initial meetings during the spring and summer of 1995. Before these meetings are held, the Agency will identify specific questions and issues on which the Agency would like to receive information.

During the regulation development process, the Agency will use the information in the cumulative record of the RTC and regulatory determination, along with any new information received, to formulate its approach to developing tailored regulations for CKD. Before the rule is proposed, the Agency may publish an advance notice of proposed rulemaking (ANPR) to present and solicit comment on various approaches to developing the regulations.

VI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354), which amends the Administrative Procedure Act, requires Federal regulatory agencies to consider ''small entities'' throughout the regulatory development process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether a substantial number of small entities will be significantly affected by a regulation. Under current internal EPA guidance, however, any economic impact is considered a significant impact, and any number of small entities is a substantial number.[14]

In keeping with this policy, EPA has performed an initial evaluation of the domestic cement industry to determine whether or not there are small entities operating U.S. cement plants. The results of this analysis show that 23 of the 115 operating domestic cement plants are owned and operated by companies that are defined as small entities.[15] These 23 plants are owned/operated by 16 of the 40 companies comprising the domestic cement industry.

Because in today's regulatory determination EPA does not establish new regulatory controls, the Agency has not conducted a full Regulatory Flexibility Analysis in support of today's action. EPA will, however, consider the potential impacts of the new regulations that will be developed as a result of this action on these small entities. In the process, the Agency will examine potential impacts of regulatory alternatives on these entities, and identify and evaluate alternative approaches that could mitigate such impacts, as required by the RFA.

VII. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, 10/4/93), 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 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 legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

VIII. Regulatory Determination Docket

Documents related to this regulatory determination, including EPA's response to the public comments, are available for inspection in the docket. The relevant docket numbers are: F–95–RCKD-FFFFF for the regulatory determination, F–94–RCKA–FFFFF for the RTC and F–94–RC2A–FFFFF for the NODA. The EPA RCRA docket is located at the following address: United States Environmental Protection Agency, EPA RCRA Docket, Room M2616, 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call the docket clerk at (202) 260–9327. Copies are free up to 100 pages and thereafter cost $0.15 per page.

In addition to the data and information that was included in the docket to support the RTC on CKD and the Technical Background Documents, the docket also includes the following documents:

- Analysis of and Responses to Public Comments on the Report To Congress; and
- Analysis of and Response to Comments on the Notice of Data Availability.

List of Subjects in 40 CFR Part 261

Environmental protection, Bevill exemption, Cement kiln dust, Incineration, Special wastes.

Dated: January 31, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–2832 Filed 2–6–95; 8:45 am]

BILLING CODE 6560–50–P

[14] USEPA, 1992. *EPA Guidelines for Implementing the Regulatory Flexibility Act,* Office of Regulatory Management and Evaluation, Office of Policy, Planning, and Evaluation.

[15] The definition of small entity is established by the Federal Small Business Administration, which has promulgated regulations found at 13 CFR 121.601. The criterion for determining small business status in the hydraulic cement industry (SIC Code 3241) is company-wide employment of less than 750 employees.

federal register

Tuesday
February 7, 1995

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1 and 33

Airworthiness Standards: Aircraft Engines; New One-Engine-Inoperative Ratings, Definitions, and Type Certification Standards; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1 and 33

[Docket No. 26019; Notice No. 89–27A]

RIN 2120–AD21

Airworthiness Standards: Aircraft Engines; New One-Engine-Inoperative Ratings, Definitions, and Type Certification Standards

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This document modifies Notice of Proposed Rulemaking (NPRM) No. 89–27, published in the **Federal Register** on September 22, 1989 (54 FR 39080). In that document, the FAA proposed adoption of new definitions and airworthiness standards of new one-engine-inoperative (OEI) ratings for type certification of rotorcraft engines. The maximum engine power level available for a certificated rotorcraft engine under current part 33 rules is the 2½-minute OEI rating. The proposed rule would establish type certification standards for 30-second OEI and 2-minute OEI ratings at higher power levels than the current OEI rating.

Four commenters provided the FAA with comments to the NPRM, addressing numerous issues. The FAA has determined that the comments and recommended changes merit consideration. Substantive changes have been made to the proposed rule based upon the relevant comments received. Accordingly, the FAA is issuing this Supplemental Notice of Proposed Rulemaking (SNPRM) to give all interested parties an opportunity to comment on the modified proposed rule.

DATES: Comments must be received on or before March 24, 1995.

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. 26019, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 26019. Comments may be examined in Room 915G weekdays between 9:00 a.m. and 5:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chung C. Hsieh, Aerospace Engineer, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (617) 238–7116; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

This supplemental notice modifies Notice No. 89–27. Comments on the effect of this change to the proposed rule are invited. Comments should be limited to the changes proposed in this document. This notice does not serve to reopen the comment period on the remainder of the original proposal. Interested persons are invited to comment on this supplemental notice by submitting written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals, as modified in this document, are also invited. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this proposed rule must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. 26019.'' The postcard will be date stamped and mailed to the commenter.

Availability of SNPRM

Any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration Office of Public Affairs, Attn: Public Inquiry Center, (APA–200), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this SNPRM.

Persons interested in being placed on the mailing list for future NPRM's should request, from the above office, a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On September 14, 1989, the FAA issued two NPRM's, Notice Nos. 89–27 (54 FR 39080 and 54 FR 39085). The Notice associated with this SNRPM is No. 89–27, which proposed to define and establish type certification standards for new OEI ratings for rotorcraft engines. The companion NPRM, No. 89–26, addressed the usage of the 30-second OEI and 2-minute OEI ratings by rotorcraft. A final rule based on Notice No. 89–26 was published in the **Federal Register** on September 16, 1994 (59 FR 47764).

These new OEI ratings are applicable to turbine engines installed on multiengine powered rotorcraft. In a Category A operation, a multiengine turbine-powered rotorcraft must have the ability to either continue flight or land within a demonstrated field size in the event of failure of an engine. In a Category B operation, the rotorcraft would not have sufficient residual power if one engine failed to continue its flight and would, therefore, a need safe landing areas throughout its flight path. Category A rotorcraft mission payloads are limited by the power available from the remaining operating engine(s) in the event one engine fails during takeoff or landing. The maximum engine power level available under current part 33 rules is the 2½-minute OEI rating.

This proposal would establish 30-second OEI and 2-minute OEI ratings at higher power levels than the current 2½-minute OEI rating. Engine type certification to these ratings, as with other OEI ratings, would be optional.

The comment period for Notice 89–27 closed on March 27, 1990. On November 16, 1989, a public meeting to hear comments on the proposals was convened in Fort Worth, Texas. In addition, the minutes of a meeting between the FAA and the Aerospace Industries Association of America, Inc., inspected, in the Rules Docket No. 26019. The FAA has determined that the comments and recommended changes merit consideration. Substantive changes have been made to the proposed rule based upon the relevant comments received. Accordingly, the FAA is issuing this SNPRM to give all interested parties an opportunity to comment on the modified proposed rule.

Discussion

Four commenters provided the FAA with comments to the NPRM, addressing numerous issues. This discussion describes only those changes made to the proposal of Notice 89–27 and the comments associated with those changes. However, for the convenience of the public, the proposed rule is being reprinted in its entirety.

Section 1.1 Definitions and Abbreviations

One commenter states that the definitions of 30-second OEI and 2-minute OEI ratings should contain a specific limit as to the number of items these power levels could be used during

any one flight. The commenter noted that the lack of a specific limit in the proposed definitions leaves the issue ambiguous. The commenter also noted that a number of a specific limit in the proposed definitions leaves the issue ambiguous. The commenter also noted that a number of people at the public meeting expressed differing views on the intended maximum number of allowable applications of 30-second OEI or 2-minute OEI power on a single flight.

The FAA agrees. The rated 30-second OEI power and rated 2-minute OEI power for section 1.1 are therefore revised to limit the use of these new power levels to a maximum of three periods. The definitions retain requirements of mandatory inspection and prescribed maintenance following any use of 30-second OEI or 2-minute OEI power, and the limit of use of these new power levels to continue operation, in order to complete the flight during which engine failure occurred.

Section 33.27 Turbine, Compressor, Fan, and Turbosupercharger Rotors

One commenter states that post-test acceptance criteria after the overspeed test for the 30-second OEI rating should be less severe since a mandatory inspection of the engine will be required after the engine is used at the 30-second OEI rating. The commenter suggests that since the inspection would result in replacement of parts unsuitable for continuous use, more specific acceptable criteria are not considered practical in view of the wide variety of designs in use and yet to come. The commenter also suggests that the last paragraph of § 33.27(c) be changed as follows:

> Following the testing, each rotor must be within approved dimensional limits for an overspeed condition and may not be cracked; except that following the test based on the 30-second OEI rating condition, growth and distress beyond the dimensional limits for an overspeed condition and cracks will be permitted, provided there is no evidence of imminent failure. The applicant may show by analysis or test, as found necessary by the Administrator, that there is no evidence of imminent failure.

Another commenter suggests that the severity of the rotor test requirement needs to be clearly specified, consistent with the worst case rationale identified in the NPRM. The commenter suggests that the second paragraph of § 33.27(c) should be extended by the addition of the following: ''* * * including two subsequent uses of both 30-second OEI and 2-minute OEI conditions.''

The FAA does not agree that section 33.27 should be revised as the commenters suggested. The FAA would require that, based on the condition of the rotor following the test, the engine would have sufficient safety margin for continued operation and the capability of completing up to three uses of both 30-second OEI power and 2-minute OEI power. It is inappropriate to specify in the rule that all cracks would be acceptable, since a rotor with cracks may not be in airworthy condition in all engines affected by the rule. The same argument applies concerning the ''dimensional'' and ''imminent failure'' statements. The standard that growth and distress beyond the limits for an overspeed condition will be permitted provided the engine is shown by analysis or test, as found necessary by the Administrator, that the structural integrity of each rotor is maintained will permit the FAA to apply the best engineering judgment for each specific engine type design tested. Therefore, the FAA proposes to revise the paragraph at the end of section 33.27(c) by incorporating that standard; the revised paragraph is proposed as a new paragraph (d) to section 33.27. In addition to these revisions other editorial changes have been made in the proposed § 33.27.

Section 33.29 Instrument Connection

One commenter states that Proposal No. 6 of the NPRM corresponds to only one of the two aspects covered by Proposal No. 11 for § 29.1305 in Notice No. 89–26. The commenter states that it corresponds only with § 29.1305(a)(25), whereas, it should also be concerned with § 29.1305(a)(24) because the engine manufacturer will need to provide some means, incorporated in the engine, in order to enable the complete helicopter to comply with both of these two part 29 sections. Therefore, the engine certification standards must address all issues that could be considered as engine requirements.

The FAA agrees. The proposed section 33.29 is changed to require a provision for a means to alert the pilot when the engine is at the 30-second OEI and 2-minute OEI levels; and is reorganized. The proposed section 33.29(c)(1) corresponds to section 29.1305(a)(24); the proposed sections 33.29(c)(2) and (c)(3) correspond to section 29.1305(a)(25).

Section 33.67 Fuel System

One commenter states that the FAA proposal is somewhat meager when compared with existing requirements in Joint Airworthiness Requirement Engines (JAR–E) for engines in which power output and associated conditions are controlled by automatic devices. The commenter, therefore, suggests changing the wording from ''* * * means for automatic control of 30-second power'' to ''* * * means for automatic availability and automatic control of 30-second OEI power.''

The FAA concurs with the suggested wording and the proposed § 33.67 is changed accordingly.

Section 33.85 Calibration Tests

One commenter states that Proposal No. 8 of the NPRM contains cross-referencing errors in the first sentence of the proposed § 33.85(c). It should state that ''* * * measurements taken during the endurance test described in § 33.87(f)(1) through (8) may be used * * *''

The FAA agrees, and the changes have been made to the proposal.

One commenter states that, in the absence of any provision in the existing § 33.85 concerning the minimum period of stabilized conditions before taking measurements, it is not clear why the proposed § 33.85(c) is required. Alternatively, if this aspect needs to be included under § 33.85, it should address all engines, regardless of their power ratings.

The commenter further suggests that the following language would be more appropriate for § 33.85 (c) and (d):

> (c) In showing compliance with the section, each condition must be allowed to stabilize before measurements are taken, except as permitted by (d) of this section.
>
> (d) In the case of engines having 30-second, 2-minute, or 2½-minute OEI ratings, measurements taken during the applicable endurance test prescribed in § 33.87 may be used in showing compliance with the requirements of this section for these OEI ratings.

The FAA agrees, and has made the suggested changes to proposed § 33.85 (c) and (d). This proposal is required to provide an acceptable and viable approach for obtaining meaningful calibration data in the briefest time possible, consistent with the practical limits of the 30-second OEI and 2-minute OEI power ratings. The proposed § 33.85(c), which requires engine parameters to stabilize before recording measurements, is consistent with current § 33.85(a) requirements.

Section 33.87 Endurance Test

One commenter suggests that § 33.87(f)(5) be changed to read as follows: ''50 percent takeoff power. One minute at 50 percent takeoff power.'' The commenter reasons that the power level for a one-minute run at 50 percent takeoff power realistically represents the minimum OEI flight power and engine

thermal condition preceding reapplication of 30-second OEI power.

The FAA agrees. The proposed wording for § 33.87(f)(5) is modified accordingly. Actual operations could realistically be expected to have a power setting of 50 to 60 percent takeoff power in an approach descent from a continuous OEI power setting toward a landing spot. The flight scenario would likely include and follow one use of takeoff power to the takeoff path's critical decision point (CDP), then from one to three applications of 30-second OEI power, and one or two applications of 2-minute OEI power.

One commenter states that Proposal 9 of the NPRM is inaccurate in stating that existing § 33.87(f) will be redesignated as paragraph (g) without text change.The commenter claims that a number of cross-references in the existing subparagraphs of the newly redesignated § 33.87(g) are incorrectly designated as (e) instead of (f). The commenter suggests changing those cross-references from (e) to (g) if § 33.87(f) is redesignated as § 33.87(g).

The FAA agrees. Editorial changes have been made in the proposed § 33.87.

Section 33.88 Engine Overtemperature Test

One commenter suggests that the wording ''or equivalent device'' be inserted after ''temperature limiter'' in § 33.88(c) and that language allowing ''equivalent limiting device'' be added as an alternative to the direct temperature limiting control system.

The FAA agrees. The proposed wording is changed from ''a temperature limiter'' to ''a means to limit temperature.'' The means to limit the temperature is intended for limiting the maximum engine gas temperature.

Section 33.93 Teardown Inspection

One commenter states that in § 33.93, an ''and'' in the first sentence of § 33.93(c) should read ''or'', making the fifth and sixth lines read as follows: ''* * * the endurance testing of § 33.87 (b), or (c), or (d), or (e) of this part and followed * * *.'' The commenter states this change is needed because in Proposal No. 9, revised § 33.87(a) states: ''* * * for engines tested under paragraphs (b), (c), (d), or (e) of this section * * *,'' and the new § 33.87(f) reads: ''* * * and following completion of the tests under paragraphs (b), (c), (d), or (e) of this section * * *.''

The FAA agrees, and editorial changes in proposed § 33.93 are made.

Supplemental Regulatory Evaluation Summary

The FAA has determined that the changes made to the NPRM do not increase the scope of the proposed rule or the original economic analysis. Therefore, the FAA has determined that this is not a significant rulemaking as defined in Executive Order 12866.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have ''a significant economic impact, on a substantial number of small entities.'' FAA Order 2100.14A outlines FAA's procedures and criteria for implementing the RFA.

The proposed modification of Notice No. 89–27 will neither eliminate any present regulations, nor impose any new regulations and, thus, will not have a significant economic impact on a substantial number of small entities. Consequently, the FAA has determined that, under the criteria of the Regulatory Flexibility Act of 1980, a regulatory flexibility analysis of this supplemental notice of proposed rulemaking is not required.

International Trade Impact Assessment

The proposed modification of Notice No. 89–27 will neither eliminate any present regulations, nor impose any new ones. As a result, affected manufacturers and operators will not incur additional costs, or realize significant savings. Thus, the proposed modification of Notice No. 89–27 will not have any impact on trade opportunities for either U.S. firms doing business overseas, or foreign firms doing business in the United States.

Federalism Implications

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

Conclusion

This SNPRM changes certain sections of the proposed rule based on comments received. For the reasons discussed in the Notice No. 89–27 and this supplemental notice, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not a significant regulation as defined in Executive Order 12866. In addition, it is certified this SNPRM will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal, including this supplemental notice, is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A draft regulatory evaluation of the proposal, including a supplement relating to the modifications in this notice, has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

14 CFR Part 1

Airmen, Flights, Balloons, Parachutes, Aircraft pilots, Pilots, Transportation, Agreements, Kites, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Airports, Airplanes, Helicopters, Rotorcraft, Heliports, Engines, and Ratings.

14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend 14 CFR part 1 and part 33 as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

Authority: 49 U.S.C. app. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1567(f); 49 U.S.C. 106(g).

2. Section 1.1 is amended by adding the definitions in alphabetical order of ''Rated 30-second OEI power'' and ''Rated 2-minute OEI power'' to read as follows:

§ 1.1 General definitions.

* * * * *

Rated 30-second OEI power, with respect to rotorcraft turbine engines, means the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under part 33 of this chapter, for continued one-flight

operation after the failure of one engine in multiengine rotorcraft, limited to three periods of use no longer than 30 seconds each in any one flight, and followed by mandatory inspection and prescribed maintenance action.

Rated 2-minute OEI power, with respect to rotorcraft turbine engines, means the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under part 33 of this chapter, for continued one-flight operation after the failure of one engine in multiengine rotorcraft, limited to three periods of use no longer than 2 minutes each in any one flight, and followed by mandatory inspection and prescribed maintenance action.

* * * * *

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

3. The authority citation for Part 33 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425; 49 U.S.C. 106(g).

4. Section 33.7 is amended by redesignating paragraph (c)(1)(viii) as paragraph (c)(1)(x); and by adding new paragraphs (c)(1)(viii) and (c)(1)(ix) to read as follows:

§ 33.7 Engine ratings and operating limitations.

* * * * *

(c) * * *

(1) * * *

(viii) Rated 2-minute OEI power;

(ix) Rated 30-second OEI power; and

* * * * *

5. Section 33.27 is amended by revising the introductory text of paragraph (c) and paragraph (c)(1), and by designating the undesignated paragraph following paragraph (c)(2)(vi) as paragraph (d) and revising it to read as follows:

§ 33.27 Turbine, compressor, fan, and turbosupercharger rotors.

* * * * *

(c) The most critically stressed rotor component (except blades) of each turbine, compressor, and fan, including integral drum rotors and centrifugal compressors in an engine or turbosupercharge, as determined by analysis or other acceptable means, must be tested:

(1) For a period of 5 minutes at the maximum rating's steady-state operating temperature limit, excluding the maximum operating temperature limits of the 30-second OEI and 2-minute OEI ratings, except as provided in paragraph (c)(2)(iv) of this section; for engines with 30-second OEI and 2-minute OEI ratings, using a separate test vehicle if desired, for a period of 2-1/2 minutes at the maximum operating temperature limit of the 30-second OEI rating, except as provided in paragraph (c)(2)(iv) of this section; and

* * * * *

(d) Following the test, each rotor must be within approved dimensional limits for an overspeed condition and may not be cracked, except that following the test based on the maximum operating temperature limit of the 30-second OEI rating, growth and distress beyond the limits for an overspeed condition will be permitted, provided the engine is shown by analysis or test, as found necessary by the Administrator, to maintain the structural integrity of each rotor.

6. Section 33.29 is amended by adding a new paragraph (c) to read as follows:

§ 33.29 Instrument connection.

* * * * *

(c) Each rotorcraft turbine engine having a 30-second OEI and a 2-minute OEI power rating must have a provision for a means to:

(1) Alert the pilot when the engine is at the 30-second OEI and the 2-minute OEI power levels;

(2) Determine, in a positive manner, that the engine has been operated at each rating; and

(3) Determine the elapsed time of operation at each rating.

7. Section 33.67 is amended by adding a new paragraph (d) to read as follows:

§ 33.67 Fuel system.

* * * * *

(d) Engines having a 30-second OEI rating must incorporate means for automatic availability and automatic control of 30-second OEI power.

8. Section 33.85 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 33.85 Calibration tests.

(c) In showing compliance with this section, each condition must stabilize before measurements are taken, except as permitted by paragraph (d) of this section.

(d) In the case of engines having 30-second, OEI, 2-minute OEI, or 2½-minute OEI ratings, measurements taken during the applicable endurance test prescribed in § 33.87 (f)(1) through (8) may be used in showing compliance with the requirements of this section for these OEI ratings.

9. Section 33.87 is amended by revising the introductory text of paragraph (a) and paragraph (a)(8); by redesignating paragraph (f) as paragraph (g); by revising the reference ''(e)(2) (ii) through (iv)'' to read ''(g)(2) (ii) through (iv)'' in newly designated paragraph (g)(2)(i); by revising the reference ''(e)(2)(i)'' to read ''(g)(2)(i)'' in newly designated paragraph (g)(2)(ii); by revising the reference ''(e)(2)(i)'' to read ''(g)(2)(i)'' in newly designated paragraph (g)(2)(iii); by revising the reference ''(e)(2) (i) and (ii)'' to read ''(g)(2)(i) and (ii)'' in newly designated paragraph (g)(2)(iv); and by adding a new paragraph (f) to read as follows:

§ 33.87 Endurance test.

(a) *General.* Each engine must be subjected to an endurance test that includes a total of at least 150 hours of operation and, depending upon the type and contemplated use of the engine, consists of one of the series of runs specified in paragraphs (b) through (g) of this section, as applicable. For engines tested under paragraphs (b), (c), (d), or (e) of this section, the prescribed 6-hour test sequence must be conducted 25 times to complete the required 150 hours of operation. Engines for which the 30-second OEI and 2-minute OEI ratings are desired must be further tested under paragraph (f) of this section. The following test requirements apply:

* * * * *

(8) If the number of occurrences of either transient rotor shaft overspeed or transient gas overtemperature is limited, that number of accelerations required by paragraphs (b) through (g) of this section must be made at the limiting overspeed or overtemperature. If the number of occurrences is not limited, half the required accelerations must be made at the limiting overspeed or overtemperature.

* * * * *

(f) *Rotorcraft engines for which 30-second OEI and 2-minute OEI ratings are desired.* For each rotorcraft engine for which 30-second OEI and 2-minute OEI power ratings are desired, and following completion of the tests under paragraphs (b), (c), (d), or (e) of this section, the applicant may disassemble the tested engine, to the extent necessary to show compliance with the requirements of § 33.93(a). The tested engine must then be reassembled using the same parts used during the test runs of paragraphs (b), (c), (d), or (e) of this section, except those parts described as consumables in the Instructions for Continued Airworthiness. The applicant must then conduct the following test sequence four times, for a total time of not less than 120 minutes:

(1) *Takeoff power.* Three minutes at rated takeoff power.

(2) *30-second OEI power.* Thirty seconds at rated 30-second OEI power.

(3) *2-minute OEI power.* Two minutes at rated 2-minute OEI power.

(4) *30-minute OEI power, continuous OEI power, or maximum continuous power.* Five minutes at rated 30-minute OEI power, rated continuous OEI power, or rated maximum continuous power, whichever is greatest, except that, during the first test sequence, this period shall be sixty-five minutes.

(5) *50 percent takeoff power.* One minute at 50 percent takeoff power.

(6) *30-second OEI power.* Thirty seconds at rated 30-second OEI power.

(7) *2-minute OEI power.* Two minutes at rated 2-minute OEI power.

(8) *Idle.* One minute at idle.

* * * * *

10. Section 33.88 is revised to read as follows:

§ 33.88 Engine overtemperature test.

(a) Each engine must run for 5 minutes at maximum permissible rpm with the gas temperature at least 75 °F (42 °C) higher than the maximum rating's steady-state operating limit, excluding maximum values of rpm and gas temperature associated with the 30-second OEI and 2-minute OEI ratings. Following this run, the turbine assembly must be within serviceable limits.

(b) Each engine for which 30-second OEI and 2-minute OEI ratings are desired, that does not incorporate a means to limit temperature, must be run for a period of 5 minutes at the maximum power-on rpm with the gas temperature at least 75 °F (42 °C) higher than the 30-second OEI ratings operating limit. Following this run, the turbine assembly may exhibit distress beyond the limits for an overtemperature condition provided the engine is shown by analysis or test, as found necessary by the Administrator, to maintain the integrity of the turbine assembly.

(c) Each engine for which 30-second OEI and 2-minute OEI ratings are desired, that incorporates a means to limit temperature, must be run for a period of 4 minutes at the maximum power-on rpm with the gas temperature at least 35 °F (20 °C) higher than the maximum operating limit. Following this run, the turbine assembly may exhibit distress beyond the limits for an overtemperature condition provided the engine is shown by analysis or test, as found necessary by the Administrator, to maintain the integrity of the turbine assembly.

(d) A separate test vehicle may be used for each test condition.

11. Section 33.93 is revised to read as follows:

§ 33.93 Teardown inspection.

(a) After completing the endurance testing of § 33.87 (b), (c), (d), (e), or (g), each engine must be completely disassembled; and—

(1) Each component having an adjustment setting and a functioning characteristic that can be established independent of installation on the engine must retain each setting and functioning characteristic within the limits that were established and recorded at the beginning of the test; and

(2) Each engine part must conform to the type design and be eligible for incorporation into an engine for continued operation, in accordance with information submitted in compliance with § 33.4.

