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February 27, 1995

Briefings on How To Use the Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 12950 of February 22, 1995

Establishing an Emergency Board To Investigate a Dispute Between Metro North Commuter Railroad and Its Employees Represented by Certain Labor Organizations

Disputes exist between Metro North Commuter Railroad and certain of its employees represented by certain labor organizations. The labor organizations involved in these disputes are designated on the attached list, which is made a part of this order.

The disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (45 U.S.C. 151 *et seq.*) (the ''Act'').

A party empowered by the Act has requested that the President establish an emergency board pursuant to section 9A of the Act (45 U.S.C. 159a).

Section 9A(c) of the Act provides that the President, upon such request, shall appoint an emergency board to investigate and report on the disputes.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 9A of the Act, it is hereby ordered as follows:

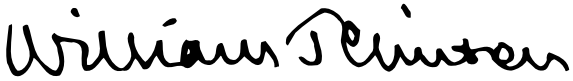
Section 1. *Establishment of the Board.* There is established effective February 22, 1995, a board of three members to be appointed by the President to investigate these disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The board shall report to the President with respect to the disputes within 30 days of its creation.

Sec. 3. *Maintaining Conditions.* As provided by section 9A(c) of the Act, from the date of the creation of the board and for 120 days thereafter, no change, except by agreement of the parties, shall be made by the carrier or the employees in the conditions out of which the disputes arose.

Sec. 4. *Records Maintenance.* The records and files of the board are records of the Office of the President and upon the board's termination shall be maintained in the physical custody of the National Mediation Board.

Sec. 5. *Expiration.* The board shall terminate upon submission of the report provided for in section 2 of this order.



THE WHITE HOUSE,
February 22, 1995.

LABOR ORGANIZATIONS

Brotherhood of Locomotive Engineers
Brotherhood of Locomotive Engineers—American Train Dispatchers Division
Brotherhood of Railroad Signalmen
International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers
International Association of Machinists & Aerospace Workers
International Brotherhood of Electrical Workers
International Brotherhood of Teamsters
Transportation Communications International Union—ARASA
Sheet Metal Workers International Union
Transport Workers Union of America
United Transportation Union

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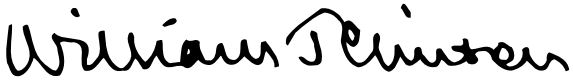

THE WHITE HOUSE,
February 22, 1995.

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Brotherhood of Locomotive Engineers—American Train Dispatchers Division
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International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers
International Association of Machinists & Aerospace Workers
International Brotherhood of Electrical Workers
International Brotherhood of Teamsters
Transportation Communications International Union—ARASA
Sheet Metal Workers International Union
Transport Workers Union of America
United Transportation Union

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Presidential Documents

Proclamation 6771 of February 23, 1995

Irish-American Heritage Month, 1995

By the President of the United States of America

A Proclamation

America's bounty—the abundance of the fields, the beauty of the landscape, the richness of our opportunities—has always attracted people who are in search of a better life for themselves and their children. Our democracy owes its success in great part to the countless immigrants who have made their way to our shores and to the tremendous diversity this Nation has been blessed with since its beginnings.

In March, when communities all across the country celebrate St. Patrick's Day, our Nation honors the rich heritage of the millions of Americans who trace their lineage to Ireland.oming to this land even before our Nation was founded, sons and daughters of Erin undertook the perilous journey to make their home in a place of hope and promise. They made inestimable contributions to their new country, both during the struggle for independence and in the founding of the Republic. Nine of the people who signed our Declaration of Independence were of Irish origin, and nineteen Presidents of the United States proudly claim Irish heritage—including our first President, George Washington.

The largest wave of Irish immigrants came in the late 1840s, when the Great Famine ravaging Ireland caused 2 million people to emigrate, mostly to American soil. These immigrants transformed our largest cities and helped to build them into dynamic centers of commerce and industry, and their contributions to our smaller cities and towns are evident today in the cultural, economic, and spiritual makeup of the communities. Throughout the country, they faced callous discrimination: ''No Irish Need Apply'' signs were ugly reminders of the prejudice that disfigured our society. But with indomitable spirit and unshakable determination, they persevered. They took jobs as laborers, built railroads, canals, and schools, and committed themselves to creating a brighter future for their families and their new country.

Today, millions of Americans of Irish ancestry continue to enrich all aspects of life in the United States. Irish Americans are proud to recall their heritage and their struggle for well-deserved recognition in all walks of American life. Throughout their history, they have held tightly to their religious faith, their love of family, and their belief in the importance of education. The values they brought with them from the Emerald Isle have flourished in America—and in turn these values have helped America to flourish.

In tribute to all Irish Americans, the Congress, by Public Law 103–379, has designated March 1995 as ''Irish-American Heritage Month'' and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim March 1995 as Irish-American Heritage Month.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third 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.

William J. Clinton

[FR Doc. 95–4909
Filed 2–23–95; 3:11 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6771 of February 23, 1995

Irish-American Heritage Month, 1995

By the President of the United States of America

A Proclamation

America's bounty—the abundance of the fields, the beauty of the landscape, the richness of our opportunities—has always attracted people who are in search of a better life for themselves and their children. Our democracy owes its success in great part to the countless immigrants who have made their way to our shores and to the tremendous diversity this Nation has been blessed with since its beginnings.

In March, when communities all across the country celebrate St. Patrick's Day, our Nation honors the rich heritage of the millions of Americans who trace their lineage to Ireland.oming to this land even before our Nation was founded, sons and daughters of Erin undertook the perilous journey to make their home in a place of hope and promise. They made inestimable contributions to their new country, both during the struggle for independence and in the founding of the Republic. Nine of the people who signed our Declaration of Independence were of Irish origin, and nineteen Presidents of the United States proudly claim Irish heritage—including our first President, George Washington.

The largest wave of Irish immigrants came in the late 1840s, when the Great Famine ravaging Ireland caused 2 million people to emigrate, mostly to American soil. These immigrants transformed our largest cities and helped to build them into dynamic centers of commerce and industry, and their contributions to our smaller cities and towns are evident today in the cultural, economic, and spiritual makeup of the communities. Throughout the country, they faced callous discrimination: ''No Irish Need Apply'' signs were ugly reminders of the prejudice that disfigured our society. But with indomitable spirit and unshakable determination, they persevered. They took jobs as laborers, built railroads, canals, and schools, and committed themselves to creating a brighter future for their families and their new country.

Today, millions of Americans of Irish ancestry continue to enrich all aspects of life in the United States. Irish Americans are proud to recall their heritage and their struggle for well-deserved recognition in all walks of American life. Throughout their history, they have held tightly to their religious faith, their love of family, and their belief in the importance of education. The values they brought with them from the Emerald Isle have flourished in America—and in turn these values have helped America to flourish.

In tribute to all Irish Americans, the Congress, by Public Law 103–379, has designated March 1995 as ''Irish-American Heritage Month'' and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim March 1995 as Irish-American Heritage Month.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third 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.

William J. Clinton

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Rules and Regulations

Federal Register
Vol. 60, No. 38
Monday, February 27, 1995

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV94–959–1FIR]

South Texas Onions; Increased Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with appropriate changes, the provisions of an amended interim final rule that increased the level of authorized expenses and established an assessment rate that generated funds to pay those expenses. This final rule further increases authorized expenses. Authorization of this budget enables the South Texas Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

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

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210–682–2833.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas. This marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

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

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

There are approximately 47 producers of South Texas onions under this marketing order, and approximately 34 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural Service firms are defined as those whose receipts are less than $5,000,000. The majority of South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 fiscal period was prepared by the South Texas Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs of goods and services in their local areas and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

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

Committee administrative expenses of $80,000 for personnel, office, and compliance expenses were recommended in a mail vote. The assessment rate and funding for the research and promotion projects were to be recommended at a later Committee meeting. The Committee administrative expenses of $80,000 were published in the Federal Register as an interim final rule August 12, 1994 (59 FR 41382). That interim final rule added § 959.235, authorizing expenses for the Committee, and provided that interested persons could file comments through September 12, 1994. No comments were filed.

The Committee subsequently met on November 8, 1994, and unanimously recommended increases of $8,900 for personnel expenses, $2,300 for office expenses, and $126,000 for compliance activities in the recently approved 1994–95 budget. The compliance increase provided funds to operate road

guard stations surrounding the production area. The Committee also unanimously recommended $164,450 in market development activities and $88,028 in production research. Budget items for 1994–95 which increased compared to those budgeted for 1993–94 (in parentheses) were: Office salaries, $22,000 ($15,600), insurance, $6,250 ($5,250), accounting and audit, $2,600 ($2,300), rent and utilities, $5,000 ($4,000), field travel, $6,000 ($5,000), onion breeding research, $88,028 ($88,000), and $4,450 for Canadian onion promotion for which no funding was budgeted last year. Items which decreased compared to the amount budgeted for 1993–94 (in parentheses) were: Market development program, $150,000 ($200,000) and ($7,000) for screening for resistance and tolerance to purple blotch, ($2,000) for leaf wetness, ($2,600) for variety evaluation, ($4,000) for thrips monitoring and control, and ($2,000) for the Integrated Pest Management program, for which no funding was budgeted this year. All other items were budgeted at last year's amounts.

The initial 1994–95 budget, published on August 12, 1994, did not establish an assessment rate. Therefore, the Committee also unanimously recommended an assessment rate of $0.04 per 50-pound container or equivalent of onions, $0.06 less than last year's assessment rate. This rate, when applied to anticipated shipments of approximately 5 million 50-pound containers or equivalents, will yield $200,000 in assessment income, which, along with $269,678 from the reserve, will be adequate to cover budgeted expenses. Funds in the reserve as of December 31, 1994, were $607,767, which is within the maximum permitted by the order of two fiscal periods' expenses.

An amended interim final rule was published in the Federal Register on December 15, 1994 (59 FR 64557). That interim final rule amended § 959.235 to increase the level of authorized expenses to $469,678 and establish an assessment rate of $0.04 per 50-pound container or equivalent of onions for the Committee. That rule provided that interested persons could file comments through January 17, 1995. No comments were received.

The Committee, in a telephone vote completed January 16, 1995, unanimously recommended an increase of $50,000 in the funding for the market development program, increasing expenditures from $150,000 to $200,000. This increase is necessary to cover additional expenses that will be incurred in conducting the program, and will result in total promotion expenses of $214,250 and a total budget of $519,678. There are adequate funds in the Committee's reserve to cover this additional expenditure, so no increase in the assessment rate was recommended.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 fiscal period began on August 1, 1994, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period. In addition, handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting and published in the Federal Register as an amended interim final rule. No comments were received concerning that amended interim final rule, which is being adopted as a final rule, with appropriate changes.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

Accordingly, the interim final rule amending 7 CFR part 959 which was published at (59 FR 64557) on December 15, 1994, is adopted as a final rule with the following change:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 959.235 is revised to read as follows:

§ 959.235 Expenses and assessment rate.