(b) After completing the endurance testing of § 33.87(f), each engine must be completely disassembled; and

(1) Each component having an adjustment setting and a functioning characteristic that can be established independent of installation on the engine must retain each setting and functioning characteristic within the limits that were established and recorded at the beginning of the test; and

(2) Each engine may exhibit deterioration in excess of that permitted in paragraph (a)(2) of this section, including some engine parts or components that may be unsuitable for further use. The applicant must show by analysis and/or test, as found necessary by the Administrator, that structural integrity of the engine including mounts, cases, bearing supports, shafts, and rotors, is maintained; or

(c) In lieu of compliance with paragraph (b) of this section, each engine for which the 30-second OEI and 2-minute OEI ratings are desired, may be subjected to the endurance testing of § 33.87 (b), (c), (d), or (e) of this part, and followed by the testing of § 33.87(f), without intervening disassembly and inspection. However, the engine must comply with paragraph (a) of this section after completing the endurance testing of § 33.87(f). Issued in Washington, DC, on January 24, 1995.

Elizabeth Yoest,

Acting Director, Aircraft Certification Service.

[FR Doc. 95–2730 Filed 2–6–95; 8:45 am]

BILLING CODE 4910–13–M

federal register

Tuesday
February 7, 1995

Part VI

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5149–3]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of partial stay and reconsideration.

SUMMARY: This action announces a three-month stay of a provision of the refrigerant recycling regulations promulgated under section 608 of the Clean Air Act that restricts the sale of class I or class II refrigerants contained in appliances without fully assembled refrigerant circuits. The effectiveness of 40 CFR 82.154(m), including the applicable compliance date, is stayed for three months pending reconsideration, only as it applies to refrigerant contained in appliances without fully assembled refrigerant circuits.

In the proposed rules Section of today's **Federal Register** notice, EPA is proposing to extend this stay to the extent necessary to complete reconsideration (including any appropriate regulatory action) of the rule in question.

EFFECTIVE DATE: January 27, 1995.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. A–92–01, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500. Dockets may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Deborah Ottinger, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460, (202) 233–9200. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Background
II. Rules to be Stayed and Reconsidered
III. Issuance of Stay
IV. Authority for Stay and Reconsideration
V. Proposed Additional Temporary Stay
VI. Effective Date

I. Background

On December 16, 1994, Hamilton Home Products, a distributor of pre-charged split air-conditioning systems, sent to the United States Environmental Protection Agency (EPA) a petition for reconsideration of the amendment to the Refrigerant Recycling Rule promulgated on October 28, 1994, (59 FR 55912, November 9, 1994), particularly the sales restriction provision under 40 CFR 82.154(m) as it applies to refrigerant contained in appliances without fully assembled refrigerant circuits. On January 6, 1995, Hamilton Home Products filed a petition in the United States Court of Appeals for the District of Columbia Circuit seeking review of this Refrigerant Recycling Rule (*Hamilton Home Products* vs. *U.S. Envtl. Protection Agency*, D.C. Cir. No 95–1019). By this action, EPA is convening a proceeding for reconsideration.

II. Rules To Be Stayed and Reconsidered

Final regulations published on May 14, 1993 (58 FR 28660), established a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment. The regulations required technicians to observe practices that minimize release of refrigerant to the environment and to be certified as knowledgeable of these requirements (40 CFR 82.154, 82.156, 82.161). Moreover, to ensure that persons handling refrigerant are certified technicians, § 82.154(n) (now (m) by amendment) prohibited the sale of refrigerant unless the buyer was a certified technician or another exception applied. One exception was for refrigerant contained in an appliance. This exception was intended to permit uncertified individuals to purchase appliances, such as household refrigerators, whose installation would involve very little risk of refrigerant release (58 FR 28697).

On August 15, 1994, EPA proposed an amendment to the technician certification provisions of the rule to clarify the scope of the activities that must only be performed by a certified technician (59 FR 41968). During the comment period on the proposed rule, EPA became aware that it also needed to clarify the exception for pre-charged appliances from the sales restriction in light of the other amendments. It was not clear whether pre-charged split systems should be considered appliances, which are excepted, or components, which are not. Although sold as a package, a pre-charged split system is not a fully assembled appliance.

For the reasons given in the October 28, 1994 final rule (59 FR 55912, published November 9, 1994) EPA revised the relevant paragraphs of § 82.154(n) to read ''Effective November 14, 1994, no person may sell or distribute, or offer for sale or distribution, any class I or class II substance for use as a refrigerant to any person unless: * * * (6) The refrigerant is contained in an appliance, and after January 9, 1995, the refrigerant is contained in an appliance with a fully assembled refrigerant circuit * * *.''

After promulgation of the October 28, 1994 rule and within the 60 day judicial review period, Hamilton Home Products (Hamilton) objected to the rule and submitted information to EPA regarding the effects of the sales restriction on pre-charged split systems. Hamilton claims that it was impracticable to raise the objection during the comment period due to lack of notice. While EPA believes its final rule is a logical outgrowth of the notice, the notice itself did not specifically address pre-charged split systems.

Hamilton's petition states that the Quick Connect assembly used in Hamilton's products, which are sold to homeowners, ''enable[s] homeowners to have the installation completed with no refrigerant loss.'' Hamilton further notes that ''in the six (6) years that Hamilton has been distributing ''Quick-Connect'' Split Systems for sale, there have been no returns as a result of any product loss of refrigerant.'' In addition, Hamilton states that consumers who buy split systems themselves, rather than through a contractor, realize significant savings even if the consumer hires a contractor to assemble the refrigerant circuit. Finally, Hamilton argues that loss of the split-system market would represent an extreme economic burden on the company.

EPA has completed a preliminary review of Hamilton's information and is now reconsidering the sales restriction provisions in light of this new information. Hamilton's information indicates that the risk of release of refrigerant during the assembly of quick-connect split systems, and therefore the benefit of restricting sale of split systems, may be small. At the same time, the cost to consumers and to distributors such as Hamilton of restricting sale of split systems may be significant.

III. Issuance of Stay

EPA hereby issues a three-month administrative stay of the effectiveness

of § 82.154(m), including all applicable compliance dates, as this provision applies to refrigerant contained in appliances without fully assembled refrigerant circuits (59 FR 55912). This stay does not affect refrigerant contained in pre-charged parts or bulk containers.[1] EPA will reconsider this rule, as discussed above and, following the notice and comment procedures of section 307(d) of the Clean Air Act, will take appropriate action. If the reconsideration results in restrictions on the sale of class I and class II refrigerants that are stricter than the existing rule, EPA will propose an adequate compliance period from the date of final action on reconsideration. EPA will seek to ensure that the affected parties are not unduly prejudiced by the Agency's reconsideration.

IV. Authority for Stay and Reconsideration

The administrative stay and reconsideration of the rule and associated compliance period announced by this notice are being undertaken pursuant to section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. 7607(d)(7)(B). The issues in the petition for reconsideration were impracticable to raise during the comment period, and are of central relevance to the outcome of this provision of the rule.

V. Proposed Additional Temporary Stay

Because EPA may not be able to complete the reconsideration (including any appropriate regulatory action) of the rule stayed by this notice within the three-month period expressly provided in section 307(d)(7)(B), in the Proposed Rules Section of today's **Federal Register**, EPA proposes a temporary extension of the stay beyond the three months provided, only to the extent necessary to complete reconsideration of the rule in question.

VI. Effective Date

This action will become final on January 27, 1995.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Interstate commerce, Nonessential products, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: January 27, 1995.

Carol M. Browner,

Administrator.

Part 82, chapter I, title 40, of the Code of Federal Regulations, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.154 is amended by adding paragraph (m)(9) to read as follows:

§ 82.154 Prohibitions.

* * * * *

(m) * * *

(9) Rules stayed for reconsideration. Notwithstanding any other provisions of this subpart, the effectiveness of 40 CFR 82.154(m), only as it applies to refrigerant contained in appliances without fully assembled refrigerant circuits, is stayed from January 27, 1995 to April 27, 1995.

* * * * *

[FR Doc. 95–2830 Filed 2–6–95; 8:45 am]

BILLING CODE 6560–50–P

[1] EPA considers a ''part'' to be any component or set of components that makes up less than an appliance. For example, this includes line sets, evaporators, or condensers that are not sold as part of a set from which one can construct a complete split system or other appliance. On the other hand, EPA considers a ''pre-charged split system'' to be a set of parts or components, at least one of which is pre-charged, from which one can assemble a complete split system. This may include a pre-charged condenser, pre-charged evaporator, and pre-charged line set, or simply a pre-charged condenser sold along with an evaporator and line set containing only nitrogen.

federal register

Tuesday
February 7, 1995

Part VII

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5149–4]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed stay.

SUMMARY: In the Rules Section of today's **Federal Register**, EPA is announcing a three-month administrative stay and reconsideration of a provision of the refrigerant recycling regulations promulgated under section 608 of the Clean Air Act that restricts the sale of class I and class II refrigerants contained in appliances without fully assembled refrigerant circuits. That action stays the effectiveness of 40 CFR 82.154 (m), including the applicable compliance date, only as it applies to refrigerant contained in appliances without fully assembled refrigerant circuits.

This notice proposes, pursuant to Clean Air Act section 301(a)(1), 42 U.S.C. 7601(a)(1), to stay temporarily the effectiveness of this provision, and applicable compliance dates, beyond the three-month administrative stay, but only to the extent necessary to complete reconsideration (including any appropriate regulatory action) of the rule in question.

DATES: Written comments on this proposal must be received by March 9, 1995. Requests for a hearing should be submitted to Deborah Ottinger by February 17, 1995. Interested persons may contact the Stratospheric Ozone Hotline at the phone number given below to see if a hearing will be held and the date and location of any hearing. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

ADDRESSES: Written comments on this proposed action should be addressed to Public Docket No. A–92–01 VIII.E, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500. All supporting materials are contained in Docket A–92–01. Dockets may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Deborah Ottinger, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460, (202)233–9200. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: In the rules Section of today's **Federal Register**, EPA announces that pursuant to Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), it is convening a proceeding for reconsideration of a provision of the refrigerant recycling regulations promulgated under section 608 of the Clean Air Act that restricts the sale of class I and class II refrigerants contained in appliances without fully assembled refrigerant circuits (59 FR 55912, November 9, 1994). Readers should refer to that notice for a complete discussion of the background and rules affected. In that notice EPA also announces a three-month stay of that provision during reconsideration. However, if EPA cannot complete reconsideration (including appropriate regulatory action) within the three-month period expressly provided by CAA § 307(d)(7)(B), then it may be appropriate to extend the stay of this provision until EPA completes reconsideration. By this action, EPA proposes a temporary extension of the stay beyond the three-month administrative stay to the extent necessary to complete reconsideration of the rule in question. If EPA takes final action to impose this proposed stay, the stay will extend until the effective date of EPA's final action following reconsideration of this rule.

By this notice EPA hereby proposes, pursuant to Clean Air Act sections 301(a)(1), 42 U.S.C. 7601(a)(1), a temporary stay of the effectiveness of 40 CFR 82.154 (m), including the applicable compliance date, only as it applies to refrigerant contained in appliances without fully assembled refrigerant circuits, promulgated as a final federal rule requiring restrictions on the sale of class I and class II refrigerants (59 FR 55912, November 9, 1994). Please refer to the notice of stay and reconsideration in the Rules section of today's **Federal Register** for EPA's statement of its reasons for staying and reconsidering this provision. Pursuant to the rulemaking procedures set forth in section 307(d) of the Clean Air Act, EPA hereby requests comment on such a proposed stay.

EPA is proposing this temporary stay of the rule and associated compliance date in order to complete reconsideration of this rule, and, following the notice and comment procedures of section 307(d) of the Clean Air Act, take appropriate action. If, after reconsideration of these provisions, EPA determines that it is appropriate to impose restrictions on the sale of class I and class II refrigerants that are stricter than the existing rules, EPA will propose an adequate compliance period from the date of final action on reconsideration. EPA will seek to ensure that the affected parties are not unduly prejudiced by the Agency's reconsideration. EPA expects that any EPA proposal regarding changes to the sales restriction provision and the appropriate compliance period would be subject to the notice and comment procedures of Clean Air Act section 307(d).

List of Subjects in 40 CFR Part 82

Environmental Protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Interstate commerce, Nonessential products, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: January 27, 1995.

Carol M. Browner,

Administrator.

Part 82, chapter I, title 40, of the code of Federal Regulations, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.154 is amended by revising paragraph (m)(9) to read as follows:

§ 82.154 Prohibitions.

* * * * *

(m) * * *

(9) Rules stayed for reconsideration. Notwithstanding any other provisions of this subpart, the effectiveness of 40 CFR 82.154(m), only as it applies to refrigerant contained in appliances without fully assembled refrigerant circuits, is stayed from (Date of Publication of Final Action) until the completion of the reconsideration of 40 CFR 82.154(m).

* * * * *

[FR Doc. 95–2829 Filed 2–6–95; 8:45 am]

BILLING CODE 6560–50–P

federal register

Tuesday
February 7, 1995

Part VIII

Small Business Administration

13 CFR Part 107

Small Business Investment Companies; Accounting and Financial Reporting Standards; Interim Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies; Accounting and Financial Reporting Standards

AGENCY: Small Business Administration.

ACTION: Interim final rule.

SUMMARY: The Small Business Administration (SBA) currently provides accounting guidance for Small Business Investment Companies (SBICs) in two appendices to SBA regulations. These appendices have not been significantly revised since 1986. Subsequent changes in generally accepted accounting principles and in the SBIC program have caused the accounting standards to become outdated and incomplete. This rule updates the standards for accounting and financial reporting by SBICs, as well as the guidelines for Independent Public Accountants (IPAs) performing audits of SBIC financial statements.

The current appendix I includes SBA Form 468, on which SBICs prepare the required Annual Financial Report to SBA. The current appendix II includes the standard chart of accounts for SBICs. This rule deletes both the Form 468 and the chart of accounts from the regulations and consolidates the remaining material in appendices I and II into one appendix.

DATES: This interim final rule is effective February 7, 1995. Written comments on this rule must be received no later than March 9, 1995.

ADDRESSES: Written comments should be sent to Robert D. Stillman, Associate Administrator for Investment, Small Business Administration, Suite 6300, 409 3rd Street SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, Office of Program Support; telephone no. (202) 205–7559.

SUPPLEMENTARY INFORMATION: The accounting standards published by SBA on August 28, 1986 (51 FR 30752) have since undergone only minor revisions. As a result, these standards do not reflect subsequent changes in the SBIC program mandated by the Small Business Investment Act of 1958, as amended (Act), as well as changes in generally accepted accounting principles (GAAP).

This rule updates the accounting standards for the SBIC program, while also reorganizing the material to make information on specific topics easier to find. The accounting, financial reporting and auditing requirements included in the current appendices I and II to Part 107 of SBA regulations are consolidated into a revised appendix I.

Two items currently included in the appendices are deleted: (1) The schedules which constitute SBA Form 468, on which SBICs prepare their Annual Financial Report to SBA, and (2) the standard SBIC chart of accounts. SBA is deleting Form 468 in the interest of consistency, since none of the other standard forms used in the SBIC program is included in Part 107 of the regulations or its appendices. The SBIC chart of accounts represents the type of explanatory material that SBA considers more appropriate for inclusion in a Policy and Procedural Release rather than in Agency regulations. SBA plans to provide updated versions of both the Form 468 and the SBIC chart of accounts after this rule is published. Until then, Licensees should continue to use the existing versions.

While many of the topics covered in this rule should be familiar to users of the current appendices, some are either new or significantly revised, including the following:

1. Independent Auditors' Report—Includes a sample report which satisfies current requirements of the American Institute of Certified Public Accountants.

2. Access to Accountants' Working Papers—States explicitly that SBA, in its discretion, may assign its examiners or other personnel to review accountants' working papers prepared in connection with audits of SBICs. Although this statement does not appear in the existing appendices, it is consistent with SBA's current position that working papers are subject to the requirements concerning records and reports set forth in § 107.1002 of the regulations.

3. Accounting for Income Taxes—Revised in accordance with FASB Statement No. 109, issued in February 1992, which sets forth current GAAP in this area.

4. Interest Income—Provides more specific guidance than before concerning the accounting treatment of delinquent interest. This section sets forth conditions which are deemed to create a presumption that the collection of interest is doubtful; SBICs would have the opportunity to rebut such a presumption. This approach is consistent with the valuation guidelines for interest-bearing securities published in the **Federal Register** on June 2, 1994 (59 FR 28471) and is intended to achieve greater consistency in financial reporting by SBICs.

5. Undistributed Realized Earnings—Provides more detailed definitions of Undistributed Net Realized Earnings and Noncash Gains/Income, the two components of Undistributed Realized Earnings. These definitions are consistent with the interpretations currently used by SBA in practice.

6. Retained Earnings Available for Distribution—Corrects contradictory statements in the current appendices and provides additional detail concerning the computation of this amount, consistent with the definition of Retained Earnings Available for Distribution which was published in the **Federal Register** on April 8, 1994 (59 FR 16898).

7. Preferred Securities Leverage for Section 301(d) Licensees—Provides guidance on accounting for 4% redeemable preferred securities, a topic which is not addressed in the current appendices.

8. Participating Securities—Provides general guidance on financial statement presentation of these new equity-type securities, which may be issued by Licensees pursuant to the final rule published in the **Federal Register** on April 8, 1994. Additional guidance and computer software to perform the various profit and distribution computations associated with Participating Securities will be provided to issuers of such securities.

Compliance With Executive Orders 12866, 12612 and 12778, and the Regulatory Flexibility and Paperwork Reduction Acts

Executive Order 12866 and Regulatory Flexibility Act

This rule will not constitute a significant regulatory action for purposes of Executive Order 12866 because it is not likely to have an annual impact on the national economy of $100 million or more, and, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it will not have a substantial impact on a significant number of small entities.

1. The legal basis for this regulation is section 308(c) of the Small Business Investment Act, 15 U.S.C. 687(c).

2. The potential benefits of this regulation have been set forth in the discussion above, under Supplementary Information.

3. The potential cost of this regulation cannot be quantified or estimated.

4. There are no Federal rules which duplicate, overlap, or conflict with this rule.

5. SBA is not aware of regulatory alternatives that could achieve the same objectives at lower cost.

This rule was not reviewed under Executive Order 12866.

Executive Order 12612

SBA certifies that this regulation has no federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C., ch. 35, SBA hereby certifies that this rule, in and of itself, will impose no new reporting or recordkeeping requirements. This rule prescribes the accounting treatment for certain types of financial transactions which are new to the SBIC program; such treatment, however, is dictated by the substance of these transactions, which has already been established by statute (primarily section 403 of Pub. L. 102–366).

Executive Order 12778

SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of Executive Order 12778.

SBA certifies pursuant to 5 U.S.C. 553(b)(B) that notice and comment in the promulgation of this regulation is impracticable. In this regard, the rule provides necessary accounting guidance to Licensees on recently implemented aspects of the SBIC program (such as Participating Securities and commitments from Institutional Investors). It also revises the guidelines to reflect recent regulatory changes in such areas as valuations, Retained Earnings Available for Distribution, and electronic reporting requirements. Licensees need to have access to this information in order to prepare their year end financial statements in a manner acceptable to SBA.

Other changes to the accounting guidelines are intended to bring them into compliance with generally accepted accounting principles. Some areas of the present guidelines (such as accounting for income taxes and preparation of the Independent Accountant's Report) are so out of date that they have become sources of significant confusion to Licensees.

Finally, this rule provides for the deletion of the present SBA Form 468 from the appendix to Part 107. This will allow SBA to implement a revised 468 (subject to OMB approval) for companies with fiscal years ending on or after December 31, 1994. The revised Form 468 is needed to accommodate reporting related to statutorily mandated programs, and also to provide Licensees with a format in which to show information such as economic impact data, investments in Smaller Concerns, and computations of Regulatory and Leverageable Capital. Without the new Form 468, Licensees will find it difficult to report required financial information to SBA, and SBA will find it difficult to monitor key aspects of their financial condition and regulatory compliance.

Therefore, this rule is being promulgated as an interim final rule, and the public is offered an opportunity to comment on it subsequent to its publication. Comments will be taken into consideration in the ultimate finalization of the rule.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs—business, Small businesses.

For the reasons set forth above, Title 13, Part 107 of the Code of Federal Regulations is amended as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for Part 107 continues to read as follows:

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.;* 15 U.S.C. 687c; 15 U.S.C. 683; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Pub. L. 102–366.

2. Appendix I is revised to read as follows:

Appendix I to Part 107—Accounting Standards and Financial Reporting Requirements for Small Business Investment Companies

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I. Introduction
II. Recordkeeping and Financial Reporting
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C. Annual Financial Report (SBA Form 468)
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III. Selection and Qualification of the Auditor
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I. Introduction

i. This appendix provides guidance to Small Business Investment Companies (SBICs) on accounting policies and procedures, financial reporting to SBA, and selection of an auditor. In addition, this appendix contains guidelines for Independent Public Accountants (IPAs) engaged to conduct annual audits of SBICs. This appendix is not intended to be a comprehensive treatment of all accounting and auditing issues which may arise in an SBIC; instead, its purpose is to cover those topics that are particularly relevant to the SBIC program and which may involve the application of specialized industry practices. Therefore, Licensees and their IPAs should consult other appropriate sources of information as needed. Furthermore, as in any audit, the independent auditor of an SBIC must exercise professional judgment as to the work required to satisfy generally accepted auditing standards.

ii. This appendix contains references to Securities and Exchange Commission (SEC) Rules and Regulations, pronouncements of the Financial Accounting Standards Board (FASB) and its predecessors, publications of the American Institute of Certified Public Accountants (AICPA), and the Internal Revenue Code. Such references are subject to change. It is the responsibility of the Licensee and its advisors to be aware of any regulatory, accounting, or tax code changes that could have an effect on the Licensee.

II. Recordkeeping and Financial Reporting

A. Records and Reports

All books, records, ledgers, and other supporting documents shall be maintained in the English language. See § 107.1002 for specific requirements relating to the retention of records and the filing of reports with SBA.

B. Account Classification

i. Licensees shall maintain their books of account in accordance with the system of

account classification prescribed by SBA. The system has been prescribed to insure that standard books of account are maintained by Licensees and that uniform accounting policies are followed.

ii. Books of account for a management consulting or other subsidiary shall be maintained using accounts compatible with those used by the Licensee.

C. Annual Financial Report (SBA Form 468)

i. The Small Business Administration, under authority granted by the Small Business Investment Act of 1958, as amended (the Act), requires each Licensee to submit an Annual Financial Report as of the close of its fiscal year (see § 107.1002(e)). The Annual Financial Report consists of audited financial statements and supplementary schedules prepared on SBA Form 468, the Independent Public Accountant's report, the notes accompanying the financial statements, and the required certifications.

ii. Preparation of the Annual Financial Report is the responsibility of the Licensee. The Independent Public Accountant's responsibility is to perform an audit and to express an opinion on the financial statements and supplementary schedules based on the audit.

D. Filing of Annual Financial Report

i. The Annual Financial Report on SBA Form 468 shall be submitted to SBA by the Licensee no later than the last day of the third month following the end of the Licensee's fiscal year.

The Licensee shall include in its filing a copy of any transmittal letter, special report, or other communication furnished by its auditor.

ii. For all fiscal years ending on or after June 30, 1994, SBA Form 468 shall be submitted electronically, in accordance with § 107.101(h). All Licensees must use the electronic reporting software provided by SBA for this purpose. A complete filing of Form 468 consists of the following:

(1) The electronic reporting data diskette;

(2) Two printed copies of the financial statements and supplementary schedules;

(3) The signed management certifications which appear on the last page of Form 468 (two copies, one with original signatures);

(4) The IPA's report (two copies, one with original signature); and

(5) The notes to the financial statements (two copies).

E. Portfolio Financing Report (SBA Form 1031)

For each financing of a small concern, Licensees shall submit a Portfolio Financing Report on SBA Form 1031 within 30 days of the closing date of the financing. Such reports shall be prepared using software provided by SBA. Licensees may submit a printout of the form to SBA or transmit it electronically. The report, which is used for program evaluation purposes, provides summary information concerning the amount and terms of the financing, the financial condition of the small concern and the intended use of proceeds, as well as information which will be used to assess the economic impact of the financing.

F. Interim Reports

SBA may require Licensees to submit interim reports containing unaudited financial and/or management information, pursuant to § 107.1002(g). The form and content of such reports may be standardized or determined by SBA on a case-by-case basis. Interim reports shall be submitted in such manner and at such time as SBA shall direct.

III. Selection and Qualification of the Auditor

A. Selection of the Auditor

i. The Licensee's Board of Directors or General Partner is responsible for selecting the Independent Public Accountant (IPA). Within 30 days of its engagement by the Licensee, the Independent Public Accountant shall file with the SBA a completed IPA Certification (CO Form 112) certifying as to its qualifications and independence. The IPA shall be deemed approved unless the Licensee is notified to the contrary by SBA within 90 days after receipt of the IPA Certification.

ii. Submittal of the IPA Certification is required only upon the initial engagement of the IPA. An IPA engaged to audit an SBIC on a recurring basis does not need to submit a new Certification each year.

iii. The Licensee shall notify the SBA in writing of a change in accountants and shall explain the reason for the change.

B. Qualification of the Auditor

Any Certified Public Accountant or Public Accountant, licensed by a regulatory authority of a State or other political subdivision of the United States, may be considered qualified to render an opinion on behalf of a Licensee, provided the following conditions are met: (1) The accountant is independent with respect to the Licensee, and (2) the accountant is duly authorized to practice and is in good standing under the laws of the State or other comparable authority in which so authorized.

C. Independence

i. Independent Public Accountants approved by SBA are to follow the Code of Professional Conduct adopted by the AICPA. In considering questions which may arise concerning the independence of an accountant with respect to a Licensee, the SBA will give appropriate consideration to all relevant circumstances, including evidence bearing on relationships between the accountant and such Licensee or any of its affiliates.

ii. Independence will be considered to be impaired by circumstances including, but not limited to, the following:

1. During the professional engagement, or at the time of expressing an opinion, the accountant or his/her firm:

a. Had or was committed to acquire any direct or indirect financial interest in the Licensee; or

b. Had any joint closely held business investment with the Licensee or any of its officers, directors or principal stockholders, or any general or limited partner, which was material in relation to the net worth of the accountant or his/her firm; or

c. Had any loan to or from the Licensee or any of its officers, directors or principal stockholders, or any general or limited partner.

2. During the period covered by the financial statements during the professional engagement, or at the time of expressing an opinion, the accountant or his/her firm:

a. Was connected with the Licensee as a promoter, underwriter, or voting trustee, a director of officer or in any capacity equivalent to that of a member of management or of an employee; or

b. Was a trustee of any trust or executor or administrator of any estate is such trust or estate had a direct or material indirect financial interest in the Licensee; or was a trustee for any pension or profit-sharing trust of the Licensee; or

c. Rendered bookkeeping services to the Licensee; *Provided however,* that SBA may approve the rendering of bookkeeping services by independent accountants on a case by case basis.

iii. Independent public accountants who audit Licensees which elect to qualify as Regulated Investment Companies should become familiar with Section 600 (''Matters Relating to Independent Accountants'') of the SEC's ''Codification of Financial Reporting Policies.''

IV. Annual Audit

A. Generally Accepted Auditing Standards

The IPA shall perform an audit of the Licensee's financial statements in accordance with generally accepted auditing standards (GAAS) of the AICPA. It is the responsibility of accountants to be informed of any changes in GAAS as they occur. AICPA recommendations for the application of GAAS to audits of the financial statements of investment companies are presented in the publication, ''Audits of Investment Companies'', which is updated periodically. Although this publication deals primarily with companies investing in marketable securities, many of its recommended audit procedures are applicable to SBICs.

B. Independent Auditor.s Report

i. The Independent Auditor's Report shall conform to current AICPA recommendations regarding the application of generally accepted auditing standards to reports on audited financial statements of investment companies. As of the publication date of these regulations, such recommendations are presented in chapter 9 of the AICPA publication, ''Audits of Investment Companies.'' It is the responsibility of accountants to be aware of any changes in generally accepted auditing standards which may affect reporting requirements.

ii. The opinion expressed in the Independent Auditors' Report must refer specifically to the financial statements as they appear in SBA Form 468. An opinion expressed on financial statements prepared for general purposes, or for any specific purpose other than inclusion in SBA Form 468, is not acceptable. The financial statements may be listed by name in the auditor's report, or listed separately and referred to in the report (for example, the report could refer to the financial statements

''as listed on the following page'' or ''as listed in the accompanying index'').

iii. In addition to expressing an opinion on the basic financial statements (the statement of financial position, statement of operations realized and statement of cash flows), the accountant must express an opinion on the supplementary financial information. The supplementary information should be addressed in a separate paragraph of the Independent Auditors' Report. As with the basic financial statements, the supplementary statements and schedules may be listed in the report itself or listed separately and referred to in the report.

iv. Almost all SBICs have Loans and Investments, the value of which must be estimated by the Board of Directors or General Partner(s) in the absence of readily ascertainable market values. The auditor's reports for such SBICs must include an explanatory paragraph addressing portfolio valuations, in which the auditor states whether the valuation procedures are reasonable and the underlying documentation is appropriate. It is no longer acceptable to state that valuations involve subjective judgment which is not susceptible to substantiation by auditing procedures. The paragraph should follow the AICPA's reporting recommendations presented in chapter 9 of ''Audits of Investment Companies''.

V. Sample Report. Following is a sample Independent Auditors' Report which is acceptable to SBA, based on generally accepted auditing standards in effect as of the publication date of these regulations. Any subsequent changes in generally accepted auditing standards which affect reporting requirements must be reflected in the Independent Auditors' Report included in a Licensee's filing of SBA Form 468, regardless of whether or not SBA has published an updated sample report.

Independent Auditors' Report

The Board of Directors of [Licensee]

or

The General Partner(s) and Limited Partners of [Licensee]

We have audited the statement of financial position of [Licensee] as of [closing date of fiscal year] and the related statements of operations realized and cash flows for the year then ended included in SBA Form 468. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of [Licensee] as of [closing date of fiscal year], and the results of its operations and cash flows for the year then ended in conformity with generally accepted accounting principles.

As explained in Note ____, the financial statements include investments valued at $_____ as of [closing date of fiscal year], whose values have been estimated by the [Board of Directors] [General Partner(s)], in the absence of readily ascertainable market values. We have reviewed the procedures used by the [Board of Directors] [General Partner(s)] in arriving at its estimates of value of such investments and have inspected underlying documentation, and, in the circumstances, we believe the procedures are reasonable and the documentation appropriate. However, because of the inherent uncertainty of valuation, those estimated values may differ significantly from the values that would have been used had a ready market for the investments existed, and the differences could be material.

Our audit was made for the purpose of forming an opinion on the basic financial statements taken as a whole. The supplementary information contained in the [analysis of stockholders' equity] [analysis of partners' capital], computations of retained earnings available for distribution and of regulatory and leverageable capital, schedules of commitments and guarantees, and schedules 1 through 7 is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

C. Access to Accountants' Working Papers

At its discretion, SBA may assign its examiners or other personnel to review the accountant's working papers. The audit engagement agreement between the Licensee and the IPA shall provide that the accountant's working papers will be made available for review upon request of the SBA.

D. Accountants' Responsibility for Valuations

i. The investment portfolios of virtually all SBICs contain nonmarketable securities, the values of which must be estimated in the absence of readily ascertainable market values. It is the responsibility of the Board of Directors or the General Partner(s) to estimate the value of such securities in good faith.

ii. The IPA does not act as an appraiser for security values estimated by the Board of Directors or General Partner(s), and is not expected to perform an audit of the portfolio concerns. The IPA's review of a Licensee's portfolio valuations shall address the following questions:

(1) Does the Licensee have a written valuation policy which has been approved by SBA?

(2) Do the Licensee's valuations of its portfolio concerns reflect consistent adherence to its valuation policy?

(3) Has the Licensee documented the basis for its valuations, and does such documentation indicate that a reasonable analysis of available information has been performed?

iii. Based upon the auditing procedures performed, the IPA shall express an opinion as to whether the Licensee's valuation procedures are reasonable and the documentation is appropriate.

iv. SBA requirements concerning portfolio valuations are set forth in Appendix II to Part 107. Appendix II contains recommended valuation techniques for securities of various types, as well as requirements concerning written valuation policy, frequency of valuation, and documentation. A Licensee has the option of adopting the model valuation policy included in Appendix II or obtaining SBA approval of an alternative valuation policy.

v. In addition to the SBA valuation requirements, IPAs may also wish to review SEC Accounting Series Release No. 118 (section 404.03, ''Codification of Financial Reporting Policies'').

vi. The IPA shall test a sufficient number of valuations to support an opinion. Testing of valuations representing less than 50 percent of the value of the entire portfolio shall be presumed to be insufficient to support an opinion.

vii. If the audit discloses that the valuation procedures are inadequate, unreasonable or inconsistent with the Licensee's valuation policy, or that the underlying documentation does not adequately support the valuations, the IPA's opinion shall be modified to indicate a lack of conformity with generally accepted accounting principles. The opinion may be qualified (using the phrase ''except for'') or, depending upon the possibility of a material misstatement, the accountant may determine that an adverse opinion is appropriate.

E. Audit Adjustments

All audit adjustments shall be entered in the Licensee's records before issuance of the Independent Auditors' Report. As a result, the financial statements accompanying the report will agree with the books as adjusted as of the statement date, giving consideration to reclassification of account balances for report purposes. If the adjustments are not so recorded on the Licensee's books, a statement shall be made by the IPA to this effect.

F. Reporting Irregularities

i. *Reporting Irregularities and Illegal Acts to SBA.* An independent public accountant that detects irregularities or illegal acts individually or collectively material to the financial statements, or irregularities or illegal acts relative to SBA programs whether or not material, shall advise management in writing. Management, in turn, shall immediately advise, in writing, the Associate Administrator for Investment, Investment Division, 409 Third Street, SW, Washington, DC 20416. Management, in advising SBA, shall, to the extent practicable, describe the irregularities or illegal acts and their effects on the financial statements and SBA programs. Auditors shall determine whether management reported the irregularities or

illegal acts and, if management fails to report, the auditor shall report to SBA at the address listed above.

ii. *Reporting Internal Control Structure Reportable Conditions.* Reportable conditions in an SBIC's internal control structure shall be reported to SBIC management in writing and SBIC management shall immediately transmit this auditor's report to SBA. Reportable conditions and the manner of reporting such conditions are addressed in AU Section 325, *Codification of Statements on Auditing Standards,* issued by the American Institute of Certified Public Accountants.

G. Detecting Noncompliance With Laws and Regulations

i. Audits of SBICs are performed in accordance with generally accepted auditing standards. These standards require IPAs to design audit procedures which will provide reasonable assurance of detecting instances of noncompliance with applicable laws and regulations that could have a material effect on Licensees' financial statements.

ii. A GAAS audit is neither a substitute for nor a duplication of the examination of an SBIC performed by SBA's examiners. The purpose of such examinations is to provide a comprehensive evaluation of the Licensee's compliance with laws and regulations governing the SBIC program. In contrast, IPAs perform audits in which compliance issues are viewed in the context of the possible effects of noncompliance on the financial statements.

iii. As part of the audit planning process, all IPAs shall be responsible for reviewing and becoming familiar with the laws and regulations applicable to SBICs. Auditors must have sufficient knowledge of such laws and regulations to be able to design appropriate audit procedures for an SBIC, and to recognize instances of noncompliance which may become evident in the course of performing such procedures. The laws and regulations governing the SBIC program include the following:

1. Small Business Investment Act of 1958, as amended (Act). The Act (15 U.S.C. 681 et seq.) provides a statement of the public purpose of the SBIC program and establishes the legislative framework upon which the regulations are based. Licensees are permitted to engage in activities contemplated by the Act, and in no other activities. Provisions of the Act governing SBICs are found primarily in Title III.

2. Code of Federal Regulations, title 13, parts 107 and 121 (13 CFR 107 and 121). Part 107 contains the regulations governing the SBIC program, and auditors should become familiar with this part in its entirety. Part 121 contains small business size regulations which apply to various SBA programs; particular attention should be given to the definition of ''Affiliation'' (§ 121.401) and the SBIC size standard (§ 121.802).

iv. In addition to the Act and regulations themselves, SBA has various materials available which may assist auditors in developing an overall understanding of the SBIC program. These include basic informational brochures about the program; the preambles to final rules published in the **Federal Register,** which provide rationales for and interpretations of new regulations; and a regulatory compliance checklist for small business financings.

v. Preparation for an SBIC audit should include a review of AICPA Statement on Auditing Standards No. 54 (SAS 54). This statement discusses the consideration an auditor should give to the possibility of illegal acts by a client in a financial statement audit performed in accordance with GAAS. As defined in the statement, ''illegal acts'' include violations of laws or government regulations.

vi. In addition to any specific audit procedures deemed necessary which may relate to compliance issues, the IPA shall obtain representation from the Licensee regarding its lawful operation as contemplated by the Act.

V. Accounting Policies and Procedures

A. Generally Accepted Accounting Principles

i. As a general rule, Licensees shall follow generally accepted accounting principles (GAAP) as promulgated by the Financial Accounting Standards Board, its predecessors (such as the Accounting Principles Board), and the AICPA. Sources of information concerning specialized accounting and reporting principles for investment companies include the AICPA publication, ''Audits of Investment Companies'', as well as this accounting guide. In the event of any conflict between this appendix and other sources, this appendix shall govern for purposes of financial reporting to SBA.

ii. Licensees and their IPAs should be aware that some of the specialized GAAP promulgated for investment companies is oriented towards companies which do not share many of the characteristics of SBICs. Appendix A of ''Audits of Investment Companies'' discusses some of the distinctive characteristics of venture capital companies in general, and of SBICs in particular, relative to other types of investment companies. These characteristics may include active rather than passive investment, illiquid portfolios with no public market, relatively long holding periods for investments, and the existence of significant debt in the case of SBICs.

iii. Appendix A includes the following statement: ''Though all venture capital investment companies should prepare their financial statements in conformity with generally accepted accounting principles and are subject to audit as are other investment companies, the statement presentation of some companies may need to be tailored to present the information in a manner most meaningful to their particular group of investors.'' SBA, as the regulator and major creditor of the SBIC industry, has tailored Form 468 to provide financial information in a format which will satisfy SBA's analytical and regulatory requirements. An IPA should exercise professional judgment in determining whether reporting on Form 468 requires a material departure from GAAP for a particular SBIC. If such a departure exists, the Independent Auditors' Report should be modified accordingly.

B. Accrual Basis of Accounting

Books of account shall be maintained on an accrual basis. All accruals are to be entered in the records and posted at the end of the fiscal year, and as of the closing dates of any other fiscal periods to be covered by interim or special financial report to SBA.

C. Reporting Entity

i. For most SBICs, the reporting entity is the Licensee only. Application of this general rule and certain exceptions to it are discussed in this paragraph C.

ii. Investment in Management Services Company. The provisions of § 107.501(c) permit a Licensee to organize a wholly-owned corporation solely to provide management services. The regulation states that reports submitted to SBA shall reflect the consolidated results of the Licensee and its subsidiary.

iii. Investment in Section 301(d) Licensee. Under § 107.712, a Section 301(d) Licensee may be licensed to operate as the subsidiary of one or more Licensee companies (''Participant Licensees''), with or without non-Licensee participation. Each Participant Licensee shall own at least twenty percent of the voting securities of the Section 301(d) Licensee. Such an investment should be reported on the equity method, under the caption ''Investment in 301(d) Licensee'' on the Statement of Financial Position. SBA recognizes that this accounting treatment may constitute a departure from GAAP if the Participant Licensee is the majority owner of the Section 301(d) Licensee. The independent public accountant may wish to express a qualified opinion if the departure is considered material.

iv. Temporary Control. Under certain circumstances, as described in § 107.801, a Licensee may temporarily own more than a 50 percent interest in a small business concern. These investments shall be classified in the appropriate category of Loans and Investments on the Statement of Financial Position (generally, this will be ''Operating Concerns Acquired''), and shall be reported at their fair value. This treatment is consistent with FASB Statement No. 94, which provides an exception to the general rule of consolidating majority-owned subsidiaries when control is likely to be temporary.

D. Fair Value of Loans and Investments

i. In accordance with generally accepted accounting principles for investment companies, SBICs shall report Loans and Investments (presented on lines 1 through 10 of the Statement of Financial Position, page 2 of SBA Form 468) at fair value. To the extent possible, fair value shall be represented by quoted market prices (appropriately discounted for such factors as restrictions on marketability or large holdings relative to daily trading volume). In the absence of quoted market prices, fair value shall be an estimate determined in good faith by the Board of Directors or General Partner(s), based on the application of valuation policies which are consistent with SBA guidelines.

ii. In response to new statutory requirements concerning valuations, SBA

published regulations which included new § 107.101(g) as well as a new Appendix II to Part 107, ''Valuation Guidelines for SBICs''. These new valuation regulations supersede the guidelines previously published in SBA Policy and Procedural Release #2006. Licensees may adopt the model valuation policy included in Appendix II or submit an alternate policy to SBA for approval. In addition to valuation policy, § 107.101(g) and Appendix II also set forth requirements concerning frequency of valuation, documentation, and responsibility for valuations.

iii. The following statement is included in § 107.101(g): ''The boards of directors of corporations and the general partners of partnerships shall have sole responsibility for adopting the Licensee's valuation policy and, pursuant thereto, for valuing Loans and Investments of such Licensee.'' This statement establishes responsibility for all valuations assigned to portfolio securities by the Licensee. SBA, in its capacity as a regulator, retains the same oversight responsibilities over valuations as it does over all other issues affecting regulatory compliance.

iv. Accounting considerations. Licensees shall maintain separate general ledger accounts for the original cost of Loans and Investments and any valuation adjustments thereto. Valuation adjustments shall be in the form of unrealized appreciation or depreciation, respectively representing valuations above or below cost. The sum of cost and unrealized appreciation or depreciation represents fair value.

v. Unrealized appreciation may be recognized on equity investments and debt investments which contain equity features, such as options or warrants. Recognition of unrealized appreciation on loans is not permitted under SBA's valuation guidelines.

vi. A general allowance for losses on Loans and Investments is not utilized in fair value accounting. Rather, the Licensee's Board of Directors or General Partner(s) shall value Loans and Investments individually as of the financial statement date. This requirement applies equally to Licensees engaged in equity investing and in lending. A Licensee which is primarily engaged in lending, however, may also identify additional anticipated losses on the basis of its portfolio history, industry experience, or other relevant factors; such amounts may be reported in the Statement of Financial Position of SBA Form 468 as additional unrealized depreciation not associated with specific portfolio assets.

vii. An appropriate tax provision shall be established for net unrealized appreciation on securities held by taxable corporate Licensees. There may also be circumstances in which a tax benefit for net unrealized depreciation should be recognized, depending on the likelihood of realization. Such a provision or benefit shall be determined in accordance with FASB Statement No. 109, ''Accounting for Income Taxes''.

E. Interest Income

i. Interest income shall be accrued according to the terms of interest bearing loans and investments. Premiums or discounts associated with debt instruments represent adjustments to interest income which shall be amortized over the stated life of the debt instrument.

ii. *Collection in Doubt.* Interest income shall not be recognized if collection is doubtful. Licensees may choose to handle doubtful interest receivable in either of two ways: (1) Make no entry to accrue interest in the regular general ledger accounts and track interest due in a memorandum account; or (2) accrue the interest and provide a 100% reserve (debit provision for loss on receivables, credit allowance for uncollectible interest receivable). The method used by the Licensee must be disclosed in the footnote to the financial statements summarizing significant accounting policies.

iii. Collection of interest is presumed to be in doubt when either or both of the following conditions occur: (1) The small concern is in bankruptcy, insolvent, or there is substantial doubt about its ability to continue as a going concern; or (2) the small concern is in default more than 120 days to the Licensee. Licensees may rebut this presumption by providing evidence of collectibility satisfactory to SBA. Such evidence may include the existence of collateral, the value of which has been verified through an appraisal by an independent professional appraiser acceptable to SBA. Such an appraisal shall be at liquidation value (net of liquidation costs) and shall have been performed within the 12 months immediately preceding the valuation date. In considering whether collateral provides an appropriate basis for valuations, SBA will consider the nature of a Licensee's claim on the collateral (for example, whether other parties have security interests senior to the Licensee's, or whether the Licensee's security interest in an asset is perfected). SBA will also review the Licensee's operating history for evidence concerning its willingness and ability to pursue available remedies (including foreclosure) in default situations.

iv. The two conditions cited in the preceding paragraph are not the only possible indicators of a collection problem. Even if neither condition is present, other circumstances may cause the Board of Directors or General Partner(s) to conclude that collection is in doubt.

v. When interest income is not being recorded on a loan or debt security, the Licensee shall so note in its Annual Financial Report on Form 468. The note should include the date at which interest accrual was discontinued. In addition, the total amount of interest not accrued because collection is in doubt shall be disclosed in a footnote to the financial statements.

vi. When the accrual of interest is discontinued, the full amount of any interest receivable recorded in prior periods must be either reversed or fully reserved.

F. Dividend Income

i. Dividend income from investments in common or preferred stock is normally recognized as of the date of record (the date at which official ownership of shares is determined for the purpose of paying the dividend). Dividend income shall not be accrued in the absence of a dividend declaration by the small concern's board of directors. This treatment shall apply to all dividends, including dividends on redeemable preferred stock or similar securities with some debt-like characteristics.

ii. Any cash distribution which is identified as a return of capital shall not be recognized as income. Such distributions are a reduction in the cost basis of an investment.

iii. Stock splits and stock dividends (in stock of the same class as that owned) are not income because the Licensee's proportional interest in the small business concern does not change as a result of such events. The cost of the shares previously held should be allocated, on a rational basis, to the number of shares held after the split or dividend. Similarly, when stock rights are received, a portion of the cost basis of the related investment may be allocated to the rights.

iv. Dividends in kind are recorded as income at the fair value of the property received. Such income should be classified as Non-Cash Gains/Income in the Statement of Financial Position of SBA Form 468. If the Licensee has a choice between a dividend in cash or in kind, and chooses to receive an in-kind dividend, the fair value is deemed to be the amount of cash that could have been received.

G. Profit Participation in Small Concerns

Participation in the profits of a loan- or debt-financed small business concern represents additional interest income to the Licensee. For regulatory purposes, any profits received must be included in the calculation of the Cost of Money.

H. Fees Charged to Small Concerns

i. Income from nonrefundable fees charged by SBICs in connection with the origination of loans shall be deferred and amortized over the term of the financing, regardless of whether or not such fees are included in the Cost of Money. Licensees should be aware of the provisions set forth in § 107.402 (d) through (g) concerning permissible fees, prepayment penalties, obligations of SBICs to provide certain fee-related information in writing to small concerns, and circumstances in which SBICs may be required to refund fees paid by small concerns.

ii. If a Licensee has made a commitment for a financing which does not take place, any processing fees which the Licensee is permitted to retain pursuant to § 107.402(d) shall be recognized as income upon expiration of the commitment.

I. Accounting for Investments in Flow-Through Entities

i. On SBA Form 468, in the Statement of Operations Realized, Licensees are asked to report income (loss) from investments in partnerships or other types of flow-through entities. This category of investments is intended to include any entity which allocates its income and losses to its equity holders and is not taxed at the entity level. Any such investments made by SBICs would most commonly be in limited partnerships.

ii. For investments of this type, original cost is adjusted at the end of each accounting

period to recognize the investor's share of earnings or losses of the investee. The amount of the adjustment is included in the net income of the investor. Distributions received from an investee reduce the carrying amount of the investment.

iii. It should be noted that the steps in the preceding paragraph determine only the cost basis of investments. Any investment included in an SBIC's portfolio of Loans and Investments still must be valued by the Board of Directors or General Partner(s) and presented at fair value in the Licensee's financial statements.

iv. Any income from investment in flow-through entities must be included initially in Non-cash Gains/Income, as discussed in paragraph X of this section V. When a Licensee actually receives a distribution from the investee, the amount received should be reclassified from Non-cash Gains/Income to Undistributed Net Realized Earnings.

J. Equity Method of Accounting

i. The only type of investment which shall be accounted for under the equity method is an investment in the common stock of a Section 301(d) Licensee, as permitted under § 107.712. Since a Licensee investing in a Section 301(d) Licensee is required to have an ownership interest of at least 20 percent, use of the equity method will normally be appropriate. Under the equity method, original cost is adjusted at the end of each accounting period to recognize the investor's share of earnings or losses of the investee. The amount of the adjustment is included in the net income of the investor. Dividends or distributions received from an investee reduce the carrying amount of the investment.

ii. Licensee should not use the equity method to account for investments in the common stock of small business concerns, even if a Licensee's ownership interest exceeds 20 percent. SBICs, whether or not registered under the Investment Company Act of 1940, are exempt from the usual requirements concerning use of the equity method because they account for investments at fair value (see APB Opinion No. 18, ''The Equity Method of Accounting for Investments in Common Stock'', paragraph 2).

K. Accounting for Income Taxes

i. In February 1992, the FASB issued Statement No. 109, ''Accounting for Income Taxes''. The Statement is effective for fiscal years beginning after December 15, 1992. Statement No. 109 supersedes FASB Statement No. 96, as well as APB Opinion No. 11, which many companies continued to follow during the period when adoption of Statement No. 96 was optional.

ii. Statement No. 109 establishes the following basic principles to be applied in accounting for income taxes at the date of financial statements:

(1) A current tax liability or asset is recognized for the estimated taxes payable or refundable on tax returns for the current period.

(2) A deferred tax liability is recognized for the estimated future tax effects of ''taxable temporary differences'' (events which will result in future taxes payable).

(3) A deferred tax asset is recognized for the estimated future tax effects of ''deductible temporary differences'' (events which will result in future tax savings), operating loss carryforwards, and tax credit carryforwards.

(4) A valuation allowance is recognized to reduce the deferred tax asset to the extent that the tax benefits are not expected to be realized.

(5) Both current and deferred tax liabilities and assets are based on provisions of the enacted tax law; the effects of future changes in tax laws or rates are not anticipated.

iii. The ability to recognize deferred tax assets under certain circumstances represents a significant change from earlier pronouncements. Licensees which recognize deferred tax assets should take careful note of the requirements of Statement No. 109 in determining whether it is ''more likely than not'' that such assets will be realized. Generally, application of the ''more likely than not'' standard means that when ''negative evidence'' exists which suggests that benefits will not be realized, there must be sufficient ''positive evidence'' to outweigh it; otherwise, a valuation allowance is required.

iv. Because SBICs must report their Loans and Investments at value, many Licensees will find it necessary to apply the criteria of Statement No. 109 in determining whether to recognize deferred tax liabilities or assets reflecting the estimated future tax effects of unrealized gains or losses. Both unrealized gains and unrealized losses are temporary differences as defined in the statement. Previously, SBA required Licensees with net unrealized appreciation to record a provision for estimated future taxes, but did not permit Licensees with net unrealized depreciation to record a corresponding benefit. In accordance with current GAAP, such a benefit may now be recorded.

v. The reporting of unrealized gains and losses and the related tax effects must be consistent. Since SBIC program accounting guidelines require that changes in unrealized appreciation or depreciation be excluded from net income (that is, they do not appear in the statement of operations realized), it follows that the related tax effects must be similarly excluded. Both elements, however, are included in ''comprehensive income'' (that is, they affect the equity of Licensees). This is reflected in the presentation of net unrealized appreciation or depreciation, net of estimated future tax effects, as Unrealized Gain (Loss) on Securities Held in the Capital section of the Statement of Financial Position.