Expenses of $519,678 by the South Texas Onion Committee are authorized and an assessment rate of $0.04 per 50-pound container or equivalent of onions is established for the fiscal period ending July 31, 1995. Unexpended funds may be carried over as a reserve.

Dated: February 21, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–4739 Filed 2–24–95; 8:45 am]

BILLING CODE 3410–02–W

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

Replacement and Modification Parts; Enhanced Enforcement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of policy on enforcement.

SUMMARY: This is a notice of the FAA's policy to enforce full compliance with certain regulations on producing modification or replacement parts for sale for installation on type certificated products.

DATES: Preliminary applications for parts manufacturer approvals must be submitted by May 30, 1995.

FOR FURTHER INFORMATION CONTACT: Production and Airworthiness Certification Division, AIR–200, FAA, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8361.

Background

In the past few years, there has been increased awareness of, and concern about, the use of unapproved parts on aircraft. It is not acceptable for persons to produce parts without complying with Federal Aviation Regulations (14 CFR 21.3030(a)). It is the FAA's intention to ensure that all persons who produce parts for sale for installation on type certificated products comply with the regulations. The FAA recognizes that some producers may have relied on previous FAA statements and practices regarding enforcement of the rule.

Therefore, the FAA is publishing this notice to ensure industry-wide awareness of the agency's intent to enforce the regulations governing all persons who produce modification or replacement parts for sale for installation on type certificated products.

Section 21.303(a) of the Federal Aviation Regulations provides that no person may produce a modification or replacement part for sale for installation on a type certificated product unless it is produced pursuant to a parts manufacturer approval (PMA). Section 21.303(b) provides exceptions to this requirement, including parts produced under a type or production certificate (TC or PC), parts produced by an owner or operator for maintaining his own product, parts produced under an FAA technical standard order (TSO), and standard parts (such as bolts and nuts) conforming to established industry or U.S. specifications. A person who holds a PMA, TSO authorization, or PC, or who holds a TC and produces under that TC, often is referred to as a production approval holder (PAH).

Under the regulations, a PAH may engage another company (commonly called a supplier) to manufacture all or a portion of the part. In the case of fabrication of complete parts, the PAH must implement procedures to ensure that the parts are fabricated and inspected using the PAH's FAA-approved quality control system. The completed parts fabricated for the PAH by the supplier are produced ''under'' the PAH's approval. The PAH may authorize the supplier to ship parts directly from the supplier to the customer. This commonly is referred to as ''direct ship'' or ''drop ship'' authority.

In some cases, such suppliers have been producing additional parts without the direction of the PAH, and selling them directly to others in the aviation industry. In such cases, because the PAH has not exercised the required control over the fabrication of the parts, the parts are not produced ''under'' the production approval.

There appears to be a widespread misconception that *any* production of a party by a supplier (of that part) to a PAH is not a violation of § 21.303(a). Historically, the FAA did not vigorously enforce compliance with § 21.303(a) in these circumstances. Thus, the FAA has been attempting to promote full industry compliance with the rules, but has so far met with only limited success.

By Notice 8110.44, dated September 25, 1992, the FAA chartered the Parts Approval Action Team (PAAT) to develop policies and procedures to facilitate approval of PMA applications by suppliers to PAHs. Under PAAT Phase I, the FAA issued Notice 8110.45, dated September 25, 1992. That notice provided simplified procedures for the issuance of PMAs to suppliers who showed evidence of a licensing agreement with a PAH. Under Phase II, the FAA issued Notice 8110.51, dated May 13, 1994. That notice provided procedures for the issuance of PMAs to suppliers who could show that their product design was identical to that of a part produced under a TC.

The intent of Phases I and II was to ensure compliance with § 21.303 by suppliers who were shipping directly to customers outside of the PAH's approval, but who could demonstrate that they were producing a part whose design and quality control already had been approved by the FAA. Unfortunately, there has been insufficient response from the suppliers, and there continues to be suppliers producing placement and modification parts for sale for installation on type certificated products without a PMA and without direct or drop ship authority from a PAH.

Inaction by the FAA as well as statements made by agency officials may have contributed to this fact. Shortly after Phase I was issued in October 1992, the then—Director of the Aircraft Certification Service, anticipating a significant transition period in approving many parts produced by suppliers, advised FAA field offices to refrain from directing such suppliers to cease shipment of such parts, and to encourage them to apply for PMAs. This direction was widely circulated within the industry.

Further, there are other persons (not suppliers to a PAH) who may be producing parts for sale for installation on type certificated products and who also do not hold a PMA.

The overall purpose of this new policy is to make clear that the FAA will undertake enhanced enforcement of § 21.303(a). This policy makes provisions for a 90-day period during which persons may begin application for a PMA without the information in the application being used to initiate enforcement. During this period and immediately thereafter, the agency will, of necessity, devote the bulk of available FAA resources to securing compliance through processing the anticipated new applications. Accordingly, enforcement for this brief period may be constrained by the availability of resources, and will be focused on immediate safety concerns. Thereafter, agency resources will be freed to effect a balanced enforcement posture across the board.

Note that the policy in this notice applies only to persons who produce parts. It does not affect the responsibility of persons who maintain aircraft. Under § 43.13(b), each person maintaining or altering, or performing preventive maintenance shall do that work in such a manner and use materials of such a quality that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition with regard to qualities affecting airworthiness. Persons installing parts on aircraft continue to be responsible for ensuring that the product will meet the appropriate airworthiness standards.

Compliance Policy

1. Each person who produces modification or replacement parts for sale for installation on type certificated products, must comply with § 21.303(a), and is subject to enforcement action by the FAA for failure to do so.

2. If a person who produces parts not in compliance with § 21.303(a) applies for a PMA as described below, neither the fact that the application for a PMA is filed under paragraph 3 nor the information contained in such application will be used by the FAA to initiate, or be used as evidence in, any FAA enforcement investigation for a violation of § 21.303(a), except as provided in this policy.

3. The person must submit at least a preliminary application for PMA no later than May 30, 1995. All such applications should be submitted as soon as possible to enable the FAA to evaluate them, and where they qualify, issue the PMAs as soon as possible. If the applicant fails to pursue the PMA in a timely manner, the FAA may determine that the application should be denied. If the FAA determines that no approval can be issued for the production of the part, the applicant may not produce the part for sale for installation in type certificated products, and the applicant would be subject to enforcement action if the part is thereafter produced.

4. The preliminary application under paragraph 2 must include at least the part number and nomenclature, the name and address of the manufacturing facilities at which the parts are manufactured, and the holder of the production approval to whom the applicant currently supplies the parts or has supplied the parts in the past (if applicable). The preliminary applications should be submitted to the appropriate geographic certification directorate. Complete applications in accordance with § 21.303(c) must be

submitted by July 27, 1995. The geographic certification directorates are:

Federal Aviation Administration, New England Region, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803, (617) 238–7100

Federal Aviation Administration, Central Region, Small Airplane Directorate, 601 East 12th Street, Kansas City, MO 64106, (816) 426–6937

Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, WA 98055–4056, (206) 227–2159

Federal Aviation Administration, Southwest Region, Rotorcraft Directorate, 2601 Meacham Boulevard, Ft. Worth, TX 76137–4298, (817) 222–5100

5. If the FAA is informed through a source other than an application, as discussed in paragraph 2, that an applicant may be producing parts in violation of § 21.303(a), the FAA will investigate and take action as necessary and appropriate to enforce and ensure future compliance with the rule.

6. Nothing in this policy precludes the FAA from taking action for violations of regulations or laws other than § 21.303(a), or referral to another government agency for appropriate action.

Issued in Washington, DC, on February 17, 1995.

Thomas E. McSweeny,

Director, Aircraft Certification Service.

[FR Doc. 95–4760 Filed 2–23–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 25

[Docket No. NM–107; Special Conditions No. 25–ANM–95]

Special Conditions; Modified Cessna 550 Series Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions with request for comments.

SUMMARY: These special conditions are issued for Cessna 550 series airplanes modified by Elliott Aviation Technical Products Development, Inc. of Moline Illinois. These airplanes are equipped with digital head-up display (HUD) systems that perform critical functions. The applicable type certification regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions that these systems perform are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is February 13, 1995. Comments must be received on or before April 13, 1995.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate (ANM–100), Attn: Docket No. NM–107, 1601 Lind Avenue SW., Renton, WA 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM–107. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Michael Zielinski, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (206) 227–2279.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the Docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to docket No. NM–107.'' The postcard will be date stamped and returned to the commenter.

Background

On October 25, 1994, Elliott Aviation Technical Products Development, Inc. of Moline, Illinois, applied for a supplemental type certificate to modify Cessna 550 series airplanes. The Cessna 550 is a business jet with two aft-mounted turbofan engines. The airplane can carry two pilots and up to 11 passengers, depending on the exit and interior configuration, and is capable of operating to an altitude of 43,000 feet. The proposed modification incorporates the installation of digital avionics consisting of a head-up display (HUD) system that is potentially vulnerable to HIRF external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the FAR, Elliott Aviation Technical Products Development, Inc. must show that the modified Cessna 550 series airplanes continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A22CE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

The regulations incorporated by reference in Type Certificate No. A22CE include the following: Part 25 of the Federal Aviation Regulations (FAR), dated February 1, 1965, including Amendments 25–1 through 25–17. In addition the following sections of the FAR apply to the HUD installation: §§ 25.1303(b) and 25.1322, as amended through Amendment 25–38; §§ 25.1309, 25.1321 (a), (b), (d), and (e), 25.1333, and 25.1335, as amended by Amendment 25–41. These special conditions will form an additional part of the supplemental type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna 550 series airplanes because of a novel or unusual design feature, special conditions are prescribed 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, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they

are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Discussion

There is no specific regulation that address protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Cessna 550 series airplanes that would require that new technology electrical and electronic systems, such as the HUD, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the HUD, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz– 2 MHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1 GHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

As discussed above, these special conditions are applicable to Cessna 550 series airplanes, modified by Elliott Aviation Technical Products Development, Inc. Should Elliott Aviation Technical Products Development, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A22CE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain unusual or novel design features on Cessna 550 series airplanes modified by Elliott Aviation Technical Products Development, Inc. of Moline, Illinois. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on modified Cessna 550 series airplanes.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may have not been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the supplemental type certification basis for Cessna 550 series airplanes modified by Elliott Aviation Technical Products Development, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

2. The following definition applies with respect to this special condition: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on February 13, 1995.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–101.

[FR Doc. 95–4772 Filed 2–24–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 25

[Docket No. NM–103; Special Conditions No. 25–ANM–94]

Special Conditions: Dassault Aviation Model Falcon 2000 Airplane; Automatic Takeoff Thrust Control System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Dassault Aviation Model Falcon 2000 airplane. This new airplane will have an unusual design feature associated with an Automatic Takeoff Thrust Control System (ATTCS), for which the applicable airworthiness regulations do not contain appropriate safety standards for approach climb

performance using an ATTCS. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: February 3, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056, telephone (206) 227–2797.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 1989, Dassault Aviation, B.P. 24, 33701 Mérignac Cédex, France, applied for a new type certificate in the transport airplane category for the Model Falcon 2000 airplane. The Dassault Aviation Model Falcon 2000 is a medium-sized transcontinental business jet powered by two General Electric/Garrett CFE 738 turbofan engines mounted on pylons extending from the aft fuselage. Each engine will be capable of delivering 5,600 lbs. thrust. The airplane will be capable of operation with two flight crewmembers and eight passengers.