L. Realized Gain (Loss) on Investments

i. Realized gain or loss on investment shall be recorded by Licensees in accordance with generally accepted accounting principles.

ii. Capital gains realized on the sale of securities shall be recognized provided that collection of proceeds is reasonably assured and the earnings process is complete. For the earnings process to be considered complete, the Licensee must have no further obligation related to the transaction. Any transaction with recourse upon the Licensee or involving any understanding, agreement, option, privilege, or other rights to repurchase by and/or resell to the Licensee shall not be considered as a final transaction. Transactions which do not meet the criteria in this paragraph L for current recognition of gains shall be accounted for using an appropriate alternate method, such as the installment method or the cost recovery method. Under the installment method, a portion of the gain is recognized with each installment payment received; under the cost recovery method, no gain is recognized until the full amount of the seller's cost has been collected.

iii. Capital losses may arise not only from sales, but also from write-offs or charge-offs of securities held (the two terms are generally used synonymously in this appendix; in contrast, the term ''write-down'' refers to the recording of unrealized depreciation). Write-offs may be either full or partial. Writing off an investment, in comparison with recording unrealized depreciation, represents a stronger judgment concerning loss of value. However, it is not necessary to have a definitive event (such as bankruptcy of the small business concern) in order to write off an investment. Generally accepted accounting principles call for the recognition of loss when it becomes evident that previously recognized future economic benefits of an asset have been reduced or eliminated.

iv. A Licensee may also realize capital gains or losses in connection with the exchange or non-reciprocal transfer of securities. The treatment of such transactions is governed by APB Opinion No. 29, ''Accounting for Nonmonetary Transactions'', and is discussed in paragraph M of this section V.

v. If a Licensee acquires shares of an investee's stock (of the same class) at different times and prices, SBA requires that the average cost method be used to determine the cost of such securities when sold.

vi. When a gain or loss is realized, whether as a result of the sale, other disposal or write-off of an asset, any previously recorded unrealized appreciation or depreciation associated with the asset shall be reversed.

vii. Non-cash Gains. When a Licensee realizes capital gains, but does not receive cash at the time of the transaction, SBA requires Licensees to segregate such ''Non-cash Gains'' from other components of Undistributed Realized Earnings, until such time as any non-cash assets received are converted to cash. Non-cash Gains are realized earnings which have been recognized in the Licensee's Statement of Operations. They are segregated in the Statement of Financial Position only because they are subject to certain restrictions under SBA regulations, primarily concerning distributions. In effect, Non-cash Gains can be considered a type of restricted retained earnings. For further information on Non-cash Gains, see ''Undistributed Realized Earnings'' in paragraph X of this section V.

M. Nonmonetary Transactions

i. Licensees should follow APB Opinion No. 29 to the extent applicable when accounting for nonmonetary transactions. Such transactions include both reciprocal and non-reciprocal transfers of nonmonetary assets or liabilities between the Licensee and

another entity or person, or between the Licensee and its stockholders or partners. The cost of an asset acquired in a nonmonetary transaction is the fair value of the asset relinquished to obtain it, and a gain or loss should be recognized on the exchange. Any gain recognized shall be reported on SBA Form 468 as a Non-cash Gain.

ii. Nonmonetary transactions in which the Licensee exchanges certain securities or assets for other securities or assets will result in the realization of gain or loss for financial reporting purposes, regardless of whether such transactions are taxable or non-taxable exchanges.

iii. Fair value of a nonmonetary asset transferred to or from a Licensee should be determined by referring to estimated realizable values in cash transactions of the same or similar quoted market prices, independent appraisals, estimated fair values of assets, or other available evidence.

iv. In cases where the values are not clearly determinable, assets received will have the same accounting basis as the assets transferred.

v. Dividends In Kind and Spin-offs. Dividends or other distributions in kind, consisting of shares of a small business concern or other securities, are nonreciprocal transfers of non-monetary assets from a Licensee to its owners. Such transfers shall be reported at the fair value of the assets distributed.

N. Interest, Notes and Accounts Receivable

i. Interest Receivable. In reporting interest receivable, Licensees should make certain that amounts are properly classified between current and noncurrent assets. Current assets are those providing benefits which are expected to be realized within the next fiscal year.

ii. Interest receivable is reported net of an allowance for uncollectible amounts, which represents a conservative estimate of probable losses. The allowance shall be adjusted, at a minimum, as of the end of the fiscal year. Interim adjustment to reflect changes in the status of receivables is strongly encouraged. See paragraph E (''Interest Income'') of this section V for guidelines to be used by SBICs in evaluating the collectibility of interest income.

iii. Expense is recognized whenever the allowance for uncollectible amounts is adjusted to reflect a change in the valuation of interest receivable. An actual write-off of interest receivable is normally recorded as a reduction of the receivable and a corresponding reduction of the allowance, and does not result in the recognition of expense.

iv. The total expense recognized during a fiscal year with respect to uncollectible interest receivable appears on Form 468 in the Statement of Operations Realized, under the caption, ''Provision for Losses on Accounts Receivable.''

v. Requirements concerning the recording of interest receivable and the related interest income appear in this appendix under the heading, ''Interest Income.''

vi. Notes and Accounts Receivable. The accounting treatment of notes receivable and accounts receivable shall be governed by the same rules which apply to interest receivable, as previously described in this paragraph N.

vii. Notes Receivable represents the unpaid balance of miscellaneous notes which do not fit into any category of Loans and Investments. It does not include notes representing amounts due from purchasers of assets acquired in liquidation of portfolio securities, which are presented separately in the Loans and Investments section of the Statement of Financial Position on Form 468.

viii. Accounts Receivable represents amounts due on account, such as for management consulting, appraisal, or other services rendered. Accounts Receivable also includes accrued fees for services rendered in connection with participations or joint financings and accrued fees receivable from small concerns.

O. Compensating Balances

i. In those instances where idle funds are encumbered or are required to be maintained at a financial institution as compensating balances in connection with debt of the SBIC, the nature of the encumbrance and the terms of any applicable agreements shall be disclosed in a footnote to the financial statements.

ii. Depending upon the specific terms, it may be necessary to classify idle funds subject to a compensating balance agreement as non-current assets.

P. Organization Costs

i. Organization costs are incurred in the formation of an SBIC and may include such items as legal fees, incorporation and various other fees imposed by states, and promotional expenditures. SBICs should amortize organization costs over a term of not more than five years.

ii. If an SBIC incurs organization costs which are deemed by SBA to be unreasonable or excessive, such costs must be excluded from Regulatory Capital as long as they are carried as an asset by the SBIC. Once such costs have been amortized to expense, the regulatory deduction is no longer required. No deduction is ever required for organization costs accepted by SBA as reasonable.

iii. Operating losses incurred by a company prior to licensing as an SBIC are not considered organization costs and shall not be capitalized.

Q. Contingent Liabilities

i. Licensees shall accrue or disclose contingent liabilities, as appropriate, in accordance with the requirements of FASB Statement No. 5. Such requirements vary depending upon whether the likelihood of realizing a loss is evaluated as ''probable'', ''reasonably possible'', or ''remote''. Contingent liabilities may arise from such transactions or events as the issuance of guarantees, pending litigation, and the sale of portfolio interests with recourse.

ii. In addition to the reporting requirements of FASB Statement No. 5, Licensees and their IPAs should be familiar with SBA's requirements for reporting of certain contingencies. These additional requirements include the completion of the Schedule of Guarantees (include in SBA Form 468) by Licensees which have guaranteed the obligations of small concerns and the filing of a litigation report by Licensees which become a party to litigation (see § 107.1002(f)).

iii. A Licensee which has sold portfolio securities (or any interest therein) on a recourse basis should be aware that any amounts for which it may be contingently liable must be treated as investments in small concerns for overline purposes (see §§ 107.707(b) and 107.303).

R. Transactions with Related Parties

i. Licensees shall disclose material transactions with related parties in accordance with FASB Statement No. 57. In applying the requirements of this pronouncement to SBIC financial statements, a Licensee shall consider the term ''related party'' to encompass any person or entity which is an Associate as defined in § 107.3. Footnote disclosures of related party transactions shall include the name of the related party as well as the nature of the relationship.

ii. Licensees and their IPAs should be aware that certain transactions involving Associates are either prohibited by SBA regulations or permitted only with SBA's prior written approval. See § 107.903 (''Conflicts of Interest'').

S. Leverage—Debentures Guaranteed or Purchased by SBA

i. SBICs which qualify on the basis of financial soundness and regulatory compliance are eligible to receive long-term leverage in the form of five-year or ten-year debentures guaranteed (or, in some cases, purchased directly) by SBA. Debentures with an interest rate subsidy of three percentage points for the first five years of their term are available to Section 301(d) Licensees only.

ii. Debentures, net of current maturities, shall be classified in the financial statements as long-term debt, and shall be shown at face value in the Statement of Financial Position of Form 468.

iii. Licensees issuing debentures pay a user fee (currently 2 percent of the amount borrowed) and an underwriter's fee (currently .625 percent). These fees shall be capitalized and amortized over the life of the debenture. Generally accepted accounting principles normally require that debt be reported net of the unamortized portion of related fees; Licensees, however, should report the unamortized fees as an asset and the debentures at their gross amount. SBA does not believe that this treatment will constitute a material departure from GAAP for most Licensees.

iv. Debentures are subject to the terms and conditions set forth in SBA regulations. In most respects, debentures incorporate by reference the regulations as amended from time to time. With respect to events of default, however, debentures incorporate those events and associated remedies in existence at the date of issue. Thus, debentures issued at different times may be subject to different default provisions. Events of default include both financial and regulatory conditions, which may result in

the entire indebtedness of the Licensee being declared due and payable.

v. If SBA decides to demand payment in accordance with the acceleration provisions of the debentures, such demand ordinarily will be presented in a letter specifying the violations that have occurred.

T. Leverage—Participating Securities Guaranteed by SBA

i. Participating Securities are redeemable preferred equity-type securities. Issuers are required to make equity investments in an amount at least equal to the amount of Participating Securities issued (see the defined term ''Equity Capital Investments'' in § 107.3 for the specific categories of investments permitted). The structure, terms and conditions of the Participating Security are set forth in detail in §§ 107.240 through 107.247.

ii. The Act authorizes SBA to guarantee Participating Securities issued in the form of limited partnership interests, preferred stock, or debentures with interest payable only to the extent of earnings. Currently, the only form of Participating Security for which documentation has been created is a limited partnership interest to be held by SBA. Other forms will be made available in the future as required to meet the needs of Licensees.

iii. The Participating Security has the following significant features:

(1) Licensees issue Participating Securities to SBA, which in turn assigns certain of its interests in such securities to a pool. Investors (known as ''certificate holders'') then purchase interests in the pool through a public offering. Each Licensee issuing Participating Securities pays a cumulative preferred return (''Prioritized Payments'') which is passed through to the certificate holders, but such payments are contingent upon the profitability of the issuer. Any Prioritized Payments which exceed the cumulative earnings of a Licensee will be paid to the certificate holders by SBA as guarantor. The Licensee, however, will be ineligible to make any other profit distributions until it has paid all of its Prioritized Payments (including reimbursement of amounts previously advanced on its behalf by SBA).

(2) In consideration for SBA's guarantee, profitable Licensees must pay a percentage of earnings to SBA as ''Profit Participation''. SBA's profit percentage (the ''Profit Participation Rate'') depends upon the Licensee's ratio of Participating Securities issued to Leverageable Capital, as well as the interest rate on 10-year Treasury securities at the time each Participating Security was issued.

(3) Except for Prioritized Payments, SBA (the ''Preferred Limited Partner'') and the Licensee's private limited partners receive distributions at the same time, allocated in accordance with legislative formulas.

(4) The securities have a 10-year term, at the end of which redemption is mandatory. It is expected, however, that most Participating Securities will be redeemed, at least in part, before the mandatory redemption date.

iv. Participating Securities will be reported in a ''Redeemable Securities'' section of the Statement of Financial Position on SBA Form 468. The amount of Participating Securities issued represents the capital contribution of SBA, the Preferred Limited Partner. SBA's capital account will increase by the amount of any Prioritized Payments or Profit Participation which the License becomes obligated to pay on the basis of profits earned, and will decrease as distributions are actually received. Distributions to SBA will be applied as Prioritized Payments, Profit Participation, or redemptions of outstanding leverage in accordance with §§ 107.243 through 107.245.

v. In a footnote to the financial statements, the Licensee shall provide a description of the terms of the Participating Securities issued, including disclosure of the mandatory redemption date. If there are any ''accumulated'' Prioritized Payments (representing a contingency for amounts paid to certificate holders by SBA on the Licensee's behalf, which the Licensee must repay as profits are realized), a footnote shall provide the dollar amount of the accumulation for the current fiscal year period and the aggregate amount accumulated.

vi. For companies licensed after March 31, 1993, the obligation to pay Prioritized Payments and Profit Participation is conditioned upon the profitability of the Licensee as a whole. Those licensed earlier, however, may be permitted to exclude profits attributable to portfolio assets in existence as of March 31, 1993.

vii. Because of the complexity of the required profit and distribution computations, all Licensees issuing Participating Securities shall use SBA-provided software to perform such computations.

U. Preferred Securities Leverage for Section 301(d) Licensees

i. *Four Percent Preferred Securities.* Section 301(d) Licensees which qualify on the basis of financial soundness and regulatory compliance are eligible to receive long-term leverage by selling 4% redeemable preferred securities (either preferred stock or a preferred limited partnership interest) directly to SBA. Such securities must be redeemed not later than 15 years from the date of issuance, at which time any unpaid portion of the preferred and cumulative 4% return due to SBA must also be paid. No distributions may be made to any investor other than SBA unless the Licensee is current on all amounts due SBA.

ii. Like Participating Securities, 4% preferred securities will be reported in the ''Redeemable Securities'' section of the Statement of Financial Position on SBA Form 468. Unlike Participating Securities, however, which specifically provide for the extinguishment of any obligation to pay Prioritized Payments in excess of the issuer's profits, the legislation which authorized 4% preferred securities does not set forth any circumstances in which the 4% return would be extinguished.

iii. The initial carrying amount of 4% preferred securities shall be the purchase price paid by SBA at the date of issue (for 4% preferred stock issued by corporate Licensees, this amount must be equal to the par value). At the end of each accounting period, the carrying amount shall be increased by the amount of any 4% returns not currently paid or declared. A breakdown of the total carrying amount, showing separately the purchase price of 4% preferred securities and the accrued 4% returns in arrears, is reported on the Statement of Financial Position.

iv. Cumulative 4% returns in arrears must be recorded as a charge against Undistributed Net Realized Earnings. For some Section 301(d) Licensees, these amounts may exceed Undistributed Net Realized Earnings. Ordinarily, a company in these circumstances would reduce paid-in capital or partners' contributed capital by the amount of the excess. Because such treatment would reduce Regulatory Capital, however, it could result in certain unintended regulatory compliance problems for Licensees (such as overline violations). Therefore, on SBA Form 468, Licensees shall report all 4% returns in arrears as a reduction of Undistributed Net Realized Earnings, even though this treatment may result in a deficit, and shall not reduce paid-in capital or partners' contributed capital.

v. Because Section 301(d) Licensees must charge the 4% return to Undistributed Net Realized Earnings whether it is paid or not, any unpaid amounts must be added back in order to determine a Licensee's Retained Earnings Available for Distribution. Unpaid 4% returns must be paid in full from Retained Earnings Available for Distribution before any other distributions can be made.

vi. In a footnote to the financial statements, the Licensee must provide a description of the terms of the preferred securities issue, including disclosure of the mandatory redemption date. If there are 4% returns in arrears, a footnote shall provide the dollar amount of the arrearage for the current fiscal period, the aggregate amount in arrears, and the number of periods in arrears.

vii. *Three Percent Preferred Stock.* Before November 21, 1989, corporate Section 301(d) Licensees were eligible to receive long-term leverage by issuing 3% cumulative preferred stock to SBA at par value. Three percent preferred stock has no mandatory redemption date and is classified as equity for financial reporting purposes. However, it shall not be treated as Regulatory or Leverageable Capital for any purpose.

viii. No dividends may be paid to any investor other than SBA unless the Licensee is current on all 3% preferred dividends due SBA.

ix. *Three Percent Preferred Stock Repurchase Program.* SBA published in the **Federal Register** a notice announcing the implementation of a program under which Section 301(d) Licensees may apply to repurchase their outstanding 3% preferred stock from SBA at a set price of 35 percent of par value. Specific guidelines governing repurchase transactions are set forth in SBA Policy and Procedural Release #2021, issued June 14, 1994. Licensees will have three years from the date of the Policy and Procedural Release during which to apply for and complete the Repurchase Program.

x. Participants in the Repurchase Program will receive detailed accounting guidance

from SBA at the time their repurchases are completed. In general, when a company repurchases its own stock at a discount (that is, for less than the original issue price), it records an increase in paid-in surplus equal to the discount. Section 301(d) Licensees will follow this general rule, but the increase in surplus attributable to the repurchase must be separately identified (as ''Restricted Contributed Capital Surplus'') on SBA Form 468 because it is subject to certain restrictions for regulatory purposes.

V. Contributed Capital and Committed Capital

i. In general, ''contributed capital'' refers to funds contributed to a Licensee by private investors (although such funds may also include ''qualified nonprivate funds'' from State and local government sources, in accordance with the definition of Private Capital in § 107.3). Although some Licensees may obtain financial assistance through the issuance of equity-type securities purchased or guaranteed by SBA, such securities are reported on Form 468 as SBA leverage rather than as contributed capital. The contributed capital of a corporate Licensee consists of the par value of its capital stock (which may consist of one or more classes or stock) and its aggregate paid-in surplus, excluding Restricted Contributed Capital Surplus obtained through the repurchase of 3 percent preferred stock from SBA. For a partnership Licensee, contributed capital consists of proceeds from the sale of partnership interests to the general partners and the limited partners (other than SBA). For all Licensees, contributed capital shall be recorded net of expenses incurred to obtain the capital.

ii. Capital contributed to a Licensee in the form of non-cash assets requires the prior approval of SBA, unless such assets are physical assets to be currently employed by the Licensee in its operations (see § 107.705). Equity securities issued in exchange for approved non-cash assets will be excluded from a Licensee's Regulatory Capital until the assets received are converted to cash.

iii. *Commitments from Investors.* In addition to its contributed capital, a Licensee may have outstanding commitments from individuals or entities to invest additional funds in the Licensee at a future date. Binding commitments from Institutional Investors (as defined in § 107.3) may be included in the Licensee's Regulatory Capital; the principal effects of such inclusion are to increase the Licensee's overline limitation (See § 107.303) and to increase the capital base used in the computation of Capital Impairment (see § 107.210(h)).

iv. Unfunded commitments from investors shall not be reported as part of the contributed capital of the Licensee on SBA Form 468. The amount of such commitments shall be disclosed in a footnote to the financial statements, which shall separately identify commitments included in Regulatory Capital and any other commitments outstanding. Any significant terms and conditions associated with investor commitments, including the timing of anticipated drawdowns if known, shall also be disclosed.

W. Unrealized Gain (Loss) on Securities Held

i. Unrealized Gain (Loss) on Securities Held results from the valuation of Loans and Investments by the Board of Directors or General Partner(s). Unrealized appreciation is recognized for valuations above cost and unrealized depreciation is recognized for valuations below cost. Unrealized gain or loss is the aggregate amount obtained by summing the unrealized appreciation or depreciation of all Loans and Investments, net of any estimated future income tax effects.

ii. Unlike some other types of investment companies, such as mutual funds, SBICs do not report changes in net unrealized appreciation or depreciation in the Statement of Operations. Instead, such changes are recorded directly in the capital account, Unrealized Gain (Loss) on Securities Held. SBA requires this treatment for two reasons: (1) because most securities held by SBICs have no readily ascertainable market values and valuation of such securities is highly subjective, SBA prefers that reported net income not be influenced by changes in valuation; and (2) segregation of unrealized gains and losses on the Statement of Financial Position makes it easier to perform certain computations required by SBA regulations.

X. Undistributed Realized Earnings

i. Undistributed Realized Earnings is the defined term used in SBA regulations to represent the earned capital of a Licensee. In general, Undistributed Realized Earnings are the cumulative balance of periodic net investment income (loss) and realized gain (loss) on investments, less dividends or distributions (at times, an SBIC may need to make an adjustment which is not reflected in this general formula). To accommodate regulatory requirements, two components of Undistributed Realized Earnings are presented separately in the financial statements:

ii. Non-cash Gains/Income consists of (1) gains on the disposition of securities realized in the form of notes, securities or any other non-cash assets; (2) income from investments in pass-through entities (such as limited partnerships) which has not been distributed to the Licensee; (3) dividends received in kind; (4) interest income accrued on deferred interest notes, zero coupon bonds or similar instruments; and (5) delinquent accrued interest converted into a new note or added to the principal of an existing note (the amount of such interest which is included in Undistributed Net Realized Earnings must be reclassified to Non-cash Gains/Income).

iii. Non-cash Gains/Income represents realized earnings of an SBIC which have been recognized in the Statement of Operations. Such earnings are segregated in the Statement of Financial Position only because they are subject to certain restrictions under SBA regulations, primarily concerning distributions. In effect, Non-cash Gains/Income can be considered a type of restricted retained earnings.

iv. Classification of capital gains or other income as non-cash items is intended to be temporary. As a Licensee receives payments on a note, receives distributions from a partnership in which it has invested, sells shares of stock received as a dividend or otherwise converts non-cash assets to cash, amounts initially reported as Non-cash Gains/Income shall be transferred to Undistributed Net Realized Earnings.

v. *Undistributed Net Realized Earnings* is a residual, computed by subtracting the balance in Non-cash Gains/Income from Undistributed Realized Earnings. If an SBIC holds treasury stock, Undistributed Net Realized Earnings are restricted (i.e., not available for distribution) to the extent of the cost of such treasury stock.

Y. Retained Earnings Available for Distribution

i. Retained Earnings Available for Distribution represents, in most cases, the maximum amount that an SBIC may distribute to investors. For SBICs which have received financial assistance from SBA in a form other than debentures, the term ''investors'' encompasses SBA as well as private investors.

ii. In some instances, SBA is entitled to receive payments from Retained Earnings Available for Distribution on a priority basis, and must receive these payments before any amounts may be distributed to investors or transferred to private capital. Dividends (or equivalent distributions) on 4% preferred securities issued by Section 301(d) Licensees are examples of such payments. In other cases, SBA may be entitled to receive payments from Retained Earnings Available for Distribution in proportion to any distributions received by private investors. Profit participations on Participating Securities are an example of this type of payment.

iii. For most Licensees, Retained Earnings Available for Distribution is computed by subtracting unrealized depreciation on Loans and Investments from Undistributed Net Realized Earnings (excluding any restricted amounts). Unrealized depreciation and unrealized appreciation are not netted in this computation.

iv. For Section 301(d) Licensees which have issued 4% preferred securities, there is one additional element in the computation. Because 4% distributions in arrears are accrued and charged against Undistributed Net Realized Earnings, they must be added back to determine Retained Earnings Available for Distribution.

v. Although partnerships do not ordinarily report retained earnings as such, partnership SBICs must compute Retained Earnings Available for Distribution in the same manner as corporate SBICs. Further discussion of the equity classifications used by partnership SBICs in financial reporting to SBA appears in paragraph Z (''Partnership Capital Accounts'') of this section V.

vi. If a Licensee has negative Retained Earnings Available for Distribution as of the end of a fiscal period, and has made or declared a distribution during such period, the distribution may have violated SBA regulations. It is the Licensee's responsibility to show, to the satisfaction of SBA, that it had sufficient Retained Earnings Available for Distribution at the time the distribution was made. In particular, a Licensee should

consider the adequacy of its unrealized depreciation before making a distribution.

vii. Capitalization of Retained Earnings Available for Distribution. Ordinarily, contributed capital and earned capital are maintained and reported separately. In the SBIC program, however, a Licensee which has attained positive Retained Earnings Available for Distribution has the option of ''capitalizing'' such earnings by permanently reclassifying them as contributed capital. As a result of the reclassification, Undistributed Net Realized Earnings are reduced, while paid-in capital is increased; the net effect is the same as if the Licensee had made a distribution to its owners, who then reinvested the same amount in the Licensee. From a regulatory perspective, this action results in an increase in the Licensee's Leverageable Capital, thus increasing its eligibility for SBA leverage. Capitalization of Retained Earnings Available for Distribution reflects the intent of a Licensee to pursue long-term growth by reinvesting its earnings in small businesses.

viii. *1940 Act Companies.* A Licensee which has registered under the Investment Company Act of 1940 may elect to be taxed as a regulated investment company under the Internal Revenue Code (§§ 851 through 855). In general, such a company can avoid taxation at the corporate level if it distributes at least 90 percent of its investment company taxable income for a given year.

ix. Licensees which are (or contemplate becoming) 1940 Act companies should be aware that the distribution requirements imposed on such companies by the Internal Revenue Code may, under certain circumstances, conflict with SBA regulations concerning distributions to shareholders. SBA regulations allow profit distributions to be made only from Retained Earnings Available for Distribution. Any distribution which would exceed Retained Earnings Available for Distribution requires the prior written approval of SBA.

Z. Partnership Capital Accounts

i. To provide the information necessary to determine compliance with various SBA regulations, Licensees which organize as limited partnerships must divide partners' capital into specified categories. The categories are (1) Partners' Contributed Capital, (2) Unrealized Gain (Loss) on Securities Held, (3) Non-Cash Gains/Income, and (4) Undistributed Net Realized Earnings (Partners' Earned Capital). The sum of these four accounts is the equivalent of the total partners' capital of a non-SBIC partnership. The Licensee must also record the general and limited partners' shares of each capital account, which results in eight separate control accounts for partners' capital.

ii. *Partners' Permanent Capital Contribution.* This balance represents proceeds from the sale of partnership units and any other partners' contributions of cash or other consideration to the partnership, less any returns of capital or other deductions.

iii. *Undistributed Net Realized Earnings and Non-Cash Gains/Income.* The sum of these two accounts represents the total undistributed earned capital of the Licensee. Separate totals must be maintained because SBA rules and regulations do not permit Non-cash Gains/Income to be distributed until they have been converted to cash. Both of these terms are explained in detail in paragraph X of this section V.

iv. *Unrealized Gain (Loss) on Securities Held.* This component of partnership capital results from the valuation of Loans and Investments by the Board of Directors or General Partner(s). Unrealized appreciation is recognized for valuations above cost and unrealized depreciation is recognized for valuations below cost. Unrealized gain or loss is the sum of the unrealized appreciation or depreciation of all Loans and Investments. Estimated future tax effects associated with unrealized appreciation or depreciation are not taken into account because partnerships are not taxed at the entity level. For further information, see paragraph W of this section V.

VI. Availability of Publications and Forms

i. This section contains information about where to obtain various publications and forms cited in this appendix I.

ii. The following forms may be obtained from the Investment Division of SBA, 409 Third Street, SW., suite 6300, Washington, DC 20416: Form 468 (Annual Financial Report), Form 1031 (Portfolio Financing Report), and CO Form 112 (IPA Certification). Forms 468 and 1031 are provided to all Licensees in the form of electronic reporting software. SBA Policy and Procedural Releases #2001 through 2021 may also be obtained from the Investment Division.

iii. Pronouncements of the Financial Accounting Standards Board (FASB) and its predecessor, the Accounting Principles Board (APB) may be purchased from the Order Department, FASB, 401 Merritt 7, P.O. Box 5116, Norwalk, CT 06856–5116.

iv. Publications of the American Institute of Certified Public Accountants (AICPA) may be purchased from the Order Department, AICPA, Harborside Financial Center, 201 Plaza III, Jersey City, NJ 07311–3881.

3. Appendix II, Chart of accounts for SBICs, is removed and Appendix III, Valuation Guidelines for SBICs, is redesignated as Appendix II.

Dated: December 7, 1994.

Philip Lader,

Administrator.

[FR Doc. 95–2937 Filed 2–6–95; 8:45 am]

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Tuesday
February 7, 1995

Part IX

Environmental Protection Agency

40 CFR Part 86

Proposed Regulations for Revisions to The Federal Test Procedure for Emissions From Motor Vehicles; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–5150–1]

RIN 2060–AE27

Proposed Regulations for Revisions to the Federal Test Procedure for Emissions From Motor Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NRPM).

SUMMARY: This notice proposes additions and revisions to the tailpipe emission portions of the Federal Test Procedure (FTP) for light-duty vehicles (LDVs) and light-duty trucks (LDTs). The primary new element of the proposal is a Supplemental Federal Test Procedure (SFTP) designed to address shortcomings with the current FTP in the representation of aggressive (high speed and/or high acceleration) driving behavior, rapid speed fluctuations, driving behavior following startup, air conditioning, and intermediate-duration periods where the engine is turned off. An element of the SFTP that also affects the conventional FTP is a new set of requirements designed to more accurately reflect real road forces on the test dynamometer. The Agency is also proposing new emission standards for the new control areas with a specified phase-in period for these standards. After complete fleet turnovers, the standards proposed today are estimated to reduce emissions from LDVs and LDTs by eight percent for non-methane hydrocarbons (NMHC), 18 percent for carbon monoxide (CO), and 14 percent for oxides of nitrogen (NO_X).

DATES: Written comments on this NPRM must be submitted on or before 30 days after the public hearing date. The Agency will conduct a public hearing on this NPRM approximately March 24, 1995. The date of the public hearing will be published in a future **Federal Register** document.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–92–64, at: Air Docket Section, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The public hearing will be held at a location to be published in a future Federal Register document.

Materials relevant to this proposed rulemaking have been placed in Docket No. A–92–64. The docket is located at the above address in Room M–1500, Waterside Mall, and may be inspected weekdays between 8:30 a.m. and 5:30 p.m. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: John German, Certification Division, U.S. Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. Telephone (313) 668–4214.

SUPPLEMENTARY INFORMATION:

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I. Obtaining Copies of the Regulatory Language

Electronic copies (on 3.5″ diskettes) of both the proposed regulatory language and the Support Document to the Proposed Regulations for Revisions to the Federal Test Procedure: Detailed Discussion and Analysis, Regulatory Impact Analysis (RIA), and Technical Reports may be obtained free of charge by visiting, calling, or writing the Environmental Protection Agency, Certification Division, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668–4384. Refer to Docket A–92–64. A copy is available for inspection in the docket (See **ADDRESSES**).

The proposed regulatory language and the Support Document to the Proposed Regulations for Revisions to the Federal Test Procedure: Detailed Discussion and Analysis, RIA, and Technical Reports are also available electronically on the Technology Transfer Network (TTN). TTN is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. Users are able to access and download TTN files on their first call. The steps required to access information on this rulemaking are listed below. The service is free, except for the cost of the phone call.

TTN BBS: 919–541–5742 (1,200–14,400 bps, no parity, eight data bits, one stop bit)
Voice help: 919–541–5384
Internet address: TELNET ttnbbs.rtpnc.epa.gov Off-line: Mondays from 8:00–12:00 Noon ET

1. Technology Transfer Network Top Menu: <T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards) (Command: T)
2. TTN TECHNICAL INFORMATION AREAS: <M> OMS—Mobile Sources Information (Command: M)
3. OMS BBS === MAIN MENU FILE TRANSFERS: <K> Rulemaking & Reporting (Command: K)
4. RULEMAKING PACKAGES: <1> [Light-Duty] (Command: 1)
5. Light-duty Rulemaking Area: File area #1 ... FTP Review (Command: 1)

At this stage, the system will list all available FTP Review files. To download a file, select a transfer protocol which will match the terminal software on your computer, then set your own software to receive the file using that same protocol.

If unfamiliar with handling compressed (that is, ZIP'd) files, go to the TTN top menu, System Utilities (Command: 1) for information and the necessary program to download in order to unZIP the files of interest after downloading to your computer. After getting the files you want onto your computer, you can quit TTN BBS with the <G>oodbye command.

II. Introduction

Automobiles are among the largest producers of hydrocarbons (HC), carbon monoxide (CO), and oxides of nitrogen (NO_X), all of which have documented impacts on public health. Hydrocarbons and oxides of nitrogen contribute to the formation of ozone, a powerful oxidant which irritates the respiratory system and reduces lung function. Some studies indicate that ozone may permanently damage lung and other tissues. Elevated levels of CO decrease the ability of blood to transport oxygen throughout the body, which tends to exacerbate cardiovascular stress. High ambient levels of CO can also adversely affect the central nervous system, and the presence of CO in even moderate levels in the bloodstream may impact the health of fetuses and newborns.[1] After complete turnover of the fleet, the Agency believes that the changes proposed today would result in an eight percent reduction in non-methane hydrocarbons (NMHC), an 18 percent reduction in CO, and a 14 percent reduction in NO_X emissions from

[1] Regulatory Impact Analysis for FTP Revisions, U.S. EPA, Office of Air and Radiation. Available in the public docket for review.

automobiles during typical summertime ozone exceedance days.

The Agency has established a number of emission standards for motor vehicles and engines, designed to control air pollution by reducing in-use emissions from motor vehicles. Compliance with these standards is typically measured using a test procedure that simulates in-use driving. In 1990, Congress amended the Clean Air Act with passage of the Clean Air Act Amendments (hereafter, CAAA or Amendments) and required that EPA review these test procedures and revise them as appropriate to reflect in-use conditions. The Agency's review focused on the procedures for light-duty motor vehicles, especially the Federal Test Procedure (FTP), the procedure used to measure compliance with motor vehicle tailpipe and evaporative emission standards.

The Agency, in conjunction with automobile manufacturers and California's Air Resources Board (CARB), conducted an extensive review of in-use driving behavior, obtaining a wealth of data on how cars are driven during trips, the length of trips, the length of time between trips, and so on.[2] The Agency then generated representative driving cycles from the data and conducted emission testing to compare emissions over these cycles with emissions over driving cycles used in the FTP. These results confirmed that revisions to the FTP were needed, as significant emissions were seen under conditions not represented by the current FTP.

The Agency sought an approach which would extend the level of control found under current FTP conditions across all in-use driving behavior. Thus, EPA developed various changes to the FTP, focusing on new driving cycles to add to the current FTP. The Agency also investigated possible control technologies that could be used to control emissions over these new compliance cycles. Today's proposal includes these various changes in the test procedure for tailpipe emissions, as well as the emission standards related to them.

In developing new compliance cycles, EPA did not re-evaluate the stringency of current standards. Rather, EPA sought parity between the types and extent of controls that manufacturers currently employ to comply with existing FTP standards and those they would implement to comply across all driving behavior. Thus, EPA believes that manufacturers for the most part will comply by making simple changes to their existing calibration strategies.

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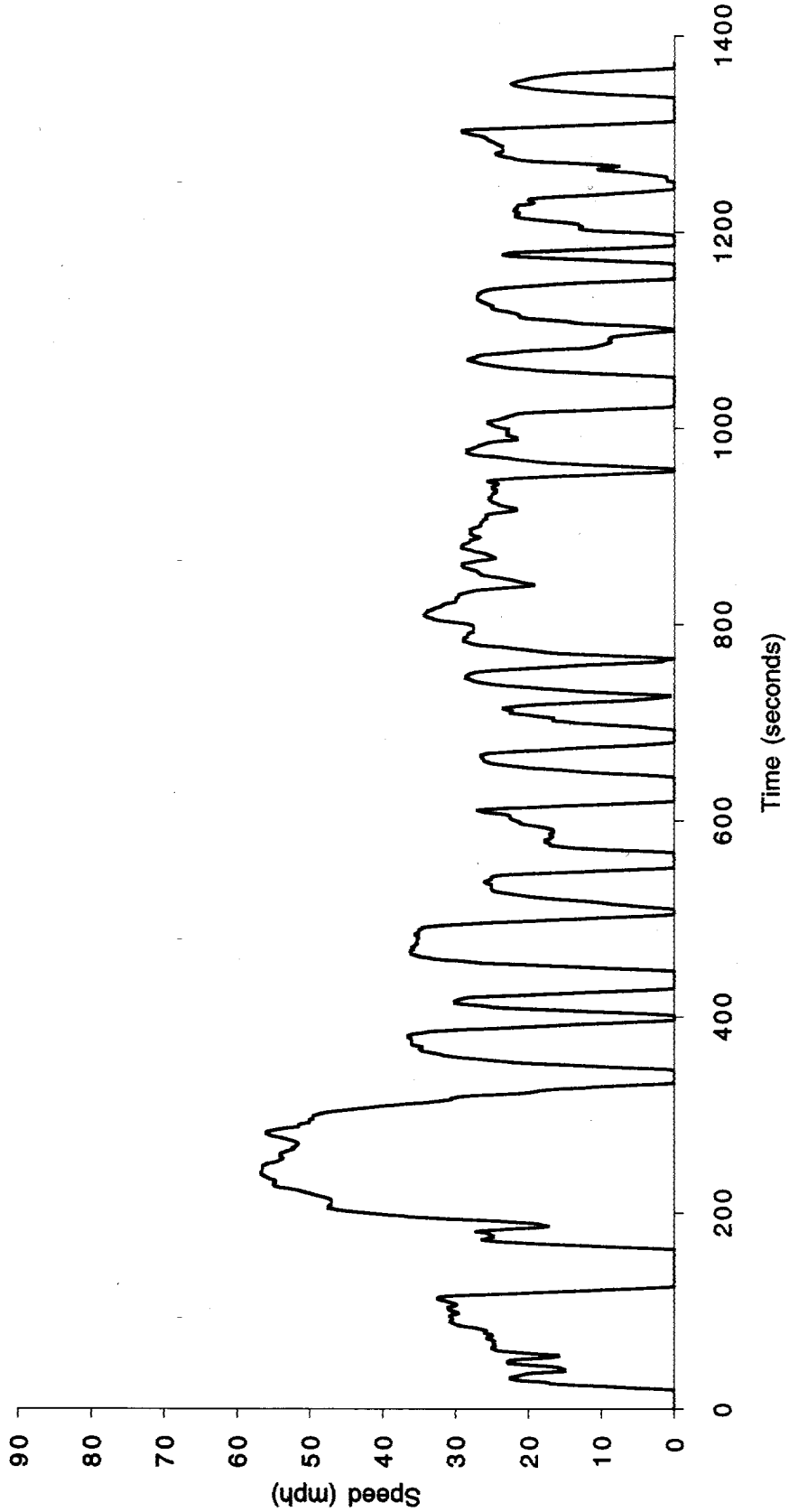
[2] See the ''Federal Test Procedure Review Project: Preliminary Technical Report,'' EPA 420–R–93–007 and the Technical Reports for this rulemaking, both in the public docket, for descriptions of the surveys and data gathered.

Figure 1: Urban Dynamometer Driving Schedule (LA4)



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The FTP is the core procedure used to measure compliance with emission standards for light-duty vehicles (LDVs) and light-duty trucks (LDTs). The current version of the FTP (40 CFR 86.130–96) consists of a series of preparatory steps to ensure the vehicle has been properly preconditioned on the test fuel, periods when the engine is off between vehicle operation (called ''soaks''), and emission tests which measure tailpipe and evaporative emissions. Tailpipe emissions are measured while the vehicle is operated according to a specified driving cycle on a dynamometer. Figure 1 presents the Urban Dynamometer Driving Schedule, commonly referred to as the LA4. With the exception of running losses, which are measured during dynamometer operation, evaporative emissions are measured in a sealed enclosure while the vehicle is turned off. An additional cold temperature CO test procedure measures tailpipe emissions at 20° F following a cold soak. By comparing the emission test results to emission standards applicable to a given vehicle class, combustion cycle, and motor fuel, EPA determines if the vehicle meets applicable certification or in-use requirements.[3]

The current evaporative emission procedure, including refueling, and cold temperature CO test procedures were promulgated following passage of the Amendments. Thus, the test procedures in these rules were recently developed to reflect the actual current driving conditions under which motor vehicles are used (57 FR 31888; 58 FR 16002). The Agency is not proposing to change these test procedures and the remainder of this section and the subsequent proposal focuses on the light-duty tailpipe emission testing procedures of the FTP.

The FTP simulates on-road vehicle operation using a dynamometer in a laboratory test cell held between 68° F and 86° F. The vehicle is driven on the dynamometer over cycles that prescribe the vehicle operator's speed as a function of time. The method for measuring tailpipe emissions of HC, CO, and NO_x requires filling a bag with exhaust drawn from the tailpipe and diluted with background air while the vehicle is driven over the appropriate cycle. The bagged sample is analyzed for the concentrations of exhaust constituents, which serve as inputs to subsequent emission compliance calculations. Additional procedures apply to the sampling of particulate matter from diesel-cycle vehicles and organic gases from alternative-fuel vehicles.

III. Proposal Requirements and Alternative Approaches

Today's proposal deals primarily with five areas of driving behavior that have not previously been represented in the test procedure: aggressive driving behavior (such as high acceleration rates and high speeds); rapid speed fluctuations (microtransient driving behavior); start driving behavior; intermediate soak times (engine-off times between 10 minutes and 2 hours prior to vehicle start); and actual air conditioner (A/C) operation. The Agency is proposing new requirements for these areas, separate from the existing FTP requirements. Also included in this proposal are requirements to improve the simulation of actual road load forces[4] across all speed ranges and to revise the criteria for allowable speed variation for a valid test, which would be applicable both to the new provisions proposed in this NPRM and the existing FTP.

As most of this proposal deals with areas that have not previously been regulated, the Agency is considering a broad range of alternative approaches and requests. Comment on the alternative approaches, as well as the central proposal, are requested. Depending on comments and data received and analyses conducted subsequent to today's proposals, EPA may include some of the alternatives, in whole or in part, in the final rule. Interested parties may also submit comments on alternatives not specifically identified or analyzed by EPA for this proposal.

While both the central proposal and the alternatives are EPA's own design, they incorporate some concepts put forth both by the California Air Resources Board (CARB) and the Ad Hoc Panel on Revisions to the FTP (Ad Hoc Panel), a joint committee of the American Automobile Manufacturers Association (AAMA) and the Association of International Automobile Manufacturers (AIAM).

The proposed additions and revisions to the tailpipe emission portions of the FTP would apply to all LDVs and LDTs, certifying on all current motor fuels. The proposed changes would apply to testing conducted during certification, Selective Enforcement Audits, and in-use enforcement (recall). Adjustments are included to accommodate certain vehicle types, transmission types, and performance categories where the additions are not representative of in-use driving. The Agency solicits comments and data on the appropriate treatment of vehicles for which adjustments are allowed and the methods for making the adjustments.

A. Central Proposal

The central proposal relies on a new Supplemental Federal Test Procedure (SFTP) that addresses various conditions under which vehicles are actually driven and used, which are not in the FTP. The SFTP includes three new driving cycles to represent (1) aggressive driving (as characterized by high speeds and/or high accelerations); (2) driving immediately following vehicle startup; and (3) microtransient driving (rapid speed fluctuations), which occur across the majority of the normal ranges of operating speeds and accelerations. The proposed SFTP incorporates conditions that are designed to more accurately reflect actual engine load due to A/C operation under typical ozone exceedance conditions. A new intermediate-duration (10- to 60-minute) soak period is also included.

Two components of today's proposal have wider impacts than just the SFTP. The first is to more accurately simulate real on-road loads at the tire/dynamometer interface, which is an element of the proposal that affects dynamometer operation throughout both the FTP and SFTP. The second would remove language specifying ''minimal throttle movement'' when conducting emission tests and replace it with ''appropriate throttle movement'' and require a specification of allowable speed variation, which also impacts both SFTP and FTP testing. The Agency is also requesting comment on whether the increased sophistication of vehicle computers necessitates replacing existing defeat device language with a requirement for proportional emission control under conditions not directly represented by the FTP and the SFTP.

The proposed standards would apply for full useful life under section 202 of the Clean Air Act. The warranty provisions under section 207 of the Clean Air Act also apply to this rulemaking.

[3] The Agency has historically relied on emission performance standards because they directly limit production of exhaust constituents that affect attainment of the National Ambient Air Quality Standards, while providing maximum flexibility to the vehicle manufacturers in determining cost-effective compliance strategies. Other basic compliance program approaches include system performance standards, which set bounds on measurable performance parameters of the engine or emission control system rather than actual emission levels, and design standards, which prescribe primary design elements of the engine or control system.

[4] Road load forces refers to the force needed to overcome wind and tire resistance when driving at specific speeds.

Supplementary Federal Test Procedure—The SFTP includes three single-bag emission test cycles: a hot stabilized 866 Cycle[5] run with a new simulation of in-use A/C operation; a new Start Control Cycle (SC01, see figure 2) simulating driving with the new simulation of in-use A/C operation and proceeded by a soak period; and a new Aggressive Driving Cycle (US06, see figure 3) run in the hot stabilized condition. The cycles of the SFTP can be run as a sequence to save on preconditioning and setup time; however, separate runs of the cycles are permissible with the appropriate soak or preconditioning steps appended.

[5] 5 Refers to Bag 2 of the LA4, preceding the 10-minute hot soak, lasting 866 seconds.

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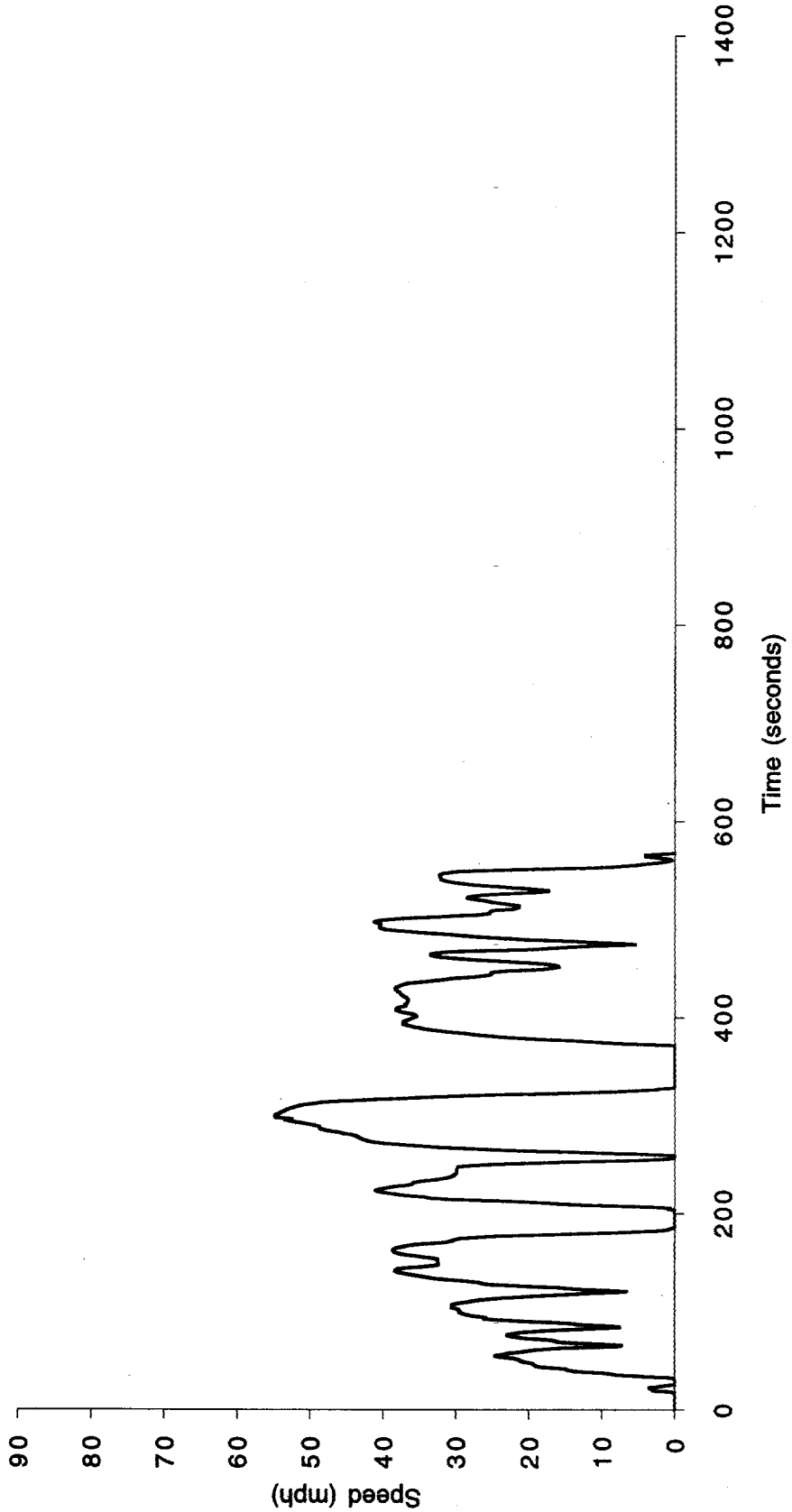
Figure 2: SC01 Driving Cycle



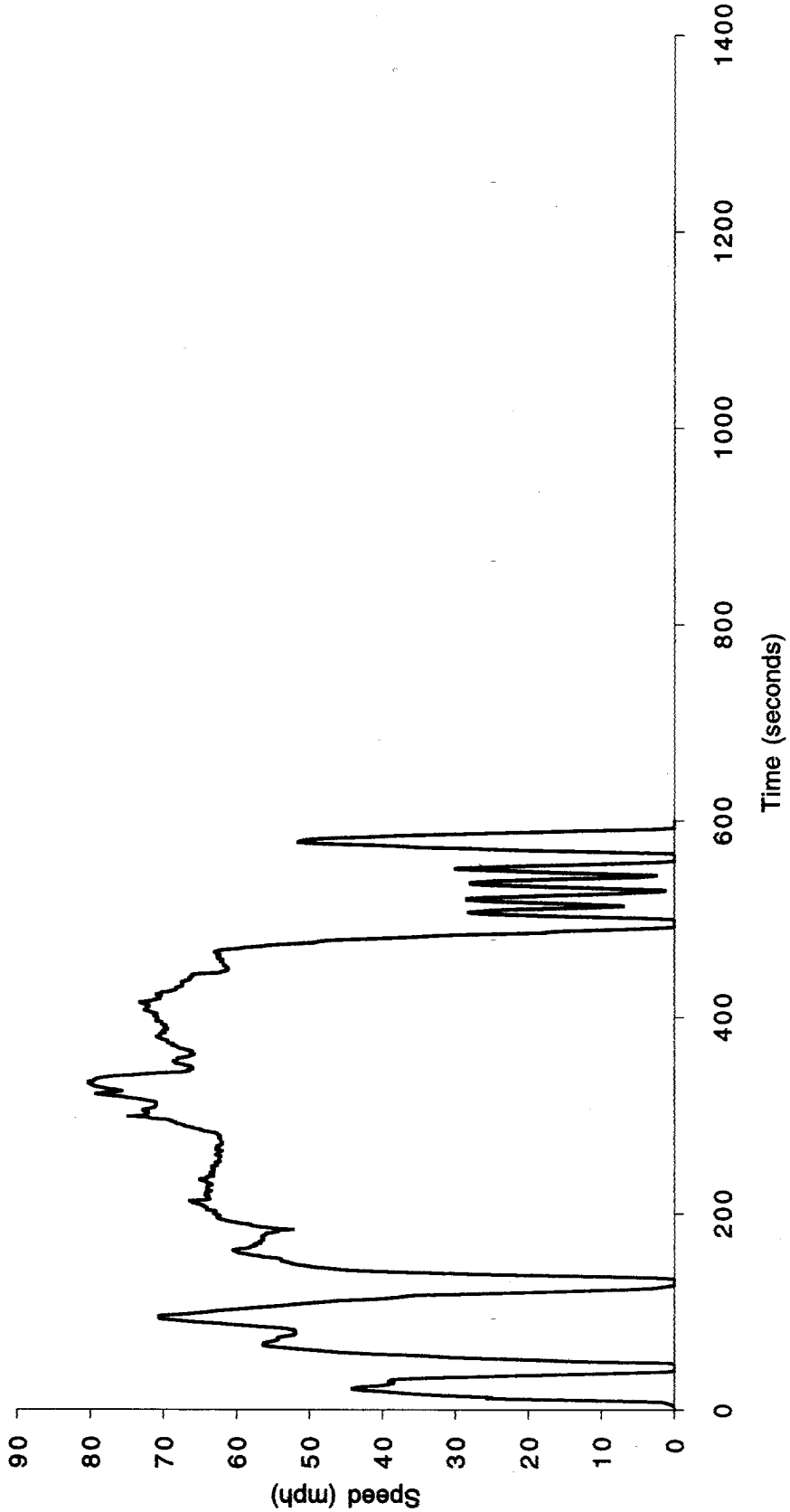


Figure 3: USO6 Driving Cycle

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Elements of the proposed A/C simulation for certification testing include, a 95 °F ± 5 °F test cell ambient temperature, A/C set to ''maximum A/C'' with interior air recirculation, high interior fan setting, coldest setting on the temperature slide, driver's window down, and front-end supplemental fan cooling. Although certification testing would occur at 95°, the compliance requirement would apply at less demanding temperatures as well. Thus, EPA confirmatory testing could take place at any point across the range 68 °F to 95 °F. The compliance requirement would would The Agency proposes these conditions as a cost-effective surrogate for testing in a fully controlled environmental chamber set to simulate ozone-exceedance conditions of ambient temperature, humidity, solar load, and pavement temperature, although the use of a fully controlled environmental chamber would be permitted.