The Model Falcon 2000 will incorporate an unusual design feature, the Automatic Takeoff Thrust Control System (ATTCS), referred to by Dassault as Automatic Power Reserve or APR, to show compliance with the approach climb requirements of § 25.121(d). Appendix I to part 25 limits the application of performance credit for ATTCS to takeoff only. Since the airworthiness regulations do not contain appropriate safety standards for approach climb performance using ATTCS, special conditions are required to ensure a level of safety equivalent to that established in the regulations.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Dassault Aviation must show that the Falcon 2000 meets the applicable provisions or part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–69. The certification basis may also include later amendments to part 25 that are not relevant to these special conditions. In addition, the certification basis for the Falcon 2000 includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, as amended by Amendments 36–1 through the amendment in effect at the time of certification. These special conditions form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Dassault Aviation Model Falcon 2000 because of a novel or unusual design feature, special conditions are prescribed 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, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model Falcon 2000 will incorporate an unusual design feature, the ATTCS (referred to by Dassault as the Automatic Power Reserve or APR), to show compliance with the approach climb requirements of § 25.121(d). The FALCON 2000 is a twin-turbofan-powered airplane equipped with Full Authority Digital Engine Controls (FADECs) that, in part, protect against exceeding engine limits. Further, the FALCON 2000 incorporates a non-moving throttle system that functions by placing the throttle levers in detents for the takeoff and climb phases of flight, allowing the FADEC to schedule power setting based on flight phase. With the throttle levers placed in either of the two forward detents (takeoff/go-around and climb), if an engine failure (RPM (N1)) difference of greater than 10 percent between engines is sensed, power is automatically advanced on the remaining engine to the APR power level associated with the detent. The system is permanently armed and will function any time the throttle levers are in either of the two forward detents and an engine failure is sensed. Additionally, as in the case of an APR failure, or in an all-engines mode, the crew can select APR by placing the throttle levers in either of the two forward detents and manually activating the system using an instrument panel-mounted override switch.

APR power levels manifest themselves as an increase in the engine flat-rating temperature for the operating altitude, and, in general, result in higher thrust levels than those associated with the throttle detents alone. Dassault also makes reference in the APR logic description to thrust increase being armed for a throttle lever angle above 27 degrees (max cruise position), but does not make it clear in the system description if the APR system functions when the throttle is not in a detent. Further discussions with Dassault make it clear that when the throttle is between two detents, the FADEC makes a linear interpolation between the related tables of corrected N_1; i.e., an almost linear thrust change. As function outside of a detent is possible, then a throttle angle of 28 degrees (arming angle + 1 degree) would produce almost no additional thrust when APR is activated, while 1 degree before the next detent (max cruise/max continuous) would produce almost the same thrust increase as when the throttle is in that detent. Logic for the max climb/max continuous detents is the same. From a practical point of view, throttle positions between the detents are not used.

The part 25 standards for ATTCS, contained in § 25.904 and Appendix I, specifically restrict performance credit for ATTCS to takeoff. Expanding the scope of the standards to include other phases of flight, including go-around, was considered at the time the standards were issued, but flightcrew workload issues precluded further consideration. As stated in the preamble to Amendment 25–62:

> ''In regard to ATTCS credit for approach climb and go-around maneuvers, current regulations preclude a higher thrust for the approach climb (§ 25.122(d)) than for the landing climb (§ 25.119). The workload required for the flightcrew to monitor and select from multiple in-flight thrust settings in the event of an engine failure during a critical point in the approach, landing, or go-around operations is excessive. Therefore, the FAA does not agree that the scope of the amendment should be changed to include the use of ATTCS for anything except the takeoff phase.'' (52 FR 43153, November 9, 1987)

The ATTCS incorporated on the FALCON 2000 allows the pilot to use the same power setting procedure during a go-around, regardless of whether or not an engine fails. In either case, the pilot obtains go-around power by moving the throttles into the forward (takeoff/go-around) throttle detent.

Since the ATTCS is permanently armed, it will function automatically following an engine failure, and advance the remaining engine to the ATTCS thrust level. Therefore, this design adequately addresses the pilot workload concerns identified in the preamble to Amendment 25–62. Accordingly, these special conditions require a showing of compliance with those provisions of § 25.904 and Appendix I that are applicable to the approach climb and go-around maneuvers.

The definition of a critical time interval for the approach climb case, during which time it must be extremely improbable to violate a flight path based on the § 25.121(d) gradient requirement, is of primary importance. The § 25.121(d) gradient requirement implies a minimum one-engine-inoperative flight path capability with the airplane in the approach configuration. The engine may have been inoperative before initiating the go-around, or it may become inoperative during the go-around. The definition of the critical time interval must consider both possibilities.

Discussion of Comments

Notice of Proposed Special Conditions No. SC–94–4–NM for the Dassault Aviation Model Falcon 2000 airplane was published in the Federal Register on December 16, 1994 (59 FR 64869). No comments were received, and the special conditions are adopted as proposed.

As discussed above, these special conditions are applicable to the Dassault Aviation Model Falcon 2000. Should Dassault Aviation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the Federal Register; however, as the certification date for the Falcon 2000 is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain design features on the Dassault Aviation Model Falcon 2000 airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

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 Dassault Aviation Model Falcon 2000 airplane.

(a) *General:* An ATTCS is defined as the entire automatic system, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers, or increase engine power by other means on operating engines to achieve scheduled thrust or power increases and furnish cockpit information on system operation.

(b) *Automatic takeoff thrust control system (ATTCS).* The engine power control system that automatically resets the power or thrust on the operating engine (following engine failure during the approach for landing) must comply with the following requirements:

(1) *Performance and System Reliability Requirements.* The probability analysis must include consideration of ATTCS failure occurring after the time at which the flightcrew last verifies that the ATTCS is in a condition to operate until the beginning of the critical time interval.

(2) *Thrust Setting.* The initial takeoff thrust set on each engine at the beginning of the takeoff roll or go-around may not be less than:

(i) Ninety (90) percent of the thrust level set by the ATTCS (the maximum takeoff thrust or power approved for the airplane under existing ambient conditions);

(ii) That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power lever position; or

(iii) That shown to be free of hazardous engine response characteristics when thrust is advanced from the initial takeoff thrust or power to the maximum approved takeoff thrust or power.

(3) *Powerplant Controls.* In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS, including associated systems, may cause the failure of any powerplant function necessary for safety. The ATTCS must be designed to:

(i) Apply thrust or power on the operating engine(s), following any one engine failure during takeoff or go-around, to achieve the maximum approved takeoff thrust or power without exceeding engine operating limits; and

(ii) Provide a means to verify to the flightcrew before takeoff and before beginning an approach for landing that the ATTCS is in a condition to operate.

(c) *Critical Time Interval.* The definition of the Critical Time Interval in Appendix I, Section I25.2(b) shall be expanded to include the following:

(1) When conducting an approach for landing using ATTCS, the critical time interval is defined as follows:

(i) The critical time interval *begins* at a point on a 2.5 degree approach glide path from which, assuming a simultaneous engine and ATTCS failure, the resulting approach climb flight path intersects a flight path originating at a later point on the same approach path corresponding to the Part 25 one-engine-inoperative approach climb gradient. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(ii) The critical time interval *ends* at the point on a minimum performance, all-engines-operating go-around flight path from which, assuming a simultaneous engine and ATTCS failure, the resulting minimum approach climb flight path intersects a flight path corresponding to the Part 25 minimum one-engine-inoperative approach climb gradient. The all-engines-operating go-around flight path and the Part 25 one-engine-inoperative approach climb gradient flight path originate from a common point on a 2.5 degree approach path. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for the takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(2) The critical time interval must be determined at the altitude resulting in the longest critical time interval for which one-engine-inoperative approach climb performance data are presented in the Airplane Flight Manual.

(3) The critical time interval is illustrated in the following figure:

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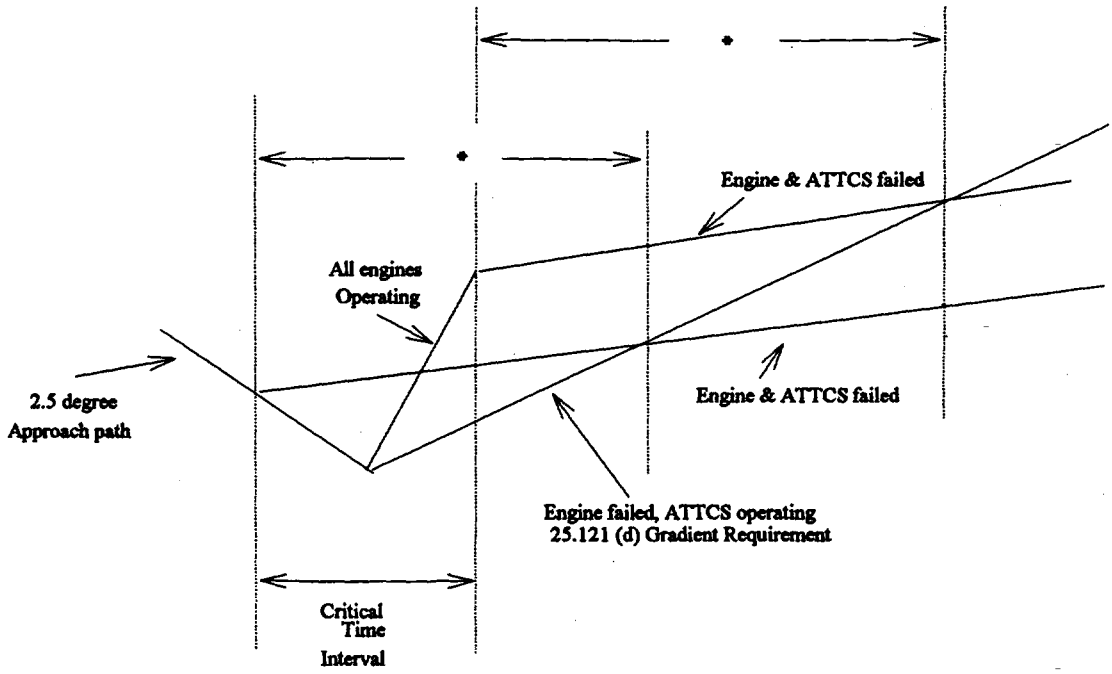

*** The engine and ATTCS failed time interval must be no shorter than the time interval from the point of simultaneous engine and ATTCS failure to a height of 400 feet used to comply with I25.2(b) for ATTCS use during takeoff.**

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Issued in Renton, Washington, on February 3, 1995.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service, NAM–101.