The required elements for the SC01 include the preconditioning, soak period, and compliance cycle requirements. Prior to the soak period, the vehicle is to be preconditioned to allow engine and catalyst temperatures to stabilize at typical warmed-up operating temperatures. The Agency believes that running the vehicle over EPA's Urban Dynamometer Driving Schedule (LA4) is adequate to achieve engine and catalyst stabilization regardless of the time period for which the vehicle was not operational prior to preconditioning. However, in the event the vehicle was shut off for less than two hours prior to preconditioning, the Agency believes that a 505 cycle is adequate for preconditioning the vehicle, although the 866 or the SC01 is also acceptable.

Immediately following the preconditioning cycle, the vehicle will enter the soak period. Manufacturer testing of engine families required to comply with the intermediate soak requirements for certification or SEA testing must soak the vehicle for at least 60 minutes. EPA will have the option of testing any soak duration between 10 and 60 minutes for certification, SEA, and in-use testing. If the engine family is not required to meet the intermediate soak requirements, a 10-minute soak period is proposed. During this period, cooling fans directed at the vehicle are to be shut off. The vehicle may be removed from the dynamometer, provided the vehicle is not subjected to unrepresentative cooling of the engine or catalyst. Following the soak period, the vehicle will be run over the SC01 cycle using the proposed A/C simulation for proper representation of engine and catalyst warm-up and start driving.

The US06 driving cycle is designed to be run in hot stabilized condition. High-volume exhaust flow for larger-displacement vehicles run on US06 dictates use of a larger-capacity constant volume sampler (CVS) than is needed for current FTP testing. The proposed A/C simulation is not required for this test cycle.

The Agency proposes that manufacturers determine the appropriate shift points for their manual transmission applications and submit the shift schedules for EPA approval. In general, EPA will allow manufacturers to specify upshift points, but downshifting will not be permitted unless the vehicle is unable to stay within the driving tolerance on the speed trace in the existing gear.

Hot stabilized condition is achieved by including several preconditioning options as part of the formal procedure immediately prior to the US06 Cycle. If the vehicle has undergone a soak of 2 hours or less, the preconditioning may be a 505 Cycle, the 866 Cycle, US06, or the SC01. Following longer soaks, the proposed preconditioning cycle is an LA4. For manufacturers who have concerns about fuel effects on adaptive memory systems, the proposal allows manufacturers, and upon manufacturer request, requires EPA to run the vehicle over the US06 Cycle on the certification test fuel before entering the formal test procedure.

The Agency proposes adjustments to the aggressive driving test cycle for all heavy light-duty trucks (HLDTs),[6] and also, for some low- and high-performance LDVs and LDTs. The proposal calls for US06 Cycle testing of HLDTs with the truck ballasted to curb weight plus 300 lbs and the dynamometer inertia weight determined from this same basis, while FTP testing remains at Adjusted Loaded Vehicle Weight. The proposed US06 Cycle adjustments based on performance level are summarized in Table 1. For low performance vehicles, the inertia weight is adjusted by multiplying the original inertia weight by the adjustment factor which is equal to the ratio of the applicable performance cutoff and the W/P of the test vehicle. Where an adjustment factor is called for, it is applied dynamically by the dynamometer only during those portions of the US06 Cycle that are the most aggressive.[7] No adjustment factors are proposed for mid-performance (''normal'') vehicles. For high performance vehicles, the manufacturer must demonstrate stoichiometric control for wide-open throttle events of two seconds or less in order to ensure that these vehicles have aggressive driving emission control over similar vehicle operation as the rest of the fleet.

TABLE 1.—PERFORMANCE-BASED ADJUSTMENTS

Transmission type	Performance (W/P range)	Adjustment
manual	low W/P>34	dynamic dynamometer inertia weight reduction.
	normal 18 W/P 34	none.
	high W/P<18	2 second stoich control.
automatic	low W/P>31	dynamic dynamometer inertia weight reduction.
	normal 18 W/P 31	none.
	high (W/P<18)	2 second stoich control.

Determining compliance with standards—With the exception of changes prompted by use of new dynamometers and an additional driver speed variation tolerance, no changes are proposed for the driving cycle of the conventional FTP. Similarly, EPA proposes to retain unchanged the method of calculating compliance with the existing FTP. However, an additional ''composite'' compliance calculation is proposed that brings together elements of the conventional FTP with results from the SFTP. In the composite calculation, emissions from the range of in-use driving are appropriately weighted, summed, and compared to the proposed emission performance standards. For total hydrocarbon (THC), non-methane hydrocarbons (NMHC), organic material hydrocarbon equivalents (OMHCE), organic material non-methane hydrocarbon equivalents (OMNMHCE), and CO, the proposed standards are the same as the standards applicable under the conventional FTP; for NO_X, an adjustment factor of 1.15 is applied to that standard to account for the emission response of vehicles to the new A/C test conditions. See the

[6] Light-duty trucks are divided into two weight categories known as light light-duty trucks (rated up through 6000-pounds Gross Vehicle Weight Rating (GVWR)) and heavy light-duty trucks (rated greater than 6000-pounds GVWR).

[7] Refer to the Final Technical Report on Aggressive Driving Behavior for the Revised Federal Test Procedure Notice of Proposed Rulemaking for a detailed discussion of the points in the cycle where the proposed adjustments would be made.

Support Document to the Proposed Regulations for Revisions to the Federal Test Procedure: Detailed Discussion and Analysis for the specific numerical standards. Due to the absence of relevant test data on which to base a decision, no supplemental test procedures or standards are proposed for diesel particulate.

Included in the composite calculation are a cold start bag (based on Bag 1 of the conventional FTP) and the three bags of the SFTP (called Bag 4, 5, and 6). The weighting factor for each of the four bags is adjusted as appropriate to reflect the proposed level of control for each type of driving in the SFTP. Because the exhaust constituents respond differently to the loads and speeds of the new SFTP cycles, the proposed levels of control and, thus, the weighting factors of the composite calculation differ somewhat for different pollutants. The proposed weighting factors are:

	Percentages	
	THC/NMHC	CO & NO_X
Bag 1 (cold start from FTP)	21	15
Bag 4 (866 cycle from SFTP)	24	37
Bag 5 (SC01 from SFTP)	27	20
Bag 6 (US06 from SFTP)	28	28

The Agency is proposing that changes in the achievable levels of control over the SFTP tests would track changes in the underlying FTP standards and, thus, adoption of the central proposal would have the effect of automatically reducing the composite standards in step with any mandatory future declines in the FTP standards.[8]

Flexibilities are proposed to allow manufacturers to reduce their testing burden, particularly during development testing. (See Support Document to the Proposed Regulations for Revisions to the Federal Test Procedure: Detailed Discussion and Analysis and Technical Reports for discussion.)[9]

Emissions Standards and Phase-in—The Agency is proposing to phase in the proposed requirements for aggressive driving and air conditioning control prior to implementing the intermediate soak requirements. It is proposed that the standards apply to 40 percent of each manufacturer's combined production of LDVs and LDTs for the 1998 model year, 80 percent in 1999, and 100 percent in 2000. Small volume manufacturers would not have to comply until the 2000 model year. All the proposed requirements would apply during this phase-in period, except that Bag 5 could be conducted with a 10-minute soak instead of the proposed 60-minute soak for control of intermediate soak emissions. The 60-minute soak would be required for all vehicles starting with model year 2001, including small volume manufacturers.

The Agency is continuing to analyze the impact of this phase-in schedule, particularly when considered in conjunction with other recently promulgated rules (such as revisions to the evaporative test procedures) as well as potential future programs (such as voluntary Federal low emission vehicle standards). Comments are specifically requested (1) on the impact of this phase-in schedule when considered with other programs and (2) providing suggestions for other schedules which will coordinate programs more effectively. The Agency will review this information in developing the final rule to determine if a more logical coordination schedule is possible while maximizing the cost/benefit effectiveness of this rule.

The proposal recognizes that adoption of emission standards more stringent than current Federal Tier 1 standards will likely result in emission control strategies that reduce catalyst light-off times.[10] This could have a significant impact on the costs and benefits of the intermediate soak requirement. As Tier 1 standards are the current legal requirement and the status of future standard changes is uncertain at this time, this proposal presumes Tier 1 applicability. The Agency invites comments and data addressing the cost/benefit implications of the proposed soak requirement under a Federal Tier 2 (or equivalent) program.

Each of the test cycles is run on a system providing accurate replication of real road load forces at the interface between drive tires and the dynamometer over the full speed range. In addition, the new US06 cycle requires significantly higher power absorption capacity, due to the higher power requirements of this aggressive driving cycle. While EPA intends to use a large-diameter single-roll dynamometer with electronic control of power absorption to meet these requirements for both the new SFTP and current FTP testing, any system would be allowed that yields equivalent or superior test results.

The improved road load simulation and the new criteria for allowable speed variation for FTP compliance determination are proposed to be implemented in the 1998 model year. Manufacturers could elect to use improved road load simulations prior to 1998, at their option.

The Agency is also proposing a minor procedural change that would remove the current 5500-pound test weight cap, to be implemented in the 1998 model year with the improved road load simulations.

B. Alternative Approaches

As indicated, EPA is considering a number of alternatives to critical elements of the central proposal. The following provides a summary of the most important of these alternatives. A full discussion of all the options and alternatives considered is found in the Support Document to the Proposed Regulations for Revisions to the Federal Test Procedure: Detailed Discussion and Analysis.

In determining compliance with the emission standards, EPA is considering two alternatives to the proposed FTP/SFTP composite and the related standards: (1) promulgating three separate sets of standards, one set each for aggressive driving, post-soak startup emissions, and A/C impacts; and (2) promulgating a single set of standards, based on a simple weighted average of separate standards for each control area. Both of these alternatives would use the same cycles and test procedures as the composite approach of the central proposal. However, instead of weighing them with Bag 1 of the FTP and using bag weights to help establish appropriate compliance procedures and standards, the alternative approaches would establish emission standards specifically for each new control area.

The Agency did not select either of these alternatives as the central proposal because of difficulties encountered in determining the appropriate amount of in-use compliance margin to allow when establishing emission standards. Also, the proposed concept of indexing the SFTP standards to any future changes in FTP standards probably would not work with either of the two alternatives. If data are submitted that could help establish appropriate in-use margins, EPA would reevaluate the most appropriate compliance structure and, if

[8] The issue of what standards would apply in the context of a voluntary Federal low emission vehicle program will be determined in a separate rulemaking (60 FR 4712, January 24, 1995).

[9] Both the Support Document to the Proposed Regulations for Revisions to the Federal Test Procedure: Detailed Discussion and Analysis and the Technical Reports are in the public docket for review.

[10] Time required for the catalyst to reach the temperature needed to sustain significant catalytic activity.

appropriate, may select one of the alternatives in the final rule.

The Agency is also considering the alternative of establishing a single standard for NMHC+NO_X, instead of separate standards, and invites comments on the cost and emission impacts of this alternative.

One issue was identified too late for EPA to properly evaluate it. Concern was raised that the proposed level of CO control may significantly interfere with the ability for vehicles to comply with the proposed level of NO_X control. Should further data and analyses substantiate that tradeoffs between CO and NO_X control would preclude meeting the proposed level of NO_X control, EPA would consider reducing the stringency of the CO standards for the new control areas in the final rule.

On October 20, 1994, EPA representatives received a joint vehicle manufacturer proposal from the Ad Hoc Panel that addressed emissions arising from aggressive driving and A/C operation and proposed emission standards for each of these two areas. The Agency has not had sufficient time to fully analyze the concepts offered by the panel or to incorporate the manufacturer proposal as an explicit, complete alternative to the primary Agency proposal presented today. Nevertheless, the manufacturers' specific proposals fall within the scope of the options and alternatives discussed by EPA in today's notice. The Agency has submitted materials supplied by the panel on October 20, 1994, to the rulemaking docket.[11] Analysis of these elements by the Agency, as well as any related material supplied in the future, will also be docketed. In order that the Agency may make the most informed and appropriate judgments in any final rulemaking, EPA encourages interested persons and organizations to evaluate and comment upon these materials.

In the area of A/C emission control, EPA is considering an alternative to the proposed test simulation of A/C operation, as well as the alternative of requiring A/C testing across the cold start (that is, Bag 1 of the FTP). The alternative A/C simulation would leave the A/C off in the test cell, but would increase the dynamometer load curve across the range of vehicle speeds to reflect the additional load imposed by an A/C compressor during ozone exceedance conditions.[12]

In the intermediate soak area, the effect on in-use emissions of the alternatives depends on future changes to the stringency of the FTP standards, the control strategies manufacturers would employ to meet such future standards, and the impacts those strategies might have on post-soak emissions. Because these are not known, alternatives might include exemption from aspects of the soak requirement or total deletion of the soak requirement.

IV. Statutory Authority and Legal Analysis

The promulgation of these regulations is authorized by sections 202, 206, 208, and 301 of the Clean Air Act (CAA or the Act) as amended by the Clean Air Act Amendments of 1990 (42 U.S.C. 7521, 7525, 7542, and 7601). Section 206(h) of the Act requires EPA to ''review and revise as necessary—the testing of motor vehicles and motor vehicle engines to insure that vehicles are tested under circumstances which reflect the actual current driving conditions under which motor vehicles are used, including conditions relating to fuel, temperature, acceleration, and altitude.'' Congress mandated that EPA exercise its authority under section 206(a) of the Act, giving broad authority to determine appropriate test procedures, consistent with the broad direction of section 206(h), to determine appropriate changes to reflect real world conditions.

Although the text of the statute and the legislative history do not provide explicit criteria or intent for this review, EPA believes the primary concern of Congress is having test procedures for LDVs and LDTs reflect in-use conditions in order to obtain better in-use emission control. This flows from the basic purpose of test procedures—to measure compliance with the emission standards—and from standards designed to obtain in-use emission reductions. Therefore, EPA made this the primary concern and objective.

A more detailed analysis of the statute, the scope of EPA's authority, and interpretation of how best to exercise EPA's discretion under section 206(h) are found in the Support Document to the Proposed Regulations for Revisions to the Federal Test Procedure: Detailed Discussion and Analysis.

V. The FTP Review Project and Areas of EPA Concern

In response to the review requirement of the CAAA, EPA initiated the FTP Review Project (the FTP Review) in November 1990. The first action of the project team was to perform an initial review of existing information to identify elements of the current FTP that might be of concern (justifying additional focus) and others that might not justify concern at this time.

Of immediate concern to EPA was representativeness of the driving cycle used in the current FTP, the ''LA4'' or ''Urban Dynamometer Driving Schedule,'' especially in the area of aggressive driving behavior.[13] It was clear that the LA4 maximum speed of 57 mph excluded a significant fraction of higher-speed, in-use operation.[14] Similarly, EPA suspected that an important fraction of in-use accelerations were more severe than those found in the LA4. A 1990 CARB study found much higher emissions, particularly for CO, during operation at high acceleration rates relative to those seen during FTP-level accelerations.

One possible explanation for these emission increases is that the engines were not calibrated for emission control during the higher engine loads associated with aggressive driving, as these loads are not encountered during current FTP testing. However, insufficient data existed at the time to quantify the in-use frequency of aggressive driving events or the actual emission impacts. There were also concerns, based on engineering judgment, about other aspects of driving behavior that were not represented in the current test procedures for which no data existed. Thus, the Agency concluded that further information was necessary to properly represent actual driving conditions. In collaboration with key stakeholders, EPA began extensive research into driving behavior and conditions and their emission implications.

During the course of the research a number of other concerns with the current FTP were identified, including two additional concerns with the LA4 representation of in-use driving behavior. The first concern was start driving behavior; that is, behavior immediately following vehicle startup

[11] Ad Hoc Panel, ''Industry Proposal on FTP Revisions,'' October 20, 1994.

[12] The Ad Hoc Panel has submitted a proposed methodology for such a dynamometer simulation of A/C load, dubbed ''Nissan II.'' Manufacturers are pursuing additional refinements to address potential concerns with the approach, such as the ability to simulate air compressor cycling and A/C loads at idle, which cannot be simulated on a dynamometer.

[13] In this report, ''driving behavior'' refers to the measurable consequences of the operator's action on the accelerator pedal, including vehicle speed, throttle variation, acceleration, and power.

[14] Details about the development of the LA4 driving cycle can be found in an SAE paper, ''Development of the Federal Urban Driving Schedule,'' Ronald E. Kruse and Thomas A. Huls, EPA, 1973, #730553.

and initial idle. The LA4 cycle used in the current FTP brings the most aggressive operation close to the beginning of the cycle; driving survey data suggest this is atypical of in-use operation. The second concern was microtransient behavior (rapid speed fluctuations). In-use driving survey data contains more frequent speed fluctuations than the FTP.

The Agency identified concerns about four additional elements of the FTP: The duration of the soaks; the representation of A/C load; representation of additional loads on the engine due to factors such as road grade, extra cargo, or trailer towing; and the adequacy of the dynamometer specification for representation of real road load.

With respect to soaks, EPA sought to determine if significant levels of emissions are missed by the current FTP because only very short- and long-duration soaks are reflected in the current structure. One related hypothesis was that the much faster cooling rate of catalysts compared to engines might lead to excessive emissions during intermediate-duration soaks.

Several aspects of the A/C load simulation were problematic. The current FTP adds load as a percentage of the base road load horsepower curve, which means the FTP A/C load decreases with decreasing speed, while real A/C system loads relative to road load horsepower are highest at low speed. Also, vehicles with different base horsepower curves end up with different FTP A/C load simulations, even if they have identical A/C systems. Additionally, the Agency believes that the current method significantly under-represents the magnitude of in-use A/C loads. As in the case of aggressive driving behavior, incorrect representation of A/C loads during the FTP risks incorrect simulation of the emissions these loads would generate from an engine in-use.

Road grade, vehicle towing, and cargo also represent a load effect on the engine. The 300-pound passenger-plus-cargo allowance on the FTP is clearly unrepresentative for some driving situations, especially for trucks, and the absence of road grade or vehicle towing simulations on the FTP means these actual in-use loads are not a factor determining emission standards or compliance with those standards.

Three aspects of the current FTP dynamometer configuration have the potential to misrepresent the actual road load experienced by vehicles in-use. First, the shape of the speed/load curve on current certification dynamometers is fixed and cannot be changed; the magnitude of the speed/load curve is adjusted by periodically calibrating the dynamometer at a single speed (currently, 50 mph). As a consequence, loads at speeds other than the calibration point can be misrepresented. Second, current FTP dynamometers cradle the vehicle drive wheels between two small (8.65-inch) rolls. Heating effects and pinching of the tire result in an unrepresentative simulation of road ''surface.'' Third, the dynamometer rolls are currently uncoupled and the front roll (which bears the power absorber) spins somewhat more slowly than the rear (which provides the vehicle speed signal); this tends to bias the system towards underloading the vehicle.

The Agency analyzed three other elements of the FTP and believes revising the current procedures is unnecessary at this time. The first such area was the altitude of testing. Given that EPA has the authority to perform vehicle testing at any altitude, and it currently exercises that authority, the Agency is not proposing to supplement by further regulation the altitude testing flexibility in current law. While it is possible that driving behavior may differ at high altitudes, EPA believes that any emission controls required for aggressive driving will also be effective during high altitude driving.

A second element which EPA did not pursue beyond the initial evaluation was test fuels. In-use fuels have a wide range of properties. This specification for fast fuel allowance for a range of fuels (40 CFR 86.113–94) appear to provide EPA with the flexibility to use a variety of test fuels ranging from an average in-use fuel to some of the less typical in-use fuels with qualities that could effect emissions. Significant differences, with potentially large emissions implications, do appear to exist between average in-use gasoline and the gasoline (indolene) typically purchased by both EPA and industry for certification testing. After evaluating approaches to addressing this situation, EPA concluded that changes to the regulations are not necessarily required, since the current regulations provide the flexibility needed to address those situations where the use of indolene may not be representative. In addition, various programs to address in-use fuel qualities are still under consideration. If a decision is ultimately made to change the certification fuel regulations, it may be best to do so along with changes to the specifications for in-use fuels.

Finally, EPA believes that it is unnecessary to further address the direct impacts of ambient temperature on FTP tailpipe emissions in this proposal. At the time the Amendments were adopted, the FTP evaluated tailpipe emissions performance in the midrange of temperature (68° F to 86° F), but omitted both cold and hot temperature testing. The emission concern following cold temperature soaks and during cold temperature operation is increased CO emissions. This concern was addressed through EPA's Cold Temperature CO rulemaking (57 FR 31888). The direct emission impact during hot temperature operation is increased fuel evaporation. Ambient temperature should not otherwise affect tailpipe emissions, as the engine and combustion temperature are not affected in any significant way by temperatures hotter than 86° F. This concern was addressed through the Agency's Evaporative Emissions rulemaking (58 FR 16002). Ambient temperature also produces indirect emission effects through increased operation of the vehicle A/C, affecting the load on the engine. This indirect aspect of temperature was addressed in EPA's detailed review of the FTP and is reflected in today's proposal.

The FTP Review project team found that existing information was clearly inadequate for evaluating potential revisions to the test procedures. Consequently, a number of new data gathering and analytical efforts were undertaken in connection with the project. In several of these efforts, EPA resources were supplemented by significant cooperative investments from other sources, including the American Automobile Manufacturers Association (AAMA), the Association of International Automobile Manufacturers (AIAM), and the California Air Resources Board (CARB). These studies provided EPA with unprecedented data on which to base its comparative review with the FTP and to construct the options presented in today's proposal.

VI. In-Use Behavior

The first critical need in reviewing the FTP was a current database on in-use driving and vehicle soak behavior. The Agency collaborated with AAMA, AIAM, and CARB over the spring and summer of 1992 to conduct surveys of in-use driving and soak behavior in four major U.S. cities.

A. In-Use Driving Behavior

Instrumented vehicle surveys and/or chase car studies were conducted in Baltimore, Maryland; Spokane, Washington; Atlanta, Georgia; and Los Angeles, California. In May of 1993, EPA published its initial conclusions regarding aggressive driving behavior in the ''Federal Test Procedure Review Project: Preliminary Technical

Report.'' [15] These conclusions were largely based on the Baltimore instrumented vehicle survey data. Subsequent analysis has found the larger three-city instrumented vehicle results to be consistent with the Baltimore-only results. The three-city analysis showed that nearly 13 percent of vehicle operation, on a time-wrighted basis, occurs at combinations of speed and acceleration that fall outside the matrix of speeds and accelerations found on the LA4 driving cycle. The maximum observed in-use speed was 95.5 mph, compared to the LA4 maximum speed of 56.7 mph, and slightly more than seven percent of in-use vehicle operation time was spent at speeds greater than 60 mph. Average speed from the three-city in-use data was 25.9 mph compared to 19.6 mph over the LA4.

Specific power is also useful when analyzing aggressive driving behavior.[16] Measures of power also indicated that in-use driving behavior was more aggressive than reflected in the LA4. Specific power in the three-city sample ranged up to 723 mph^2/sec and averaged 47.0 mph^2/sec. The LA4 has maximum power of 192 mph^2/sec and an average of 38.6 mph^2/sec.

The Agency analyzed the in-use survey data to determine how the above findings on speeds, accelerations, and power measures were affected by other factors, including vehicle type (car/truck), transmission type, vehicle performance level, time of day, and day of the week. The first three vehicle-related factors are reflected in today's proposal. The discussion of the analysis and findings are in the Support Document to the Proposed Regulations for Revisions to the Federal Test Procedure: Detailed Discussion and Analysis and the Technical Reports.

The Agency also examined start driving behavior as represented by the instrumented vehicle survey data. The Agency determined that the start driving (operation following the initial idle and before coolant temperature exceeded 140° F) in the survey data generally did not exceed 240 seconds. Further analysis showed that the speeds of start driving did not change substantially following soaks of different durations, but they did differ from those found in hot stabilized driving. The results for in-use initial idle time and start driving are different than the representation of these elements in the FTP. The LA4 cycle has atypical high speeds over the first four minutes of a vehicle trip. On the other hand, the LA4 has substantially less aggressive accelerations than the first 80 seconds or so of typical in-use start driving, while it is substantially over-aggressive when compared to the succeeding 160 seconds. For initial idles, the FTP presumes 20-second durations for both cold and hot starts, whereas the in-use averages from EPA's data were 28 seconds for cold starts and only 12 seconds for hot starts.

The previous discussion of in-use speeds and accelerations presents a snapshot of driving behavior. Although the acceleration measure, which looks at the change in speed from one second to the next, partially characterizes the transient nature of driving, other measures expand the time interval to examine the rapid fluctuations in speed, or microtransients. One measure, referred to as jerk, is equal to the change in acceleration. A related measure is the second-to-second change in specific power. Conceptually, this measure captures the change in the power requirement imposed by the driving behavior.

The Agency used the three-parameter instrumented vehicle data from Baltimore, Spokane, and Atlanta,[17] to calculate these microtransient measures for in-use driving behavior and compared the results to the LA4's representation. The measures of jerk and change in power are shown in Table 2.

TABLE 2.—MEASURES OF MICROTRANSIENT DRIVING FROM INSTRUMENTED VEHICLE DATA/SEC

Source	Jerk		Change in power	
	Mean of the absolute values (mph/sec)	Standard deviation (mph/sec)	Mean of the absolute values (mph^2/sec)	Standard deviation (mph^2/sec)
In-use driving	0.47	0.89	20.48	34.36
LA4	0.36	0.63	14.96	22.96

For both jerk and change in power, the mean of the absolute values were used in order to look at both the positive and negative values (the mean of the signed values of jerk is always equal to zero). The in-use means were higher than those for the LA4, indicating larger in-use changes in acceleration and power, as well as reflecting, in part, the LA4's acceleration rate cutoff of 3.3 mph/sec and the maximum speed of 57 mph. The standard deviations of jerk and change in power are probably a better measure of microtransient behavior. Again, in-use data show larger values for both measures. The greater variation around the mean demonstrated by the in-use data suggests that the LA4 does not adequately represent the microtransient nature of in-use driving behavior.

B. Soak Behavior

The survey data were also analyzed to determine the frequencies at which soaks of different durations occurred in-use. The Agency found that soaks of less than 10 minutes and greater than 8 hours occur with the highest frequencies in use. However, EPA also found that a significant portion of in-use soaks are of intermediate duration. For example, nearly 40 percent of all soaks in the Baltimore survey data were between 10 minutes and 2 hours. Given that the current FTP employs only two soaks (the 10-minute hot soak and the 12- to 36-hour cold soak) to represent the range of soaks in-use, EPA was concerned that the current FTP might not adequately control for emissions following these intermediate-duration soaks.

C. Air Conditioning

A number of variables affect the range of A/C usage, particularly temperature, sun load, and humidity, all of which

[15] U.S. Environmental Protection Agency, Federal Test Procedure Review Project: Preliminary Technical Report, EPA 420–R–93–007, Office of Air and Radiation, May 1993.

[16] The power needed from an engine to move a vehicle is proportional to both the vehicle speed and the acceleration rate. Neither variable, by itself, is a good measure of the load placed on the engine. The joint distribution of speed and acceleration is probably the best measure, but it must be examined in three dimensions, which is difficult to visualize and comprehend. The concept of specific power provides a two-dimensional measure which is roughly equal to 2*speed*acceleration and has the units of mph^2/sec.

[17] See the Technical Reports for a full description and analysis of this data.

vary by season, time of day, and geographic location. Given that the overall goal of the Act is to help bring localities and regions into compliance with the National Ambient Air Quality Standards (NAAQS), the Agency chose to focus attention on the contribution of A/C to vehicle emissions during typical high ozone situations. Analyses of ozone exceedances revealed that ozone exceedances typically occur on days with a mean ambient temperature of 95 °F, 30–40 percent relative humidity, and limited cloud cover.

In August and September 1994, the Agency conducted an instrumented vehicle study in Phoenix, Arizona. Preliminary analyses of the survey data indicate that the average A/C usage was 77 percent for days that reached a peak temperature between 90 °F and 100 °F. The A/C compressor was actually engaged 61 percent of the total time (see Technical Reports and the Support Document to the Proposed Regulations for Revisions to the Federal Test Procedure: Detailed Discussion and Analysis for full analysis). The high use of A/C in ozone exceedance conditions makes the accurate simulation of A/C during the FTP more important.

D. Additional Elements Affecting Engine Load

A comprehensive evaluation of additional elements affecting engine load would require surveys of the frequency of occurrence of the elements in-use, as well as evaluation of interactive effects with driving behavior. For road grade, a 1980 EPA report [18] indicated that positive road grades average 1.66 percent nationally and that roughly six percent of national VMT is spent on grades of four percent or higher. The Agency sought to supplement this information with driving behavior data over road grade, gathered during the chase car portion of the in-use driving surveys. Unfortunately, problems with noise and insufficient resolution on the measure of grade rendered the data inadequate, and no alternative data source was available. In addition, EPA was unable to conduct in-use surveys in the areas of passenger/cargo loading and trailer towing, due to the scope and nature of the necessary survey instrument. As a consequence, EPA has insufficient data for use in evaluating the additional elements affecting engine load that were originally identified as areas of concern.

[18] 18 U.S. Environmental Protection Agency, Passenger Car Fuel Economy: EPA and Road, EPA# 460/3–80–010, September 1980, p. 119.

VII. Representative Driving Cycles

In order to evaluate the emission impacts of in-use driving and soak behavior, EPA designed three driving cycles that were representative of the in-use survey results, using segments of actual in-use driving survey data. Concurrently, EPA determined weighting factors to reflect the fraction of in-use operation represented by each cycle; these factors are used to properly weight the emissions from the cycles when doing an emission assessment.

The Agency developed separate cycles for start driving and aggressive driving. The Agency chose to develop individual cycles rather than a single ''representative'' cycle in order to evaluate EPA's areas of concern independently. This is most critical in the case of aggressive driving where both capturing the diversity of aggressive driving behavior and representing it proportionally in a single cycle covering all in-use operation would lead to a very long cycle.

The Start Cycle (ST01) represents three successive 80-second segments of in-use driving immediately following the initial idle. Testing using ST01 allowed separate determination of start driving emissions; ST01 was also used to quantify the emissions effects of varying soak duration.

The second cycle, characterizing aggressive driving, was the Representative Non-LA4 Cycle (REP05). This cycle targeted speeds and accelerations, as well as microtransient effects, not covered by the current LA4.

To complete the representation of in-use driving behavior for emission assessment purposes, a third cycle, the Remnant Cycle, was developed to characterize in-use driving behavior not represented by either the ST01 or REP05.

The Agency used the same basic cycle development methodology for each of the three representative cycles. A full discussion of the methodology used, the composition of each cycle, and how it compares to the cycle in the FTP is found in the Technical Reports.

It seemed clear from the in-use survey data that rapid speed fluctuations, including ones not well represented on the LA4, could be found in all types of in-use vehicle operation. The Agency's use of actual microtrips as the building blocks for the three representative cycles directly incorporated such microtransient driving behavior into all three cycles.

The Agency has assumed that driving behavior is not affected significantly by A/C operation and that the representative driving cycles developed from the in-use driving survey data are equally applicable to testing with the A/C system on and off. In fact, even though the Atlanta driving survey was the only one of the three surveys conducted during the summer, that city had the most aggressive driving of the three cities. Thus, it does not seem likely that A/C operation could have a significant impact on driving behavior. Nonetheless, the Agency welcomes data and comments on the relationship between A/C operation and driving behavior.

VIII. Emission Inventory Assessments

An assessment of emissions from four areas for potential emission control was conducted using the representative test cycles developed from the survey data. A full description of the test programs and the results can be found in the Technical Reports. The following summarizes the conclusions for each area considered.

A. In-Use Driving Behavior

The FTP Review's emission assessment of in-use driving behavior was based on a vehicle emission test program conducted cooperatively by EPA, CARB, AAMA, and AIAM during 1993 and early 1994 (referred to subsequently as the Non-LA4 Emissions Test Program).[19]

On the basis of the EPA data, the project team concluded that the LA4 under-predicts actual in-use hot stabilized emissions by 0.043 g/mi NMHC, 2.8 g/mi CO, and 0.083 g/mi NO_X on current technology, properly operating vehicles.[20] These numbers do not have any direct bearing on the FTP standards; they are simply an estimate of the additional amount such vehicles actually emit in-use, compared to the FTP test results.

Table 3 shows the percentage contribution to the in-use emission increase from the Start (ST01), Remnant, and aggressive (REP05) driving cycles, weighted by their respective proportion of in-use driving. As expected, the aggressive driving of REP05 contributed significantly to the difference. More surprisingly, however, significant contributions to the increase also came from the Start and Remnant Cycles, particularly for NMHC and NO_X.

[19] EPA's assessment was limited to EPA's and AAMA/AIAM data. Due to differences in testing hardware, CARB's emission results were not directly comparable.

[20] These estimates are only for the emission under-prediction related to driving behavior. Other factors such as soak are addressed in the sections to follow.

TABLE 3.—CONTRIBUTIONS TO THE IN-USE G/MI INCREASE BY THREE TYPES OF DRIVING

Driving	NMHC	CO	NO_X
All (In-Use In-crease).	0.043 g/mi	2.784 g/mi.	0.083 g/mi.
Start	30.2%	17.1% ..	23.0%.
Remnant .	33.8%	25.0% ..	45.6%.
Aggres-sive.	36.0%	57.8% ..	31.4%.

The AAMA/AIAM portion of the program was conducted in late 1993 and early 1994. This 26-vehicle, 8-manufacturer program included hot stabilized testing with REP05, the 505, and the 866, but none with the Remnant or Start Cycles; thus, a complete assessment of in-use hot stabilized driving could not be conducted with the manufacturers' data. Nevertheless, comparisons were made between the EPA and manufacturer program results for REP05 as well as the difference between REP05 emissions and hot stabilized LA4 emissions. In looking at the emission difference between REP05 and hot LA4, the LDV and light light-duty truck (LLDT) average for the EPA tested vehicles was 0.04 g/mi while it was 0.06 g/mi for the vehicles tested by the manufacturers. The CO emissions tracked better, with the REP05 and hot LA4 difference of 5.71 g/mi for EPA and 5.32 g/mi for the manufacturer tests. The manufacturer testing showed a much larger NO_X differential. The NO_X difference between REP05 and hot LA4 was 0.25 g/mi for the manufacturers' testing while only 0.09 g/mi for EPA testing. The NMHC and CO differences are primarily among the LLDTs while the NO_X difference was found in LDVs and LLDTs. The Agency did not test any heavy light-duty trucks (HLDTs); however, the manufacturers' results showed these vehicles as having the largest grams per mile increases from hot LA4 to REP05. This comparison suggests that EPA's emission assessment should provide a reasonable, if not conservative, estimate of in-use emissions.

B. Intermediate Soaks

The Agency conducted the assessment of in-use emissions following intermediate soaks using data from EPA's Soak/Start Test Program, conducted in two phases between July 1993 and June 1994. The testing represented the soaks observed in the driving survey data. The primary cycles used to measure post-soak emission levels for the emission assessment were variations of EPA's representative Start Cycle (ST01).

Post-soak emissions in the Soak/Start Test Program, measured over the ST01 cycle, increased steadily and sharply as soak duration was incremented between 10 minutes and 60 minutes. The average ST01 emissions for all vehicles tested for NMHC, CO, and NO_X were higher following the 60-minute soak than they were for the 10-minute soak by factors of seven, two, and four, respectively. The increases were significant in absolute terms as well; for example, the average NMHC emissions on three Tier 1 vehicles went from about 0.05 g/mi following the 10-minute soak to over 0.50 g/mi following the 60-minute soak. The rate of increase moderated with soaks longer than 60 minutes, such that emissions of all constituents following a 2-hour soak were within 50 percent of cold soak levels. The subset of Tier 1 vehicles in the EPA program showed similar percentage increases as a function of soak duration relative to the Tier 0 vehicles, although the average emission levels of these vehicles were lower than the Tier 0 vehicles.

C. In-Use Air Conditioner Operation

The Agency conducted three test programs and participated cooperatively with AIAM and AAMA in an additional test program during late 1993 and early 1994 with the purpose of assessing in-use emissions due to A/C operation. Detailed descriptions of all of these programs and the results are contained in the Support Document to the Proposed Regulations for Revisions to the Federal Test Procedure: Detailed Discussion and Analysis.

The first test program compared emissions during the current FTP A/C simulation to emissions obtained with the A/C actually operating and confirmed that the current A/C simulation method significantly under-represents the actual load of the A/C on the engine.[21]

The second test program went beyond the current FTP by testing A/C impacts over the three representative cycles (REP05, ST01, Remnant) as well as over the LA4. As in the first program, results from this testing demonstrated an overall increase in actual emissions with the A/C operating. In particular, the magnitude of the NO_X increase in both programs was much larger than expected and caused the Agency to focus further research and analysis on the effects of A/C operation on NO_X emissions.

The third test program was very similar to the second but was designed to collect second-by-second emissions and vehicle operating data. Analysis of these data indicated that the significant A/C-related emission impacts were occurring during idles and accelerations; on the LA4, ST01, and Remnant cycles the combination of idles and accelerations accounted for more than 80 percent of the total observed NO_X increase. As was the case in the previous program, the overall increases in NO_X were heavily weighted towards the moderate and lower speed driving of the ST01, Remnant, and LA4 cycles, although some increases were seen on the REP05 cycle.

A detriment of these test programs is that they did not adequately or fully represent the actual conditions under which A/C systems are likely to be operated. To test vehicles under an accurate simulation of environmental conditions and vehicle speed, an emission testing program (referred to as the AC Rochester [ACR] test program) was conducted by vehicle manufacturers in a sophisticated environmental test facility.[22] The Agency and manufacturers cooperatively defined for the testing a set of environmental and meteorological parameters to represent a typical ozone nonattainment day.

Eight vehicles certified to the EPA's Tier 1 emission standards with HFC–134a A/C refrigerant systems were tested in the program. Once again, the effects of A/C operation were most pronounced on the moderate-to-lower speed cycles. On a hot, stabilized LA4, the average increases were 0.011 g/mi for NMHC, 0.3 g/mi for CO, and 0.205 g/mi for NO_X. The increases observed on the REP05 cycle were smaller than on the LA4, but still noteworthy due to the performance of several of the vehicles, causing the Agency some concern about the impact of A/C operation during aggressive driving behavior. Fuel economy decreased by about 13 percent on the REP05 with the A/C operating, substantially less than the 20 percent reduction on the LA4, further indicating that the A/C load as a proportion of total load tends to diminish as speeds and accelerations increase.

[21] In fact, the Agency believes that the effect on emission values of the additional ten percent dynamometer road load horsepower is negligible and unobservable within the range of current test-to-test variability.

[22] This program was developed as a cooperative effort between EPA and manufacturers with funding from manufacturers.

D. Additional Elements Contributing to Engine Load

As part of the Non-LA4 Emission Test Program, EPA conducted an evaluation of emission impacts from road grade by simulating a two percent grade through increased inertia weight at the dynamometer during testing of three vehicles over the three representative cycles. The road grade effect, weighted by the percentages of the driving types in-use, showed a consistent HC increase of 0.04 g/mile, a highly variable CO increase averaging 3.2 g/mile, and a NO_X increase (due largely to one vehicle) of 0.19 g/mi. Due to the absence of comprehensive in-use survey information, EPA did not calculate adjustments to these numbers to reflect in-use frequency of grade or modifications to driving behavior over grades.

IX. Cause and Control of Emissions

Three candidate areas for emission control are aggressive driving behavior, intermediate soak periods, and A/C operation. Microtransient driving behavior carries over and is addressed withing these candidate areas. The following discusses each of these areas, the causes of emission, and potential strategies for controlling the emission.

A. Aggressive Driving Emissions

Both agencies and the vehicle manufacturers anticipated that a primary cause of higher emissions during aggressive operation would be ''commanded enrichment,'' which is done by programming the vehicle's computer to change the air/fuel ratio to the rich side (more fuel for the same air) of stoichiometric operation, typically in response to high loads on the engine. Aggressive driving, positive road grade, increased vehicle loading, and air conditioning operation all generate increased load on the engine. Further, the effect of these factors are cumulative. Manufacturers currently employ commanded enrichment in essentially all applications when high load at the engine (regardless of the source) is detected, both to provide increased power and to cool the engine or catalyst.

Using data from EPA's Non-LA4 Test Program, supplemented by AAMA/AIAM data,[23] the Agency concluded elevated HC and CO emissions during aggressive driving are due primarily to enrichment, both commanded and transient. High NO_X emissions during aggressive driving, EPA believes, are due both to an increase in engine out NO_X (from higher temperatures) and to relatively poor catalytic conversion. Poor catalytic conversion is due to lean events resulting from erratic A/F control and to an A/F control strategy which is not biased rich. The Agency also recognizes that catalyst breakthrough is a potential contributor to CO and NO_X emissions during aggressive driving.

The Agency considered five strategies that manufacturers might employ for addressing the causes of high emissions from aggressive driving: improved control of the A/F ratio (fuel control) through calibration; improved fuel control by upgrading fuel injection systems to sequential firing; upgrading to electronic throttle control; improvements to catalyst design; and reapplication or refinement of conventional NO_X emission control systems. These strategies are discussed in detail in the Technical Reports.

Of these strategies, the various recalibration options appeared to be the least costly, because each of the remaining strategies involved per-vehicle hardware modifications. In addition, data from the Non-LA4 test program indicated that recalibrations would probably control the vast majority of aggressive driving emissions.

B. Intermediate Soak Periods

The Agency examined the causes of post-soak emissions using data from the EPA Soak/Start Test Program and a preliminary program called the Albany Cooldown Study that gathered real-world engine and catalyst cooldown profiles. The data from these programs indicated that increased emissions following intermediate soaks arise in three ways:

- Rapid catalyst cooldown following keyoff,
- Slow catalyst thermal recovery following a restart, and
- Manufacturer calibration strategies in response to the startup condition.

The Agency data indicate the catalyst cools to below the temperature needed to sustain significant catalytic activity (''light-off'' temperature) within 20–30 minutes of vehicle shutoff, while the engine is still near its normal operating temperature. Data also indicated a significant delay in achieving light-off temperature upon restart, apparently due to the cool initial temperature of the engine-out exhaust. Because tailpipe emissions increase dramatically when the catalyst is below light-off temperatures, the relatively long delay in achieving light-off results in disproportionately high emission increases over intermediate soaks.

The current FTP provides no incentive for manufacturers to retard the rapid cooldown of the catalyst during intermediate soaks. In addition, testing found differences in engine-out emissions determined by the manufacturer's calibration strategy upon restart. Following intermediate-duration soaks, one vehicle had a lean calibration strategy which increased NO_X emissions. Here again, the test results indicate that significant emissions may be occurring in-use because of a lack of incentive for manufacturers to optimize startup calibrations following intermediate soaks.

In general, strategies for reducing post-intermediate soak emissions are catalyst-based and either focus on the retarding of catalyst cooldown through insulation after the vehicle is shut off or the enhancement of catalyst light-off upon restart.

Of the potential approaches considered for control of intermediate soaks, EPA is focusing on catalyst insulation as the primary control strategy. Use of insulation results in greater emission reductions over intermediate soaks than strategies which focus on improving catalyst light-off through conventional means and provides more cost-effective emission benefits than advanced cold start approaches. Although intermediate soak emissions will likely be reduced to some extent due to directional improvements in cold start performance, EPA believes that on Tier 1 vehicles intermediate soak emissions will continue to be relatively significant because the primary cause of intermediate soak emissions—rapid cooling of the catalyst—will remain unaddressed. Because insulation directly addresses catalyst cooldown, EPA anticipates that this approach will incur significant emission reductions over intermediate soaks on Tier 1 vehicles, including those which will incidentally reduce intermediate soak emissions through improved cold start performance.

C. Air Conditioner Operation

The Agency focused on the NO_X impacts from A/C use because of the large observed increases. The increases in tailpipe NO_X with the A/C operating seen in the ACR Test Program could clearly be linked to large increases observed in engine out NO_X, which are probably caused primarily by higher combustion temperatures due to the additional load of the A/C system. Tailpipe NO_X can be improved by

[23] AAMA/AIAM spotlighted commanded enrichment by retesting a portion of the vehicles in their test program in a stoichiometric configuration, as well as in the ''production'' configuration and provided second-by-second data acquisition capability for emissions and a variety of engine and emission control parameters, allowing fine scrutiny of individual driving events.

increasing NO_X conversion efficiency in the catalyst or decreasing engine out NO_X. Control strategies include improving control of the A/F ratio, eliminating the lean-on-cruise calibration strategy, adjusting spark timing, adding or enhancing EGR systems strategic cycling of the A/C compressor, and improving catalysts to enhance NO_X conversion efficiency.

The testing at ACR confirmed that HC and CO were also impacted by A/C operation. The Agency believes that these HC and CO increases are related to the increased load on the engine triggering additional periods of commanded enrichment when the A/C is on. The Agency believes that the control strategies for HC and CO discussed in ''IX.A. Aggressive Driving Emissions'' will eliminate HC and CO emissions increases due to A/C operation as well as during aggressive driving.

X. Options Considered and Information Needed

The following outlines the options which EPA has considered in developing today's proposal and issues on which more information is needed. As has been indicated, EPA and other stakeholders conducted extensive research and examined many options. While today's proposal selects the approach EPA felt would provide the most emission benefits feasible, in developing the final rule EPA will reconsider each of the options in terms of new research and data submitted. The Agency welcomes comments and additional data on these and any other points. A full discussion of these issues and a detailed analysis of each option is found in the Support Document to the Proposed Regulations for Revisions to the Federal Test Procedure: Detailed Discussion and Analysis.

A. Affecting Aggressive Driving Cycle

The Agency evaluated three basic options for establishing standards and vehicle testing aimed at controlling emissions from aggressive driving. Two options were based on emission performance standards with compliance measured using a test cycle, and one option was based on a performance standard using the A/F ratio with a related test procedure.

The Agency was guided by seven criteria in evaluating the options. First, EPA sought an option that would lead to control of emissions over the broad range of aggressive driving behavior found in the in-use driving survey data. Second, due to the non-linear nature of HC and CO emission increase during enrichment, a high priority was to ensure sufficient content from the highest-emission operating modes to prompt manufacturers to employ appropriate control strategies, including curtailing commanded enrichment. Third, the Agency sought consensus with CARB, to avoid duplicate or incompatible test requirements. Fourth, EPA sought to reasonably account for technical concerns raised by vehicle manufacturers, particularly manufacturer comment on the necessity of some commanded enrichment events to avoid elevated catalyst temperature levels from in-use operation leading to catalyst deterioration.[24] Fifth, EPA sought to pursue cost saving elements like reduction in test time where practical. Sixth, the Agency sought practical control of microtransient behavior, a candidate area of control that spans all driving. Finally, EPA favored strategies to control aggressive driving emissions that would also address the potentially significant (but unquantified) emissions from other engine load factors like road grade.

A full analysis of each option, how it was evaluated, how the level of emission control was determined, and the feasibility of the approach is in the Support Document to the Proposed Regulations for Revisions to the Federal Test Procedure: Detailed Discussion and Analysis and Technical Reports and comment on the analysis is welcome. Comment is specifically solicited on the following items:

- Comment is requested on the need to allow some commanded enrichment events during the USO6 Cycle to avoid elevated catalyst temperature levels from in-use operation leading to catalyst deterioration.

- The Agency is proposing that US06 HC and NMHC emissions be controlled to the same gram-per-mile emission levels currently achieved on the second bag of the FTP. US06 CO and NO_X emissions are proposed to be controlled to overall FTP emission levels. These proposals are based upon the Agency's analyses of the potential control technology and their related costs and emission reductions, which are described in detail in the Technical Reports. Comments and additional data addressing these proposed levels of control are solicited. Additional information and data are also requested about the potential tradeoffs between NO_X and CO control during aggressive driving, and on the impact such tradeoffs could have on the appropriate level of CO control.

- Although concern has been expressed that removal of commanded enrichment could impose a 2 percent to 10 percent power penalty, EPA believes power enrichment would not be precluded outright by this proposal, but rather curtailed only within the durations and speed-acceleration combinations found in the US06 cycle. Thus, the Agency has concluded on the basis of available data that compliance with the US06 standard should have a negligible effect on vehicle performance. Additional data on the effect on vehicle performance under this proposal is requested.

- The Agency has proposed adjustments to the US06 for all HLDTs and some LDVs and LDTs. These include a change in determing inertia weight for HLDTs, dynamic load adjustment for low-performance vehicles, and demonstration of stoichiometric control for wide-open throttle events for high-performance vehicles. Comments and data are solicited on the appropriateness of these adjustments and of the weight-to-power cutpoints. Of special concern is the possible unfair advantage the proposed high performance cut-off may provide to vehicles in the 18–21 W/P range.

- The Agency has proposed a W/P-based measure for the performance cutoffs after also considering the alternative performance criteria based on a vehicle's acceleration time from zero to 60 mph. The Agency rejected the zero to 60 time approach on the basis of practical problems related to establishing appropriate cutoff points and a standardized procedure for determining zero to 60 times. The Agency solicits comments on the proposed method for making vehicle performance adjustments, as well as input on alternatives, including the one discussed above.