[FR Doc. 95–4774 Filed 2–24–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 25

[Docket No. NM–108; Special Conditions No. 25–ANM–96]

Special Conditions: Modified Gulfstream American Corporation Model G–IV Airplane; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream American Corporation (GAC) Model G–IV airplane modified by Duncan Aviation, Inc., of Lincoln, Nebraska. This airplane will be equipped with a Flight Visions Corporation, FV–2000 Head-Up Display System (HUD) that will perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of the HUD from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions performed by this system are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is February 13, 1995. Comments must be received on or before April 13, 1995.

ADDRESSES: Comments on these final special conditions, request for comments, may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–108, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked ''Docket No. NM–108.'' Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All

comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–108.'' The postcard will be date stamped and returned to the commenter.

Background

On August 16, 1994, Duncan Aviation, Inc., of Lincoln, Nebraska, applied for a supplemental type certificate to modify the Gulfstream American Corporation (GAC) Model G–IV airplane. The GAC Model G–IV airplane is a business jet with two aft-mounted turbofan engines. The airplane can carry two pilots and 19 passengers, depending on the exit and interior configuration, and is capable of operating to an altitude of 45,000 feet. The proposed modification incorporates the installation of a digital avionics system that will present critical functions on the Head-up Display System (HUD), which is potentially vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR), Duncan Aviation, Inc., must show that the altered GAC Model G–IV airplane continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A12EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

The regulations incorporated by reference in Type Certificate No. A12EU include the following for the GAC Model G–IV airplanes: § 21.29 of 14 CFR part 21 and 14 CFR part 25, dated February 1, 1965, as amended by Amendments 25–1 through 25–26. In addition, under § 21.101(b)(1), the following sections of the FAR apply to the HUD installation: § 25.1322, as amended by Amendment 25–38; and §§ 25.1309, 25.1321(a)(b) (d), and (e), 25.1331, 25.1333, and 25.1335, as amended by Amendment 25–41. These special conditions will form an additional part of the supplemental type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the GAC Model G–IV airplane because of a novel or unusual design feature, special conditions are prescribed 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, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground-based radio transmitters, and the growing use of sensitive electrical and electronic systems to command and control airplanes, have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the modified GAC Model G–IV airplanes that would require that the HUD be designed and installed to preclude component damage and interruption of function due to the effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the HUD, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplanes will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated:

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

As discussed above, these special conditions are applicable to the GAC Model G–IV airplane, modified by Duncan Aviation. Should Duncan Aviation apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A12EU to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain unusual or novel design features on GAC Model G–IV airplanes modified by Duncan Aviation. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of this feature on this airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment

would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the GAC Model G–IV airplane, as modified by Duncan Aviation:

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields external to the airplane.

2. The following definition applies with respect to this special condition: *Critical Function.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on February 13, 1995.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–101.

[FR Doc. 95–4773 Filed 2–24–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AGL–31]

Modification of Class D Airspace; Cleveland, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Cleveland, Burke Lakefront, OH by adjusting the lower vertical limits of the Class D area up to but not including the base altitude of the overlying Class B airspace area. Associated with airspace reclassification, guidelines have been established for depicting Class D airspace areas that underlie Class B airspace areas. The intent of this action is to eliminate confusion to pilots by appropriately identifying controlled airspace areas at Cleveland, Burke Lakefront, OH.

EFFECTIVE DATE: 0901 UTC, May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Cibic, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7573.

SUPPLEMENTARY INFORMATION:

History

On December 23, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D airspace area at Cleveland, Burke Lakefront, OH (59 FR 246).

Airspace Reclassification, effective September 16, 1993, discontinued the use of the term ''control zone'' and replaced it with the designation ''Class D'' airspace. Subsequent to and associated with airspace reclassification, new guidelines have been established for depicting Class D airspace areas that underlie Class B airspace areas. The base altitude of the higher class airspace, in this case Class B airspace, supersedes the vertical limits of the Class D airspace area. Therefore, this action adjusts the lower vertical limits of the Class D area up to but not including the base of the overlying Class B airspace area. The intent of this action is to eliminate confusion to pilots by appropriately identifying the controlled airspace areas at Cleveland, Burke Lakefront Airport, OH. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 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 Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies Class D airspace at Cleveland, Burke Lakefront Airport, OH to coincide with the guidelines for depicting Class D airspace areas.

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 14 CFR 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 5000 General

* * * * *

AGL OH D Cleveland, Burke Lakefront Airport, OH [Revised]

(Lat. 41°31′03″N., Long. 81°41′00″W.)

That airspace extending upward from the surface to but not including 3000 feet MSL within a 4.1-mile radius of Burke Lakefront Airport, excluding that airspace within the Cleveland, OH, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on February 15, 1995.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 95–4778 Filed 2–24–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 9050206037–5037–01]

RIN 0691–AA23

Direct Investment Surveys: Raising Exemption Level for Quarterly Report Form BE–577

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations on direct investment surveys to raise the exemption level for filing quarterly Form BE–577, Direct Transactions of U.S. Reporter With Foreign Affiliate. The BE–577 is a mandatory survey of U.S. direct investment abroad conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce. Under this final rule, the exemption level for the survey—the level below which reports are not required—is raised from $15 million to $20 million. This change will reduce the number of respondents that otherwise must report in the survey.

EFFECTIVE DATE: This rule will be effective March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: In the December 12, 1994 Federal Register, 59 FR 63941, BEA published a notice of proposed rulemaking that would increase the exemption level for filing the BE–577, Direct Transactions of U.S. Reporter With Foreign Affiliate. No comments on the proposed rule itself were received. (As noted below, one comment on changes to the survey forms that did not require rule changes was received.) Thus, this final rule is the same as the proposed rule.

The quarterly BE–577 is part of BEA's regular data collection program for U.S. direct investment abroad. The survey is mandatory and is conducted pursuant to the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended).

The exemption level is set in terms of the size of a U.S. company's foreign affiliates. Under this final rule, the exemption level for the BE–577 survey is raised from $15 million to $20 million. Thus, if an affiliate is owned 10 percent or more by the U.S. company and has assets, sales, or net income greater than $20 million (positive or negative), it will have to be reported. If the affiliate does not meet these criteria, a report is not required. The last time the exemption level was raised was May 1, 1986.

Raising the exemption level lowers the number of reports that otherwise must be filed, thus reducing the reporting and processing burdens. The changes in exemption level will be implemented beginning with the reports for the first quarter of 1995.

BEA has made changes to the BE–577 survey form in addition to the raising of the exemption level. These changes, however, did not require rule changes and are not reflected in the final rule. They are a result of changes made to the related BE–10. Benchmark Survey of U.S. Direct Investment Abroad—1994. They include the combination of two items that appeared on the 1994 BE–577 survey and the addition of other items that are on the 1994 BE–10 but were not on the 1994 BE–577. Added to the form are items, to be completed annually, on services transactions between U.S. Reporters and their foreign affiliates by type and an item, to be completed quarterly by affiliates classified in banking, on the U.S. Reporter's share of the affiliate's provision for loan losses. Also, changes in the survey instructions are being made primarily for purposes of clarification and to reflect the combination or addition of items.

In response to the notice of proposed rulemaking, one letter of comment was received. It expressed concern that the new items on services transactions would impose additional burden by requiring modification of information systems and more time to complete the survey forms. The new items must be completed only annually, and the first time they will need to be completed will not be until the second quarter following the end of affiliates' fiscal year 1995, which in most cases will be mid-1996. This will give companies at least a year to implement program changes necessary to report this information.

Executive Order 12612

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

The collection of information required in this final rule has been approved by OMB (OMB No. 0608–0004).

The public reporting burden for this collection of information is estimated to be 1.15 hours per response (form). The burden on the U.S. Reporter will vary depending on the number of forms that must be submitted in a given reporting period; this ranges from 1 to 225 forms. The estimated burden of 1.15 hours per form includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments from the public regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Commerce.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 606(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. Because it raises the exemption level for filing the survey, it will actually reduce the reporting requirements of smaller entities.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Foreign investments in United States, Penalties, Reporting and

recordkeeping requirements, United States investments abroad.

Dated: February 2, 1995.

Carol S. Carson,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR Part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR Part 806 is revised to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

§ 806.14 [Amended]

2. Section 806.14(e) is amended by removing ''$15,000,000'' and adding ''$20,000,000'' in its place.

[FR Doc. 95–4631 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–EA–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1117

Interpretative Regulations for Reporting Choking Incidents to the Consumer Product Safety Commission Pursuant to the Child Safety Protection Act

AGENCY: Consumer Product Safety Commission (CPSC).

ACTION: Final rule.

SUMMARY: The ''Child Safety Protection Act'' requires manufacturers, distributors, retailers, and importers of marbles, small balls, latex balloons, and toys or games that contain such items or other small parts, to report to the Commission when they learn of choking incidents involving such products. The Commission is issuing a rule to implement this reporting requirement.

DATES: This regulation becomes effective March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Eric L. Stone, Office of Compliance and Enforcement, CPSC, 4440 East West Highway, Bethesda, MD 20814 (Mailing address: Washington, D.C. 20207), telephone (301) 504–0626 extension 1350.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102 of the Child Safety Protection Act, (Pub. L. No. 103–267 (June 17, 1994) (''the Act'' or the ''the CSPA'') requires:

Each manufacturer, distributor, retailer and importer of marble, small ball, or latex balloon, or a toy or game that contains a marble, small ball, latex balloon or other small part, shall report to the Commission any information obtained by such manufacturer, distributor, retailer, or importer which reasonably supports the conclusion that—

(A) an incident occurred in which a child (regardless of age) choked on such a marble, small ball, or latex balloon or on a marble, small ball; latex balloon, or other small part contained in such toy or game and

(B) as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional.

A failure to report is a prohibited act under section 19(a)(3) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2068(a)(3), punishable by civil penalties under section 20 of the CPSA, 15 U.S.C. 2069. The Act provides a high degree of confidentiality for choking reports. Reports shall not be interpreted as admissions of liability or of the truth of the information in the reports.

On July 1, 1994, the Commission proposed a rule to define several terms and resolve ambiguities and uncertainties in the statutory reporting scheme. (59 F.R. 33927) The Commission received over 200 comments from consumer groups, medical professionals, and individual consumers. Generally, these comments supported the proposed rule. Manufacturers, trade associations, testing labs, attorneys and others commented on behalf of industry. Generally, these groups sought to limit the reporting requirements and allow firms more time and discretion. In all, over 260 comments were received and analyzed.

B. Consideration of the Comments

1. Substantive Versus Interpretative

Several manufacturers, trade associations and industry consultants objected to this rule being issued as a substantive rule. Generally, these commenters believed interpretative rules were more appropriate. Consumers and consumer groups supported issuance of substantive rules.

The business commenters argued (1) a substantive rule would be binding and would eliminate the opportunity to challenge the Commission's interpretation of the reporting requirement on a case-by-case basis; (2) the Commission did not issue other reporting rules under section 15(b) or 37 of the CPSA as substantive rules; (3) since, unlike the provisions of section 101(c) of the Child Safety Protection Act, Congress did not grant the Commission specific authority to issue this rule, the Commission should limit itself to an interpretative rule; (4) section 16(b) of the CPSA is a recordkeeping and inspection provision and was not intended to be used for reporting rules except those limited to inspections; and (5) given the tight timeframes for reporting, the rule should be interpretative.

Section 102(a)(2) of the Child Safety Protection Act provides that ''[f]or purposes of section 19(a)(3) of the Consumer Product Safety Act [15 U.S.C. 2068(a)(3), describing prohibited acts], the requirement to report information under this subsection is deemed to be a requirement under such Act.'' While the Act does not explicitly require the Commission to issue rules to implement it, the Commission believes that Congress intended the entire reporting section to be considered part of the CPSA. The Commission believes its general authority under section 16(b) to issue rules concerning reporting applies.

Section 102 left unanswered several questions about reporting procedures and the contents of the report. The Commission has an obligation to further define the reporting obligation outlined in the statute through rulemaking and it has the authority to do so.

Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to require manufacturers, private labelers and distributors to ''make such reports * * * as the Commission may, by rule, reasonably require for the purposes of implementing this Act.'' A failure to make reports or provide information under section 16(b) of the CPSA (15 U.S.C. 2065(b)) is a prohibited act under section 19(a)(3) of the CPSA (15 U.S.C. 2068(a)(3)). The Commission proposed this rule under section 102 of the Act and section 16(b) of the CPSA (15 U.S.C. 2065(b)).

Although section 16(b) falls within a section titled ''Inspection and Recordkeeping,'' the language of the provision does not by its terms limit reporting solely to an inspectional context. The Commission has consistently taken this ''plain language'' view of section 16(b). The Commission cited section 16 as part of the authority for the section 15(b) reporting regulations codified in 16 CFR Part 1115. In addition , the Commission has relied on section 16(b) for authority to require reports in the certification

process for child resistant cigarette lighters (16 CFR Part 1210, Subpart B).

The Commission carefully weighed the policy concerns raised by the commenters. A substantive rule would require firms to report the specified information and firms would be judged solely on whether they met the reporting requirements.

An interpretative rule should provide adequate guidance to firms as to what should be reported and the timeframes for reporting. Since reports cannot be used against firms, there are few disincentives to reporting under the CSPA than under section 15(b) of the CPSA. Assembling the limited information to report should pose only minimal burden on reporting firms. The Commission, therefore, concludes that while a substantive rule could be legally justified, it is unnecessary for policy reasons.

2. Section-by-Section Analysis of the Comments

(a) Section 1117.2—Definitions

Several industry commenters suggested that the Commission exempt from the choking hazard reporting requirement any products that are exempted from the small parts regulations at 16 CFR 1501.3 and small parts intended for adult assembly. Various consumer commenters opposed such changes. The Commission exempted certain items from the small parts ban because it believed that the risk of injury posed by the product was outweighed by some functional benefit of the product. Balloons, books, writing materials, clothing and other items were exempted.

Unlike a ban, the requirement to report hazards does not interfere with the sale of the exempt product, and the choking hazard report does not place an extraordinary burden on the reporting firm. Congress did not limit the reporting obligation to only those products subject to the small parts regulation. In fact, it specifically included categories of products that were subject to the exceptions or not covered by the small parts ban at 16 CFR Part 1501 (balloons, toys and games intended for use by the children 3 and older). With the exception of balloons which are specifically mentioned in the reporting provision, the Commissioners could not agree as to whether the choking hazard reporting provision applies to products that would have been exempt from the small parts requirements. Accordingly, that issue will remain unresolved until such time as a majority of the Commission concurs on its resolution. Pending that resolution, reporting on these products exempt under section 1501.3 of Title 16 is not required.

(b) Section 1117.2(b)—Small Balls

One comment suggested that manufacturers of items with inaccessible small balls, such as pinball machines, should not have to report choking hazards with those balls. The Commission disagrees. Since the purpose of this provision is to inform the agency of choking hazards, the only salient factor is whether someone choked on a ball. If the ball is incorporated in a pinball machine but somehow got out and caused a choking, that is the very kind of information firms should be reporting to the Commission. If a ball is truly inaccessible, then there will be no choking incidents to report.

The Commission made a minor change to section 1117.2(b) spelling out the procedure for identifying small balls in this section rather than incorporating it by reference.

(c) Section 1117.2—Choked

Several commenters suggested changes in the definition of the word ''choked.'' Some manufacturers thought the definition of ''choked'' in the regulation as ''obstruction of the airways'' was too vague. Some suggested that under this provision a momentary cessation of breathing might be considered a choking. Another suggested that the definition be changed to the Red Cross description in *First Aid & Safety,* (American Red Cross 1993, pp. 44, 91). Various consumer groups supported the proposed definition.

As Congress did not define the word ''choked,'' the Commission proposal gave a dictionary definition of ''choked'' that is commonly understood by the public and health professionals. The definition of ''choked'' does not provide all the diagnostic guidance in the Red Cross document cited by one manufacturer. That document suggests ''[i]f a child is coughing weakly or is making a high-pitched sound or if the child cannot speak, breathe, or cough, *the airway is completely blocked*.'' [Emphasis added.] This statement recognizes that the blockage of the airway is the essence of choking. While this Red Cross diagnostic guidance may be useful to firms in determining whether an airway was in fact obstructed, it is not a definition of choking.

Other commenters suggest that hiccuping or swallowing might be interpreted as obstructing the airway. The Commission does not intend that the definition cover such natural phenomena. ''Choked'' in this context refers only to obstruction of an airway by a small part, balloon, small ball or marble, not to a natural functions such as swallowing.

(d) Section 1117.2(f)—Serious Injury

The proposal included a definition of serious injury drawn from the Commission's Substantial Product Hazard rule, 16 CFR at 1115.6(c). Although none of the commenters pointed it out, that definition includes various harms such as lacerations and fractures not likely to directly result from choking. The Commission has decided to amend the definition of serious injury to delete references to such inquries.

(e) Section 1117.3—Reportable Information

Section 1117.3 of the proposed rule emphasizes that subject firms must report whenever they obtain sufficient information to put a reasonable firm on notice of a reportable choking incident. The reporting provision originated in the Senate, and the Report of the Senate Committee on Commerce, Science and Transportation states this provision requires subject firms to ''report to the CPSC any information obtained that supports the conclusion that an incident occurred in which a child, regardless of age, choked on such a product *and*, as a result of such choking incident, the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional.'' [Emphasis added. (S. Rep. No. 195, 103d Cong., 2d Sess. 10 (1993).] Under the proposed rule, if the allegations received by the firm meet the statutory test (choking on one of the specified products or small parts leading to a cessation of breathing or other specified effects) then no further inquiry is necessary.

Several industry commenters wanted time to investigate choking incidents. Many suggested 10 days. Essentially, they argue they should not be forced to take at face value the word of parents, physicians, attorneys, and others about an incident. They contend the Commission might be burdened with unreliable reports. They also argued that this provision could require them to report a choking incident involving someone else's product and objected to having to do so. Finally, at least one firm objected to the term ''ceased breathing for any length of time'' since it might require the report of a momentary cessation of breathing. Consumer group commenters approved of this provision, noting that it relieves firms of the obligation to investigate and

determine whether the incident was real. They contend this provision will lead to quicker reports. The consumer groups also argued that firms under-report under section 15(b) of the CPSA and argued against giving firms leeway to avoid reporting under this provision.

The Commission is skeptical about how much additional information a firm might obtain in even a ten day period. If the person notifying the firm of an incident is unreliable, it is difficult to see how the firm would obtain useful information within that timeframe. Sometimes, firms do not learn the full details of such incidents until months or years later and then, only after extensive discovery in litigation. An additional 10 days is not likely to greatly assist a firm in determining whether the statement made to it by a parent, attorney, physician, or other person is true.

Based on its experience with section 15(b) of the CPSA, the Commission believes an immediate report may save lives. As a report involves a minimal burden on the reporting firm and cannot be used against the firm as an admission, there is little reason not to provide an immediate report. Since this statutory reporting provision went into effect in June 1994, the Commission has received only a handful of reports. After examining these reports, the Commission does not share the concern of some industry commenters that the Commission will be deluged with spurious reports.

This provision does not require manufacturers, distributors and retailers to report incidents which they know were not caused by their product. However, if they are informed of an incident which allegedly involved their product they should report unless a reasonable person would conclude their product was not involved. While it is conceivable a parent, attorney, physician or other party might mistakenly notify a firm that its product caused a reportable choking incident, that is not likely to be a common event. Moreover, if a firm's product is so similar to the object that caused the choking incident that it is mistakenly identified, it may present the same risk. The public benefits if firms err on the side of reporting. For the reasons enumerated above, the Commission has not changed this provision.

Section 102 of the CSPA states that reports are due if the child choked and ''ceased breathing for *any length of time*.'' [Emphasis added.] This language suggests that whether the cessation of breathing was momentary or prolonged, a report must be filed. Whether a parent or child succeeds in dislodging the time within a second, a minute, or never, the incident is still reportable. The Commission staff has received questions about whether this requires firms to report a child swallowing something, sneezing, or hiccuping. As noted earlier, the intent of this provision is to obtain reports of choking incidents, not incidents where a child swallowed something, or hiccuped. The Commission believes the words ''ceased breathing for any length of time'' are unambiguous. It sees no reason to provide further definition than is provided by the statute.

(f) Sections 1117.3 and 1117.4—Time for Filing a Report

A number of manufacturers, Members of Congress, trade associations, and industry consultants suggested the Commission give firms 10 days to route choking information to an appropriate corporate official, conduct a reasonable investigation, and assemble the information that must be reported. They point to the 10 day period for investigation of death and grievous bodily injury under 16 CFR 1115.12(d) and 1115.14(d) and the 30 days for law suit reporting allowed by section 37 of the CPSA as precedents. They also note that the statute did not specify a timeframe for reporting and, therefore, left the Commission with discretion to allow a longer time period. Many consumer groups and consumers supported the proposal's 24 hour requirement as an important lifesaving requirement.

If Congress did not expect immediate reporting it could have specified a time frame, such as the 30 days it provided in section 37 of the CPSA. It did not do so. Therefore, the Commission believes the legislative intent was to require immediate reporting. In the Commission's experience, immediate reporting may prevent additional choking incidents or deaths.

The 24 hour reporting requirement in this rule is consistent with the 24 hour requirement in the Commission's section 15(b) rules. The section 15(b) rules require firms to immediately report once they have obtained reportable information. Firms are given ten days to analyze whether an obligation to report exists under section 15(b) only when the obligation to report *is not immediately clear*. (Firms must report a death allegedly caused by a defect in their product if they cannot within a reasonably expeditious—usually 10 day—investigation determine the defect that caused the death does not trip the ''could create a substantial hazard'' reporting trigger of Section 15(b).) Section 15(b) requires firms to evaluate a wide range of information to determine whether the product contains a defect which could create a substantial risk or presents an unreasonable risk of serious injury or death. In contrast, the CSPA's choking reporting requirement is simple. A firm has either learned of an incident that meets the statutory criteria, or it hasn't. In addition, the content of a choking hazard report is limited compared to a ''full report'' under section 15(b) of the CPSA. For the reasons set forth above, the Commission declines to change the twenty four hour requirement.