B. Affecting Start Driving Cycle and Intermediate Soak

The compliance program approach evaluated for intermediate soaks and start driving was an emission performance standard applied to the results of testing over an emission control cycle following a soak period of intermediate duration. As with control program approaches for aggressive driving emissions, EPA believes that an emission performance standard provides the most direct method of controlling the emissions arising during the particular type of vehicle operation. Given the particular causes of high emissions in this case, use of design standards or system performance

[24] The relationship between curtailing commanded enrichment and catalyst deterioration is addressed in the discussion of feasibility in the Technical Report.

standards would be particularly complex and restrictive of the manufacturers' options.

The Agency developed a new Start Control Cycle (SC01) to be used for controlling emissions following intermediate soaks. Initial idles and start driving are addressed in SC01 by incorporating the EPA Start Cycle (ST01) in its entirety. The balance of SC01 is composed of two microtrips of moderate driving, selected from the in-use survey database in order to bring the total distance of the new control cycle up to match the 3.6-mile distance of the 505 Cycle; the resulting cycle is 568 seconds long.[25, 26]

A full analysis of the approaches and issues considered, how each was evaluated, how the level of emission control was determined, and the feasibility of the proposed approach is in the Support Document to the Proposed Regulations for Revisions to the Federal Test Procedure: Detailed Discussion and Analysis and Technical Reports and comment on the analysis is welcome. Comment is specifically solicited on the following items:

- The Agency believes that manufacturers should be able to control emissions on the SC01 cycle following a soak of from 10- to 60-minutes to the same gram-per-mile emission levels currently achieved on the third bag of the FTP. Comment on the appropriateness of this level of standard and method for determining compliance is requested.
- The Agency believes that internal catalyst insulation does not pose a temperature-based feasibility problem for underbody catalysts.[27] However, EPA had insufficient data to reach a firm view on this issue for the small number of Tier 1 vehicles which might need to insulate close-coupled catalysts. Thus, EPA solicits comments or data on the temperature-based feasibility of insulation for close-coupled catalysts.
- The Agency believes that application of catalyst insulation as a strategy for control of emissions following intermediate soaks is feasible. Data and comments are solicited on the feasibility of catalyst insulation and its impact on catalyst operation and durability.
- Comments are solicited on strategies to mitigate temperature increases in the catalyst brought about by insulation (such as moving the catalyst further downstream and subsequently conserving exhaust heat ahead of the catalyst to not impair cold start performance, or switching to more temperature-resistant noble metals like palladium), as well as spinoff effects of such strategies.
- The Agency believes it is necessary to move forward with an intermediate soak standard either if a significant proportion of vehicles are certified to Tier 1 standards for a significant time period following implementation or if it is cost effective and feasible to pursue control over intermediate soaks on vehicles certified to the lower standards. The Agency requests comment on the issues of cost-effectiveness and feasibility of an intermediate soak requirement on vehicles certified to lower emission standards.
- Criteria are being considered to permit manufacturers to forego the data submittal requirement for SC01 testing following a 60-minute soak on an engine family basis, allowing manufacturers to reduce the SFTP soak duration to 10 minutes. Under this option, manufacturers would be allowed to submit a technical justification demonstrating that an engine family would clearly pass the intermediate soak requirement. The Agency solicits comment on this option and potential criteria for granting such a waiver.

C. Affecting Air Conditioner Operation

The Agency analyzed several possible approaches to compliance testing designed to control emissions due to A/C operation. These options hinged on determination of two important elements—the choice of a control cycle and the choice of a methodology for simulating A/C operation over that cycle. The Agency pursued a control program for A/C-on emissions that utilized an emission performance standard rather than other control options.

A full analysis of each option considered, how it was evaluated, how the level of emission control was determined, and the feasibility of the approach is in the Support Document to the Proposed Regulations for Revisions to the Federal Test Procedure: Detailed Discussion and Analysis and Technical Reports and comment on the analysis is welcome. Comment is specifically solicited on the following items:

- The control cycle for A/C-related emissions being proposed is the 866 plus SC01. While the Agency believes these are the best cycles for A/C control, comments are solicited on the possibility of substituting the 505 component of the LA4 for SC01. Comments are also solicited on whether full A/C simulation should be added to the US06 cycle.
- A cold start test is not included in today's proposal, but the Agency does believe that it may be appropriate to return to this issue with respect to future technologies and future test procedures and emission standards. The Agency specifically solicits comments on this issue.
- Independent from determining the appropriate control cycles for testing, the Agency evaluated three principle options for simulating A/C operation on a given test cycle.[28] The Agency requests comment on the potential applicability of each option and the various methods of implementing each option, whether any specific method should be retained as an option in the final rule to allow for its future development and use by petitioning for Agency approval. The ''Nissan-II'' approach is currently being evaluated by a consortium of auto manufacturers and the Agency expects to review and evaluate the data as soon as it becomes available. The Agency specifically requests comments and data that would allow a better evaluation of this approach and its viability, as well as suggested improvements that would alleviate the Agency's concerns, as detailed in the Support Document to the Proposed Regulations for Revisions to the Federal Test Procedure: Detailed Discussion and Analysis.
- The Agency has estimated that vehicles can maintain existing NMHC and CO emission levels with the A/C turned on. For NO_X, the Agency believes that 25 percent of the NO_X increase with the A/C engaed is likely to be unavoidable without increasing the stringency of the current NO_X standard, but is proposing to control the other 75 percent. The Agency requests comments on the feasibility of this proposed level of control and the technology implications of controlling to this level.

[25] The severity of one SC01 acceleration was artificially modified to be less severe than in the original microtrip. This preserved the design objectives of matching the 505 trip distance and reflecting moderate, rather than aggressive driving. The representative level of microtransient behavior in the cycle was unaffected by this change.

[26] Analysis of the two microtrips used to complete SC01 shows higher power levels than the comparable portion of the 505. The Agency plans to replace these microtrips with those which match power levels of the 505 more closely. The completed cycle, known as SC02, will replace SC01 and serve the same purpose.

[27] Per vehicles with both under-body and close-coupled catalysts, EPA anticipates that only the underfloor catalyst would need to be insulated.

[28] The three options—bench testing, dynamometer simulation, and running test with A/C on—are discussed in more detail in the Support Document to the Proposed Regulations for Revisions to the Federal Test Procedure: Detailed Discussion and Analysis and the Final Technical Report on Air Conditioning for the Federal Test Procedure Revisions Notice of Proposed Rulemaking U. S. Environmental Protection Agency.

D. Affecting Whole Proposal

The Agency evaluated four different options to translate the proposed level of emission control for US06, intermediate soak, and A/C into compliance procedures and appropriate emission standards. The first option would set stand-alone standards for each control area. Compliance procedures and standards would be established individually for aggressive and microtransient driving behavior, A/C, and intermediate soaks. The second option would combine the three non-FTP areas of control into a single standard. The third option would establish a composite standard based on results drawn from both the SFTP and the FTP. While the basic concept is similar to the second option, the approach is specifically structured to directly implement the proposed level of control for each area using bag weights and to preserve the existing FTP compliance margins. The fourth option considered by EPA would replace the current FTP with an entirely new FTP that reflects, as accurately as possible, actual driving behavior.

A full analysis of each option, how it was evaluated, and the feasibility of each approach is in the Support Document to the Proposed Regulations for Revisions to the Federal Test Procedure: Detailed Discussion and Analysis. Comment on the analysis is welcome. Comments are specifically solicited on the following issues which relate to all cycles in the SFTP or changes to the FTP.

- Use of a composite non-FTP emission standard was chosen as the central approach chosen instead of using individual stand-alone standards, a single combined stand-alone standard, a replacement FTP, or some other option not considered. Stand-alone standards or a single combined stand-alone standard were not chosen primarily because of the lack of data to determine appropriate compliance margins and the difficulty in determining a single emission level given the disparity in emission levels from vehicle to vehicle. Replacing the current FTP at this time was not chosen primarily because revising the existing FTP would potentially impact the stringency of more stringent emission standards currently being considered for different parts of the country, such as the California LEV and ULEV standards, efforts by the Northeast states to adopt California requirements, and voluntary 49-state emissions standards (''FEDLEV''). Additional information and data are requested on the use of any of these approaches. Comments concerning stand-alone standards, or the simple average of the composite standards, should include consideration of how to set appropriate standards for both intermediate and full useful life.[29] Durability procedures for new stand-alone standards should also be addressed.
- Because replacing the FTP would offer better assurances of in-use emission control and would simplify the test procedure, EPA believes it makes sense in the long term to consolidate all the test requirements into a revised FTP. However, to avoid jeopardizing work on more stringent emission standards and to avoid delaying implementation of today's proposal, EPA believes it is better to incorporate consolidation of the FTP with future consideration of tighter federal standards. Comments are solicited on when consolidation should occur.
- Under the non-FTP composite approach, the bag weights for each cycle are selected to mirror the proposed level of control determined using the in-use driving survey data. (A discussion of the proposed level of control for each pollutant and how it was determined can be found in the Final Technical Report on Aggressive Driving Behavior for the Revised Federal Test Procedure Notice of Proposed Rulemaking). Comments are requested on the method used to select each weighting factor or the weighting given to each bag when determining compliance with the composite non-FTP emission standards.
- Emission standards are proposed to be set at current Tier 1 FTP levels, with an adjustment made for NO_X, and are tied to future changes in the FTP standards. Comments on tying the non-FTP composite standards to FTP standards, the method used for determining the standards, the No_X adjustment provided, or the need for other adjustments are requested.
- The Agency considered separating LDVs and LDTs but determined driving behavior was similar between these classes. Some adjustments are provided in the proposal for specific vehicle types, transmission types, and performance rating. Comments on the method used for determining these adjustments, the need for other adjustments, or other related issues are welcome.
- Very little emission data currently exists on emission impacts using fuels other than gasoline during the SFTP. Because of this, EPA considered exempting alternative- and/or diesel-fueled vehicles from the SFTP requirements, but decided such vehicles would be able to comply. Information and data related to applying today's proposal to alternative- and diesel-fueled vehicles are welcome.
- The Agency is asking for comments on whether or not it would be appropriate to establish a single $NMHC+NO_X$ standard for stand-alone A/C or soak/start requirements or for the proposed composite standards. Comments are also solicited on both the potential emission impacts and cost implications of this proposed alternative.
- Comments are requested on the benefits and feasibility of the proposed phase-in schedule from MY1998 to 2001. The Agency is particularly interested in data and comments on how potential concerns with higher catalyst temperatures should influence lead time, as well as how these concerns should be balanced with the objective to obtain the emission benefits under this rulemaking as quickly as possible. If it appears that wholesale elimination of commanded enrichment with short lead time could introduce unanticipated problems with catalyst deterioration, EPA may elect to spread the implementation of the requirements over a longer period in the final rule. Another option might be to set an intermediate standard level for the initial phase-in. Comments are solicited on the relative benefits and costs of an intermediate standard compared to a phase-in directly to the final standards.
- Today's proposal provides two blanket, automatic substitutions from the SFTP to the FTP to reduce testing costs and time for manufacturers. No substitution of FTP bags into the SFTP calculation is allowed. Flexibility in preconditioning is also provided in the proposal. If stand-alone standards are promulgated, EPA is considering an exemption from the intermediate soak requirements. Comments on any of these aspects or related matters are requested.
- Today's proposal will improve the accuracy of the dynamometer simulation of actual on-road operation during vehicle testing. In addition, the change in dynamometers to improve accuracy also allows modifying the equivalent test weight requirements to remove the cap. Comments are solicited on these changes.
- Comments are specifically solicited on the need for additional lead time to implement the new road load requirements in terms of the dynamometer changes. If data and additional information submitted

[29] Tier 1 standards were set for two points in the useful life of a vehicle—50,000 miles (intermediate) and 100,000 miles (full).

supports longer lead times, the Agency may elect to phase in the FTP under the same phase-in schedule used for the new SFTP requirements. Under this alternative, any engine family included in the SFTP phase-in would also use the improved road load simulations for FTP testing. To minimize the laboratory burden of maintaining two different sets of dynamometers, EPA would like to couple any phase-in of the new road load requirements with procedures allowing an electric dynamometer to simulate the existing dynamometer load. Comments addressing new road load lead time should also comment on how such a simulation could be incorporated.

• Changes to allow ''appropriate'' throttle action and new speed tolerance criteria are included in today's proposal. For each test cycle, a range of acceptable speed variation is created using the DPWRSUM [30] variable. Each driving cycle has a unique value of DPWRSUM, which is compared to the DPWRSUM calculated from the driver's trace (what the vehicle actually drove) to determine a valid test. Comments are solicited on these aspects of today's proposal, specifically on the proper method for setting the lower DPWRSUM threshold for a valid test.

XI. Environmental and Economic Impacts

To estimate the emission reductions associated with the proposal, the expected lifetime emission reductions were determined per vehicle sold after implementation of the proposed regulations. Baseline emissions are taken from the extensive test programs conducted by the Agency and the original equipment manufacturers in support of the FTP Review Project, as discussed earlier. The weighted averages of the emission results of these test vehicles over the various new test procedures constitute the baseline emissions used in this analysis.

A. Emission Reductions

The emission reductions used in this analysis were calculated by subtracting the proposed level of control for each control area from the baseline test vehicle emissions. These test vehicle reductions were then weight averaged to simulate the reductions associated with the actual in-use vehicle fleet mix. It should be noted that the test results were derived for an average vehicle with a 50,000 mile catalyst and do not include any allowance for in-use compliance margins. Thus, the emission benefits calculated here are likely to be understated.

The average emission factor impacts per vehicle associated with the proposed regulations are shown in Table 4. The calculated results for A/C control listed in Table 4 include a factor to account for driving with the A/C ''on'' versus driving with it ''off.'' A recent survey of actual A/C operation in Phoenix, AZ found that the compressor was engaged about 61 percent of the time during typical ozone exceedance days. Thus, the estimated g/mi reduction from A/C control was multiplied by 0.61 for inclusion in Table 4.

TABLE 4.—AVERAGE EMISSION FACTOR REDUCTION PER VEHICLE

Control area	NMHC (g/mi)	CO (g/mi)	NO_X (g/mi)
High speed/accel	0.055	2.39	0.062
Soak/start	0.022	0.02	0.037
Air conditioning	0.000	0.00	0.91

These emission reduction numbers constitute the emission reductions associated with the proposed requirements in g/mi. These g/mi values were converted into the estimated lifetime emission reduction per vehicle using assumptions about average annual mileage accumulation rates, a discount rate of seven percent, and estimated survival rates. The results are listed in Table 5; a detailed discussion of the methodology can be found in the Regulatory Impact Analysis.

TABLE 5.—DISCOUNTED LIFETIME EMISSION REDUCTIONS POUNDS PER VEHICLE

Control area	NMHC	CO	NO_X
US06	10.1	441	11.4
Soak/start	4.1	4	6.8
Air conditioning	0.0	0	16.9
Total	14.2	445	35.1

The tons per summer day emission reductions in various years as a result of the proposed test procedure modifications were estimated using vehicle miles traveled (VMT) for different model year vehicles during each year of interest, the emission factor reductions shown in Table 4, and the proposed phase-in schedule. These calculations are show in Appendix B of the Regulatory Impact Analysis (RIA) and are summarized in Table 5. The percent reduction columns in Table 6 compare these estimated tons per summer day (tpsd) emission reductions to the baseline emissions for the light-duty fleet (cars and trucks). Calculations for these percentage reductions are shown in Appendix C of the RIA.

TABLE 6.—FLEET EMISSION REDUCTIONS IN TONS/SUMMER DAY AND PERCENT OF LIGHT-DUTY FLEET

	NMHC		CO		NO_X	
	tpsd	%	tpsd	%	tpsd	%
2005	404	4	12655	11	1000	9
2010	577	6	18047	15	1427	12
2015	694	7	21717	17	1717	14
2020	765	8	23938	18	1892	14

B. Economic Impact

The proposed additions to emission test procedures will impose several costs on the original equipment manufacturers. These costs include added hardware for improved emission control and associated development and redesign costs, improved engine control calibrations, and increased costs associated with the certification process including durability data vehicle testing and reporting.

The cost estimates correspond to costs incurred by the manufacturer in complying with the proposed requirements. These costs can be divided into fixed and variable costs. Fixed costs are those costs made prior to vehicle production and are relatively

[30] DPWRSUM is the sum in the change in power, a statistic which is derived from the vehicle speed.

independent of production volumes. The fixed costs considered in this analysis are those for engine control recalibration, vehicle redesign, mechanical integrity testing on redesigned engine families, certification durability demonstration, annual certification costs, and test facility upgrades and construction. Variable costs are costs for the necessary emission control hardware and are, by nature, directly dependent on production volume. Table 7 presents a summary of the cost estimates calculated by the Agency. Discussion of the assumptions and data included in these estimates can be found in the RIA.

TABLE 7.—REGULATORY COST ESTIMATES

	Annual cost ($ million)	Cost/vehicle ($)
US06	16.8	1.12
Soak/start	139.4–187.0	9.30–12.47
A/C	18.3	1.22
Totals	174.5–222.1	11.63–14.81

C. Cost-Effectiveness

The cost-effectiveness estimate represents the expected cost per ton of pollutant reduced. The costs presented in Table 7 are not necessarily equally spread among the three pollutant emissions (NMHC, CO, and NO_X). Since the requirements associated with A/C are targeted for NO_X control, all costs associated with A/C have been allocated to NO_X. For US06, the costs associated with each area have been allocated equally across each pollutant. As the CO reduction from soak/start is minimal, the costs associated with soak/start have been split equally between NMHC and NO_X. Table 8 contains the per vehicle cost allocation to each pollutant within each control area.

TABLE 8.—COST ALLOCATION ($/VEHICLE)

	NMHC	CO	NO_X	Total
US06 costs	0.37	0.37	0.37	1.12
Soak/start costs	4.65–6.23	0.00	4.65–6.23	9.30–12.47
A/C Costs	0.00	0.00	1.22	1.22
Total	5.02–6.61	0.37	6.24–7.83	11.63–14.81

Dividing the costs shown in Table 8 by the lifetime emission reductions shown in Table 5, gives the cost-effectiveness estimates shown in Table 9.

TABLE 9.—COST-EFFECTIVENESS ESTIMATES ($/TON)

Control area	NMHC	CO	NO_x
US06	74	2	65
Soak/start	2291–3072	NA	1362–1827
A/C	NA	NA	153
Total	707–930	2	355–445

D. Consumer Impacts

Two impacts on value to the consumer not included in the above estimates are potential savings associated with reduced fuel consumption and impact on the horsepower output of some vehicle engines. As previously discussed, EPA expects manufacturers to eliminate or greatly reduce the amount of commanded enrichment currently used in order to meet the NMHC and CO standards for the US06 control cycle. Due to the lower fuel consumption associated with stoichiometric air/fuel control as compared to commanded enrichment, this action will result both in a small improvement in fuel economy and a small loss in horsepower output. The Agency approximated the fuel economy benefit by determining how much extra fuel is used during commanded enrichment operating modes and the in-use incidence of these commanded enrichment operating modes. The result was an estimated 0.51 percent reduction in fuel consumption. Using this fuel consumption reduction and multiplying it by the miles driven in a given year, the appropriate survival rate and a seven percent discount factor, results in an estimated lifetime fuel economy savings of $16.56, based on a gasoline cost of $0.80 per gallon, excluding state and federal taxes.[31] A more detailed discussion of fuel economy cost savings can be found in the RIA for this rule.

Accompanying the lost horsepower output will be the potential for some consumers to consider such affected vehicles as having less value. The Agency does not believe that this lost value will be noticed by most consumers, as the horsepower loss is quite small, but acknowledges its potential effect nonetheless. Due to the difficult nature of trying to quantify a cost associated with reduced power output, or reduced 0 to 60 mph acceleration time, etc., the Agency has not been able to quantify the loss in consumer value. However, the Agency believes that this cost should be roughly negated by the associated savings in fuel expenses. Comments and data are solicited on ways to quantify the consumer value of the power loss.

The Agency does not anticipate that today's proposal will have any impact on Inspection/Maintenance programs.

[31] From Cost Projections, FFA, 1992, updated from DOE/EIA Monthly Energy Review, May 1994, and DOT/FHA. According to FHA, average sales-weighted state taxes for gasoline were 18.54¢ in June 1994. Federal tax is 18.4¢.

XII. Public Participation

A. Comments and the Public Docket

The Agency welcomes comments on all aspects of this proposed rulemaking. All comments, with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–92–64 (see **ADDRESSES**). Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by:

- Labeling proprietary information ''Confidential Business Information'' and
- Sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket.

This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants

EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, the submission may be made available to the public without notifying the commenters.

B. Public Hearing

Anyone wishing to present testimony about this proposal at the public hearing (see **DATES**) should, if possible, notify the contact person (see **FOR FURTHER INFORMATION CONTACT**) at least seven days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first-come, first-served basis, and will follow the testimony that is arranged in advance.

The Agency recommends that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed.

The official records of the hearing will be kept open for 30 days following the hearing to allow submissions of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket, Docket No. A–92–64 (see **ADDRESSES**).

The hearing will be conducted informally, and technical rules of evidence will not apply. Written transcripts of the hearing will be made and a copy thereof placed in the docket. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding.

XIII. Administrative Designation

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or 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 of annual impacts on the economy that are likely to exceed $100 million. 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.

XIV. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1990 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA).

The Agency has determined that this action will not have a significant impact on a substantial number of small entities. This regulation will affect only manufacturers of motor vehicles, a group which does not contain a substantial number of small entities.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., I certify that this regulation does not have a significant impact on a substantial number of small entities.

XV. Reporting and Recordkeeping Requirement

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No. 2060–0104) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M St., SW (Mail Code 2136), Washington, DC 20460 or by calling (202) 260–2740.

The information collection burden associated with this rule (testing, record keeping and reporting requirements) is estimated to average 566 hours annually for a typical manufacturer. However, the hours spent annually on information collection activities by a given manufacturer depends upon manufacturer-specific variables, such as the number of engine families, production changes, emissions defects, and so forth. The burden estimate includes such things as reviewing instructions, searching existing data sources, setting up and maintaining equipment, performing emission testing, gathering and maintaining data, performing analyses, and reviewing and submitting information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, EPA, 401 M St., SW (Mail Code 2136), Washington, DC 20460 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and marked ''Attention: Desk Officer for EPA.'' The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Confidential business information, Environmental protection, Gasoline, Imports, Labelling, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: January 31, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–2833 Filed 2–6–95; 8:45 am]

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federal register

Tuesday
February 7, 1995

Part X

The President

Proclamation 6767—To Amend The Generalized System of Preferences

Federal Register
Vol. 60, No. 25
February 7, 1995

Presidential Documents

Title 3—

The President

Proclamation 6767 of February 3, 1995

To Amend the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to sections 501 and 502 of the Trade Act of 1974, as amended (''trade Act'') (19 U.S.C. 2461 and 2462), and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Armenia as a beneficiary developing country for purposes of the Generalized System of Preferences (GSP).

2. Pursuant to section 504(f) of the Trade Act (19 U.S.C. 2464(f)), I have determined that the per capita gross national product of The Bahamas has exceeded the applicable limit provided for in section 504(f). Accordingly, pursuant to section 504(a) of the Trade Act (19 U.S.C. 2464(a)), I have determined that it is appropriate to suspend the designation of The Bahamas as a beneficiary developing country for purposes of the GSP, and pursuant to section 504(f) of the Trade Act, I have determined that it is appropriate to terminate such designation.

3. Pursuant to section 504(f) of the Trade Act, I have determined that the per capita gross national product of Israel has exceeded the applicable limit provided for in section 504(f). Accordingly, I have determined that it is appropriate to terminate the designation of Israel as a beneficiary developing country for purposes of the GSP.

4. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the provisions of that Act, and of other acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 501, 504, and 604 of the Trade Act, do proclaim that:

(1) General note 4(a) to the HTS, listing those countries whose products are eligible for benefits of the GSP, is modified by: (a) inserting ''Armenia'' in alphabetical order in the list of independent countries;

(b) deleting ''Bahamas, The'' and ''Israel'' from the list of independent countries; and

(c) deleting ''Bahamas, The'' from the list of Member Countries of the Caribbean Common Market, and amending the heading of that list to read ''Member Countries of the Caribbean Common Market (CARICOM), except The Bahamas''.

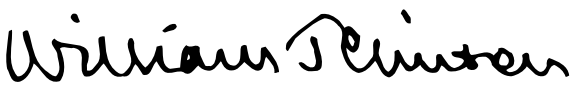
(2) General note 4(d) to the HTS is modified as provided in Annex I to this proclamation.

(3) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(4)(a) The modifications to the HTS made by paragraph (1)(a) of this proclamation shall be effective with respect to articles that are: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of publication of this proclamation in the **Federal Register**.

(b) The modifications to the HTS made by paragraphs (1)(b), (1)(c), and (2) shall be effective on July 1, 1995.

IN WITNESS WHEREOF, I have hereunto set my hand thisthird day of February, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.



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Annex I—Modifications to General Note 4(d) of the HTS

Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1995.

General note 4(d) is modified by:

(a) deleting the following HTS subheadings and the country set out opposite such subheadings:

3909.10.00	....	Israel
4011.91.50	....	Israel
8419.19.00	....	Israel
8419.90.10	....	Israel
8517.30.15	....	Israel

(b) deleting the country set out opposite the following HTS subheadings:

2903.40.40	....	Israel
2903.59.40	....	Israel
2918.90.30	....	Bahamas
2933.40.10	....	Israel
7113.19.50	....	Israel

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