In the event a firm obtains information indicating that a child choked, without any allegation of cessation of breathing, death or other triggering event, or without clear allegations that a small part, balloon, marble, or small ball was involved, the firm may investigate to determine whether a reportable incident has occurred. The firm does not have an obligation to report until it has learned that the choking incident did cause a death, cessation of breathing or other triggering incident.

The Commission has modified the final rule to adopt an imputation of knowledge provision identical to the one in its section 15 rules. This new provision is found at section 1117.4(b). In evaluating whether or when a subject firm should have reported, the Commission will deem a subject firm to have obtained reportable information when the information has been received by an official or employee who may reasonably be expected to be capable of appreciating the significance of the information. Section 1117.4(b) notes the Commission believes this process should usually occur within five days. However, if firms are capable of transmitting choking hazard data to a responsible official within a shorter timeframe, they should not wait five days.

(g) Section 1117.5—Content of Reports

Proposed section 1117.5 describes the information that firms must report. The Commission proposal attempted to limit the reporting requirements to information necessary to give the Commission staff sufficient information to understand the nature and content of the choking incident and to determine whether corrective measures may be necessary. Nevertheless, several manufacturers and trade associations had questions or concerns about the information that must be submitted.

At the outset, it should be noted that much of the information that must be reported under section 1117.5(b) will be contained in the letter or other record of contact with the person notifying the

firm of the choking incident. A retailer or distributor may have no information other than the name and a sample of the product, its own distribution information, and the choking complaint. The rule has been modified to make it clear a retailer or distributor is not under any obligation to seek additional information from its supplier to complete a report. Section 1117.5(c). A manufacturer (including an importer) may have more information about the design iterations of the product and any corrective action taken.

Several commenters stated that if their product was not involved in the choking incident it would be pointless to submit some of the information such as corrective action measures. Firms have no obligation to report on design changes or corrective action measures if none were undertaken. Therefore, these provisions pose no burden on firms.

A trade association expressed uncertainty about the obligation in section 1117.5(b)(7) to report changes made in the design of the product and whether changes made before or after the incident need be reported. The Commission intentionally made this provision broad to include all changes made to address choking incidents similar to the one reported, whether made before or after the reported choking occurred.

Several commenters expressed concern that the 24 hour reporting obligation would make supplemental reports necessary. They suggested that some timeframe be supplied for supplemental reports. The Commission agrees and has added language to subsection (c) of 1117.5 requiring supplemental reports be submitted within ten days. Firms do not have to file a supplemental report if they have already provided all the information required by subsection (b) of section 1117.5.

Section 1117.6 of the proposed rule explains this reporting provision is in addition to, but is not a substitute for, the reporting requirements of section 15(b) of the CPSA (15 U.S.C. 2064(b)). Even if a report of a choking hazard is not required by the proposed rule, a report may be necessary under section 15(b) of the CPSA (15 U.S.C. 2064(b)) and 16 CFR Part 1115. Several consumer groups said the agency should vigorously enforce the section 15(b) reporting obligation. The Commission plans to do so.

The remaining provisions of the regulation set forth the confidentiality, liability and penalty provisions that would apply to reporting in accordance with the proposed regulation published below. These provisions were not controversial.

C. Impact on Small Businesses

In accordance with section 3(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this regulation will not have a significant economic impact upon a substantial number of small entities if issued on a final basis. Any obligations imposed upon such entities arise under the express provisions of section 102 of the Child Protection Safety Act, Pub. L. 103–267, June 17, 1994. The regulation simply implements the obligations imposed by that law. The regulation itself will not have a significant economic impact or small businesses, either beneficial or negative, beyond that which results from the statutory provisions.

D. Environmental Considerations

The rule falls within the provisions of 16 CFR 1021.5(c), which designates categories of actions conducted by the Consumer Product Safety Commission that normally have little or no potential for affecting the human environment. The Commission does not believe that the rule contains any unusual aspects which may produce effects on the human environment, nor can the Commission foresee any circumstance in which the rule issued below may produce such effects. For this reason, neither an environmental assessment nor an environmental impact statement is required.

E. Effective Date

This regulation will become effective 30 days after publication of the final regulation in the Federal Register. Subject firms should be aware, however, that the Child Safety Protection Act required reporting as of June 17, 1994.

List of Subjects in 16 CFR Part 1117

Administrative practice and procedure, Business and industry, Consumer protection, Toy safety, Penalties, Reporting and recordkeeping requirements, Small parts.

Conclusion

Therefore, pursuant to the authority of the Child Safety Protection Act (Pub. L. 103–267), section 16(b) of the CPSA (15 U.S.C. 2065(b)) and 5 U.S.C. 553, the CPSC amends Title 16 of the Code of Federal Regulations, Chapter II, Subchapter B by adding a new Part 1117 to read as follows:

PART 1117—REPORTING OF CHOKING INCIDENTS INVOLVING MARBLES, SMALL BALLS, LATEX BALLOONS AND OTHER SMALL PARTS

1117.1 Purpose.
1117.2 Definitions.
1117.3 Reportable information.
1117.4 Time for filing a report.
1117.5 Information that must be reported and to whom.
1117.6 Relation to section 15(b) of the CPSA.
1117.7 Confidentiality of reports.
1117.8 Effect of reports on liability.
1117.9 Prohibited acts and sanctions.

Authority: Section 102 of the Child Safety Protection Act (Pub. L. No. 103–267), section 16(b), 15 U.S.C. 2065(b) and 5 U.S.C. 553.

§ 1117.1 Purpose.

The purpose of this part is to set forth the Commission's interpretative regulations for reporting of choking incidents required by the Child Safety Protection Act. The statute requires that each manufacturer, distributor, retailer, and importer of a marble, small ball, or latex balloon, or a toy or a game that contains a marble, small ball, latex balloon, or other small part, shall report to the Commission any information obtained by such manufacturer, distributor, retailer, or importer which reasonably supports the conclusion that an incident occurred in which a child (regardless of age) choked on such a marble, small ball, or latex balloon or on a marble, small ball, latex balloon, or other small part contained in such toy or game and, as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional.

§ 1117.2 Definitions.

(a) *Small part* means any component of a toy or game which, when tested in accordance with the procedures in 16 CFR 1501.4(a) and 1501.4(b)(1), fits entirely within the cylinder shown in Figure 1 appended to 16 CFR part 1501.

(b) *Small ball* means any ball that under the influence of its own weight, passes, in any orientation, entirely through a circular hole with a diameter of 1.75 inches (4.445 cm) in a rigid template .25 inches (6 mm.) thick. For purposes of this designation, the term ''ball'' includes any spherical, ovoid, or ellipsoidal object that is designed or intended to be thrown, hit, kicked, rolled, or bounced, and is either not permanently attached to another toy or article, or is attached to such a toy or article by means of a string, elastic cord, or similar tether. The term ''ball'' includes any multi-sided object formed by connecting planes into a generally

spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball, and any novelty item of a generally spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball.

(c) *Choked* means suffered an obstruction of the airways.

(d) A *latex balloon* is a toy or decorative item consisting of a latex bag that is designed to be inflated by air or gas. The term does not include inflatable children's toys that are used in aquatic activities, such as rafts, water wings, life rings, etc.

(e) A *marble* is a ball made of a hard material, such as glass, agate, marble or plastic, that is used in various children's games, generally as a playing piece or marker.

(f) *Serious injury* includes not only the concept of ''grievous bodily injury'' defined in the Commission's rule for Substantial Hazard Reports at 16 CFR 1115.12(d), but also any other significant injury. Injuries necessitating hospitalization which require actual medical or surgical treatment and injuries necessitating absence from school or work of more than one day are examples of situations in which the Commission shall presume that such a serious injury has occurred.

(g) *Subject firm* means any manufacturer, distributor, retailer or importer of marbles, small balls, latex balloons, or a toy or game that contains a marble, small ball, latex balloon, or other small part.

§ 1117.3 Reportable information.

A subject firm shall report any information it obtains which reasonably supports the conclusion that a reportable incident occurred. Generally, firms should report any information provided to the company, orally or in writing, which states that a child choked on a marble, small ball, latex balloon, or on a marble, small ball, latex balloon or other small part contained in a toy or game *and*, as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional. Subject firms must not wait until they have investigated the incident or conclusively resolved whether the information is accurate or whether their product was involved in the incident. Firms shall not wait to determine conclusively the cause of the death, injury, cessation of breathing or necessity for treatment. An allegation that such a result followed the choking incident is sufficient to require a report.

§ 1117.4 Time for filing a report.

(a) A subject firm must report within 24 hours of obtaining information which reasonably supports the conclusion that an incident occurred in which a child (regardless of age) choked on a marble, small ball, or latex balloon or on a marble, small ball, latex balloon, or other small part contained in a toy or game and, as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional. Section 1117.5 of this part sets forth the information that must be reported.

(b) The Commission will deem a subject firm to have obtained reportable information when the information has been received by an official or employee who may reasonably be expected to be capable of appreciating the significance of the information. Under ordinary circumstances, 5 days shall be the maximum reasonable time for information to reach such an employee, the Chief Executive Officer or the official or employee responsible for complying with the reporting requirements of section 102 of the Child Safety Protection Act.

§ 1117.5 Information that must be reported and to whom.

(a) Reports shall be directed to the Division of Corrective Actions, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20815 (Mailing Address: Washington, D.C. 20207) (Phone: 301–504–0608, facsimile: 301–504–0359).

(b) Subject firms must report as much of the following information as is known when the report is made:

(1) The name, address, and title of the person submitting the report to the Commission,

(2) The name and address of the subject firm,

(3) The name and address of the child who choked and the person(s) who notified the subject firm of the choking incident,

(4) Identification of the product involved including the date(s) of distribution, model or style number, a description of the product (including any labeling and warnings), a description of the marble, small ball, latex balloon or other small part involved, and pictures or sample if available,

(5) A description of the choking incident and any injuries that resulted or medical treatment that was necessary,

(6) Copies of any information obtained about the choking incident,

(7) Any information about changes made to the product or its labeling or warnings with the intention of avoiding such choking incidents, including, but not limited to, the date(s) of the change and its implementation, and a description of the change. Copies of any engineering drawings or product and label samples that depict the change(s).

(8) The details of any public notice or other corrective action planned by the firm,

(9) Such other information as appropriate.

(c) Retailers or distributors should supply as much of the information required in paragraph (b) of this section as is available to them but are not required to obtain information about product design changes or recall activities from the product manufacturer.

(d) Within ten days of their initial report, subject firms must supplement their reports to supply any of the information required by paragraph (b) of this section that was not available at the time of the initial report.

§ 1117.6 Relation to section 15(b) of the CPSA.

Section 15(b) of the CPSA requires subject firms to report when they obtain information which reasonably supports the conclusion that products they distributed in commerce fail to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA, contain a defect which could create a substantial product hazard, or create an unreasonable risk of serious injury or death. The Commission's rules interpreting this provision are set forth at 16 CFR part 1115. The requirements of section 102 of the CSPA and this part are in addition to, but not to the exclusion of, the requirements in section 15(b) and part 1115. To comply with section 15(b), subject firms must continue to evaluate safety information they obtain about their products. Subject firms may have an obligation to report under section 15(b) of the CPSA whether or not they obtain information about choking incidents. Firms must also comply with the lawsuit-reporting provisions of section 37 of the CPSA, interpreted at 16 CFR part 1116.

§ 1117.7 Confidentiality of reports.

The confidentiality provisions of section 6 of the CPSA, 15 U.S.C. 2055, apply to reports submitted under this part. The Commission shall afford information submitted under this part the protection afforded to information submitted under section 15(b), in accordance with section 6(b)(5) of the

CPSA and subpart G of part 1101 of title 16 of the CFR.

§ 1117.8 Effect of reports on liability.

A report by a manufacturer, distributor, retailer, or importer under this part shall not be interpreted, for any purpose, as an admission of liability or of the truth of the information contained in the report.

§ 1117.9 Prohibited acts and sanctions.

(a) Whoever knowingly and willfully falsifies or conceals a material fact in a report submitted under this part is subject to criminal penalties under 18 U.S.C. 1001.

(b) A failure to report to the Commission in a timely fashion as required by this part is a prohibited act under section 19(a)(3) of the CPSA, 15 U.S.C. 2068(a)(3).

(c) A subject firm that knowingly fails to report is subject to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069. ''Knowing'' means the having of actual knowledge or the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations. Section 20(d) of the CPSA, 15 U.S.C. 2069(d).

(d) Any person who knowingly and willfully violates section 19 of this Act after having received notice of noncompliance from the Commission may be subject to criminal penalties under section 21 of the CPSA, 15 U.S.C. 2070.

Dated: February 17, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–4483 Filed 2–24–95; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 93C–0380]

Listing of Color Additives for Coloring Contact Lenses; 1,4-Bis[4-(2-Methacryloxyethyl) Phenylamino]Anthraquinone Copolymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of the colored reaction product formed by copolymerizing 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone with 3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate (CAS Reg. No. 134072–99–4) and *N*-vinyl pyrrolidone to form contact lenses. This action is in response to a petition filed by Bausch & Lomb, Inc.

DATES: Effective on March 30, 1995, except as to any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by March 29, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3092.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the Federal Register of November 3, 1993 (58 FR 58699), FDA announced that a color additive petition (CAP 3C0242) had been filed by Bausch & Lomb, Inc., 1400 North Goodman St., Rochester, NY 14692–0450. The petition proposed that the color additive regulations be amended in § 73.3106 *1,4-Bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone copolymers* (21 CFR 73.3106) to provide for the safe use of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone copolymerized with *N*-vinyl pyrrolidone and 3[tris(trimethylsiloxy)silyl] propyl vinyl carbamate to form contact lenses. The filing notice erroneously indicated that the petition was filed under section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(b)(5)). The correct section of the act is 721(d)(1) (21 U.S.C. 379e(d)(1)).

II. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 (Pub. L. 94–295), Congress mandated the listing of color additives for use in medical devices when the color additive in the device comes in direct contact with the body for a significant period of time (21 U.S.C. 379e(a)). The use of the reaction product of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone copolymerized with 3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate and *N*-vinyl pyrrolidone as a color additive in manufacturing contact lenses is subject to this listing requirement. The color additive is formed into contact lenses in such a way that at least some of the color additive will come in contact with the eye when the lenses are worn. In addition, the lenses are intended to be placed on the eye for several hours a day, each day, for 1 year or more. Thus, the color additive will be in direct contact with the body for a significant period of time. Consequently, the use of the color additive currently before the agency is subject to the statutory listing requirement.

III. Identity

The color additive, when used to color contact lenses, is produced by copolymerizing the dye 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone (CAS Reg. No. 121888–69–5) with 3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate (CAS Reg. No. 134072–99–4) and *N*-vinyl pyrrolidone monomers. The dye 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone covalently bonds through two methacrylate groups to the polymer matrix during polymerization. The resulting copolymeric product is formed into a contact lens.

IV. Safety Evaluation

The agency believes that because 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone has a significantly lower molecular weight than the *N*-vinyl pyrrolidone/3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate/1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone copolymer, it would be more readily absorbed into the body than the copolymeric color additive and would thus be expected to show a greater toxic effect. Therefore, the safety evaluation of the subject color additive focused primarily on 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone.

FDA concludes, from the data submitted in the petition and from other relevant information, that the maximum daily exposure to 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone from this petitioned use in contact lenses would be no greater than 0.08 micrograms per person per day (μg/p/d). The agency-calculated upper limit was based on two factors. First, the maximum use level anticipated by the petitioner is 300 parts per million (ppm) of the lens material or 15 μg of 1,4-bis[4-(2-methacryloxyethyl)

phenylamino]anthraquinone per lens (Ref. 1). Second, the agency made two worst-case assumptions: (1) The user will replace lenses tinted with 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone at the maximum use level once each year with a new pair of identical lenses; and (2) one hundred percent of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone will migrate from the lenses into the eyes over the 1-year period. Because these assumptions are worst-case estimates, exposure to 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone from its use in coloring *N*-vinyl pyrrolidone/3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate contact lenses is likely to be far less than 0.08 µg/p/d (Ref. 1).

To establish the safety of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone for coloring *N*-vinyl pyrrolidone/3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate contact lenses, the petitioner conducted toxicity studies with 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone, colored lenses, and colored lens extracts. The studies included five in vitro cytotoxicity studies, three by the agar overlay method (with 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone and lens) and two by the direct-contact method (with 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone and lens extract). The maximum noncytotoxic concentration for 1,4-bis[4-(2-methacryloxyethyl) phenylamino] anthraquinone was determined to be 1,810 µg/milliliter (mL) by the direct-contact method using mouse fibroblast cells. Both the lenses and lens extracts were found to be noncytotoxic to mouse fibroblast cells. A 21-day ocular irritation study with contact lenses in rabbits and a guinea pig maximization (Kligman) study with lens extracts were also conducted. These studies demonstrated no evidence of ocular irritation or an allergic response in the test animals.

To relate the 1,810 µg/mL no-effect level, established in the direct-contact cytotoxicity study for the dye, to the 0.08 µg/p/d exposure from wearing the colored lenses, the agency calculated the maximum concentration level of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone in each eye that would result from the use of the contact lens. The agency estimated that the daily exposure to 1,4-bis[4-(2-methacryloxyethyl) phenylamino] anthraquinone in each eye would be 0.04 µg and that this would be diluted by the average daily tear film of 1.2 mL produced in each eye. This concentration is equal to a maximum daily concentration in the tear flow of the eye of 0.04 µg dye/mL. This concentration represents a more than a 45,000 fold safety factor for this proposed use of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone.

Based upon the available toxicity data, the small amount of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone used to form the color additive in the contact lenses, and the agency's exposure calculation for 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone, FDA finds that the reaction product formed by copolymerizing 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone with *N*-vinyl pyrrolidone and 3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate is safe for use as a color additive in contact lenses. FDA further concludes that the safety margin is sufficiently large that no limitation is required beyond the usual limitation that the reactants may be used in amounts not to exceed the minimum reasonably required to accomplish the intended technical effect. Batch certification is not required to ensure safety.

V. Conclusions

Based on data contained in the petition and other relevant material, FDA concludes that there is a reasonable certainty that no harm will result from the petitioned use of the reaction product formed by copolymerizing 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone with *N*-vinyl pyrrolidone and 3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate to form colored contact lenses, and that the color additive is safe and suitable for its intended use.

VI. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VII. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Objections

Any person who will be adversely affected by this regulation may at any time on or before March 29, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the Federal Register.

IX. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from the Chemistry Review Branch to the Indirect Additives Branch, ''CAP 3C0242 (MATS# 741)–Bausch & Lomb. Reactive Blue 246 for coloring contact lenses, copolymerized with *N*-vinyl pyrrolidinone and 3-[tris(trimethylsiloxy)silyl]propyl vinyl

carbamate. Submission dated 9–10–93,'' dated February 22, 1994.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e).

2. Section 73.3106 is amended by revising paragraph (a) to read as follows:

§ 73.3106 1,4-Bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone copolymers.

(a) *Identity*. The color additive is 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone (CAS Reg. No. 121888–69–5), copolymerized with hydroxyethyl methacrylate monomer, or a blend of hydroxyethyl methacrylate and *N*-vinyl pyrrolidone monomers, or a blend of 3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate (CAS Reg. No. 134072–99–4) and *N*-vinyl pyrrolidone monomers to form the contact lens material.

* * * * *

Dated: February 17, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–4767 Filed 2–24–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 2171]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: Legislation over the last several years has created several new nonimmigrant visa categories. This rule provides a new table of nonimmigrant visa symbols at § 41.12 which reflects these changes. Minor editorial changes have also been made throughout.

EFFECTIVE DATE: This rule takes effect on February 27, 1995.

ADDRESSES: Chief, Legislation and Regulation Division, Visa Office, Washington, D.C. 20522–1013.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, 202–663–1204.

SUPPLEMENTARY INFORMATION: The passage of the Violent Crime Control and Law Enforcement Act of 1994 and the enactment of the North American Free Trade Agreement Implementation Act, which implemented the North American Free Trade Agreement (NAFTA), resulted in the creation of new nonimmigrant visa categories. The visa symbols for these nonimmigrant categories, S–1 and S–2 and TN and TD, are added to the list of nonimmigrant visa symbols at § 41.12.

Aliens Supplying Critical Information Relating to a Criminal Organization or Enterprise

On September 13, 1994, the President signed into law the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322). Section 130001 of this Act amends the Immigration and Nationality Act (INA)(by adding a new subparagraph (S) at INA 101(a)(15), thus establishing a new nonimmigrant (S) classification (''S–1'' and ''S–2'') for these aliens and their dependents.

NAFTA Professionals

In December 1993, the United States concluded the North American Free Trade Agreement (NAFTA) with Canada and Mexico. The North American Free Trade Agreement Implementation Act (Pub. L. 103–182) implementing the NAFTA agreement was signed by the President on December 8, 1993 and took effect January 1, 1994. Section 341 of the Implementation Act provided for certain professionals entering the United States under this agreement to be treated as if classified as nonimmigrants under INA 101(a)(15). The symbols TN and TD have been designated for these professionals and their dependents.

Final Rule

This rule adds the S–1 and S–2 and TN and TD symbols to the list of nonimmigrant symbols at 22 CFR 41.12. This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule imposes no reporting or record-keeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. This rule is exempted from E.O. 12866 but has been reviewed to ensure consistency therewith.

List of Subjects in 22 CFR Part 41

Classification of nonimmigrants, Classification symbols, Visas.

Accordingly, part 41 to 22 of the Code of Federal Regulations is amended to read as indicated below:

PART 41—[AMENDED]

1. The authority citation for Part 41 is revised to read as follows:

Authority: 8 U.S.C. 1101 and 1104; 19 U.S.C. 3401.

2. Section 41.12 is revised to read as follows:

§ 41.12 Classification symbols.

A visa issued to a nonimmigrant alien within one of the classes described in this section shall bear an appropriate visa symbol to show the classification of the alien. The symbol shall be inserted in the space provided in the visa stamp. The following visa symbols shall be used:

NONIMMIGRANTS

Symbol	Class	Section of law
A–1	Ambassador, Public Minister, Career Diplomat or Consular Officer, or Immediate Family	101(a)(15)(A)(i).
A–2	Other Foreign Government Official or Employee, or Immediate Family	101(a)(15)(A)(ii).
A–3	Attendant, Servant, or Personal Employee of A–1 or A–2, or Immediate Family	101(a)(15)(A)(iii).
B–1	Temporary Visitor for Business	101(a)(15)(B).

NONIMMIGRANTS—Continued

Symbol	Class	Section of law
B–2	Temporary Visitor for Pleasure	101(a)(15)(B).
B–1/B–2	Temporary Visitor for Business & Pleasure	101(a)(15)(B).
C–1	Alien in Transit	101(a)(15)(C).
C–2	Alien in Transit to United Nations Headquarters District Under Sec. 11.(3), (4), or (5) of the Headquarters Agreement.	101(a)(15)(C).
C–3	Foreign Government Official, Immediate Family, Attendant, Servant or Personal Employee, in Transit	212(d)(8).
D	Crewmember (Sea or Air)	101(a)(15)(D).
E–1	Treaty Trader, Spouse or Child	101(a)(15)(E)(i).
E–2	Treaty Investor, Spouse or Child	101(a)(15)(E)(ii).
F–1	Student	101(a)(15)(F)(i).
F–2	Spouse or Child of F–1	101(a)(15)(F)(ii).
G–1	Principal Resident Representative of Recognized Foreign Government to International Organization, Staff, or Immediate Family.	101(a)(15)(G)(i).
G–2	Other Representative of Recognized Foreign Member Government to International Organization, or Immediate Family.	101(a)(15)(G)(ii).
G–3	Representative of Nonrecognized Nonmember Foreign Government to International Organization, or Immediate Family.	101(a)(15)(G)(iii).
G–4	International Organization Officer or Employee, or Immediate Family	101(a)(15)(G)(iv).
G–5	Attendant, Servant, or Personal Employee of G–1 through G–4 or Immediate Family	101(a)(15)(G)(v).
H–1A	Registered Nurse	101(a)(15)(H)(i)(a).
H–1B	Alien in a Specialty Occupation (Profession)	101(a)(15)(H)(i)(b).
H–2A	Temporary Worker Performing Agricultural Services Unavailable In the United States (Petition filed on or After June 1, 1987).	101(a)(15)(H)(ii)(a).
H–2B	Temporary Worker Performing Other Services Unavailable in the United States (Petition filed on or After June 1, 1987).	101(a)(15)(H)(ii)(b).
H–3	Trainee	101(a)(15)(H)(iii).
H–4	Spouse or Child of Alien Classified H–1A/B, H2A/B, or H–3	101(a)(15)(H)(iv).
I	Representative of Foreign Information Media, Spouse and Child	101(a)(15)(I).
J–1	Exchange Visitor	101(a)(15)(J).
J–2	Spouse or Child of J–1	101(a)(15)(J).
K–1	Fiance(e) of United States Citizen	101(a)(15)(K).
K–2	Child of Fiance(e) of U.S. Citizen	101(a)(15)(K).
L–1	Intracompany Transferee (Executive, Managerial, and Specialized Knowledge Personnel Continuing Employment with International Firm or Corporation.	101(a)(15)(L).
L–2	Spouse or Child of Intracompany Transferee	101(a)(15)(L).
M–1	Vocational Student or Other Nonacademic Student	101(a)(15)(M).
M–2	Spouse or Child of M–1	101(a)(15)(M).
N–8	Parent of an Alien Classified SK–3 Special Immigrant	101(a)(15)(N)(i).
N–9	Child of N–8 or of an SK–1, SK–2, or SK–4 Special Immigrant	101(a)(15)(N)(ii).
NATO–1	Principal Permanent Representative of Member State to NATO (including any of its Subsidiary Bodies) Resident in the U.S. and Resident Members of Official Staff; Secretary General, Assistant Secretary General, and Executive Secretary of NATO; Other Permanent NATO Officials of Similar Rank, or Immediate Family.	Art. 12, 5 UST 1094; Art. 20, 5 UST 1098.
NATO–2	Other Representative of member state to NATO (including any of Subsidiary Bodies) including Representatives, its Advisers and Technical Experts of Delegations, Members of Immediate Art. 3, 4 UST 1796 Family; Dependents of Member of a Force Entering in Accordance with the Provisions Status-of-Forces Agreement or in Accordance with the provisions of the Protocol on the Status of International Military Headquarters; Members of Such a Force if Issued Visas.	Art. 13, 5 UST 1094; Art. 1, 4 UST 1794.
NATO–3	Official Clerical Staff Accompanying Representative of Member State to NATO (including any of its Subsidiary Bodies) or Immediate Family.	Art. 14, 5 UST 1096.
NATO–4	Official of NATO (Other Than Those Classifiable as NATO–1) or Immediate Family	Art. 18, 5 UST 1098.
NATO–5	Expert, Other Than NATO Officials Classifiable Under the NATO–4, Employed in Missions on Behalf of NATO, and their Dependents.	Art. 21, 5 UST 1100.
NATO–6	Member of a Civilian Component Accompanying a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement; Member of a Civilian Component Attached to or Employed by an Allied Headquarters Under the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty; and their Dependents.	Art. 1, 4 UST 1794; Art. 3, 5 UST 877.
NATO–7	Attendant, Servant, or Personal Employee of NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, and NATO–6 Classes, or Immediate Family.	Art. 12–20; 5 UST 1094–1098.
O–1	Alien with Extraordinary Ability in Sciences, Arts, Education, Business or Athletics	101(a)(15)(O)(i).
O–2	Accompanying Alien	101(a)(15)(O)(ii).
O–3	Spouse or Child of O–1 or O–2	101(a)(15)(O)(iii).
P–1	Internationally Recognized Athlete or Member of Internationally Recognized Entertainment Group	101(a)(15)(P)(i).
P–2	Artist or Entertainer in a Reciprocal Exchange Program	101(a)(15)(P)(ii).
P–3	Artist or Entertainer in a Culturally Unique Program	101(a)(15)(P)(iii).
P–4	Spouse or Child of P–1, P–2, or P–3	101(a)(15)(P)(iv).
Q–1	Participant in an International Cultural Exchange Program	101(a)(15)(Q).
R–1	Alien in a Religious Occupation	101(a)(15)(R).
R–2	Spouse or Child of R–1	101(a)(15)(R).
S–1	Certain Aliens Supplying Critical Information Relating to a Criminal Organization or Enterprise	101(a)(15)(S)(i).
S–2	Certain Aliens Supplying Critical Information Relating to Terrorism	101(a)(15)(S)(ii).

NONIMMIGRANTS—Continued

Symbol	Class	Section of law
TN	NAFTA Professional	214(e)(2).
TD	Spouse or Child of NAFTA Professional	214(e)(2).

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 95–4588 Filed 2–24–95; 8:45 am]

BILLING CODE 4710–06–M

22 CFR Part 42

[Public Notice 2170]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: Legislation over the last several years has created several new immigrant visa categories. In addition, the passage of time has resulted in the lapsing of other transitional categories. This rule provides a new table of immigrant visa symbols at § 42.11 which reflects these changes. Minor editorial changes have been made throughout.

EFFECTIVE DATE: This rule takes effect on February 27, 1995.

ADDRESSES: Chief, Legislation and Regulation Division, Visa Office, Washington, DC 20522–1013.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, 202–663–1204.

SUPPLEMENTARY INFORMATION: Several amendments to the Immigration and Nationality Act (INA) over the last several years have resulted in the creation of new immigrant visa categories. The new visa symbols for these immigrant categories IW2, ES1, SM1 through SM5, R51 through R53, and I51 through I53 are added to the list of immigrant visa symbols at § 42.11. This rule also removes from the list the visa symbols LB1 and LB2 and DT1 through DT3, used for transitional categories which have expired.

Section 42.11 Classification Symbols

Section 219 of the Immigration Technical Corrections Act of 1994 (Pub. L. 103–416, Oct. 25 1994) amended INA 201(b) to include the children of widows/widowers of U.S. citizens who qualify for immediate relative status. The new immigrant visa symbol IW2 is added to the list. This category is scheduled to expire on October 24, 1996.

Section 4 of the Soviet Scientists Immigration Act of 1992 (Pub. L. 102–509, October 24, 1992) provided for the admission of certain scientists from the independent states of the former Soviet Union and the Baltic states who possess exceptional scientific ability. These scientists have been accorded the ES1 symbol.

Section 2(a)(3) of the Armed Forces Immigration Adjustment Act of 1991 (Pub. L. 102–110, October 1, 1991) amended INA 101(a) by adding a new paragraph (K) which confers special immigrant status on certain active members and certain honorably separated former members of the U.S. Armed Forces. These special immigrants and their derivative spouses and children have been designated SM1 through SM5.

Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993 (Pub. L. 102–395, October 6, 1992) provided for an immigrant investor pilot program to implement the provisions of INA 203(b)(5), the permanent immigrant investor category. This pilot program sets aside immigrant visa numbers annually over a five-year period for aliens who make qualifying investments in commercial enterprises located within regional centers in the United States. These investors have been designated R51 through R53 if investing in a non-targeted area, and I51 through I53 if investing in a targeted area.

This rule also removes from the list at § 42.11 two immigrant categories created by the Immigration Act of 1990 (IMMACT 90) which were transitional: (1) the LB categories, created by section 112, for spouses and children of legalized aliens, and (2) the DT categories, created by section 134, for displaced Tibetans, their spouses and children.

Final Rule

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule imposes no reporting or recordkeeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. This rule is exempted from E.O. 12866 but has been reviewed to ensure consistency therewith.

List of Subjects in 22 CFR Part 42

Classification of immigrants, Classification symbols, Visas.

Accordingly, part 42 to title 22 of the Code of Federal Regulations is amended as indicated below:

PART 42—[AMENDED]

1. The authority citation for Part 42 is revised to read as follows:

Authority: 8 U.S.C. 1101 note, 1103 note, 1104, 1153 note.

2. Section 42.11 is revised to read as follows:

§ 42.11 Classification symbols.

A visa issued to an immigrant alien within one of the classes described below shall bear an appropriate visa symbol to show the classification of the alien.

IMMIGRANTS

Symbol	Class	Section of law
	Immediate Relatives	
IRI	Spouse of U.S. Citizen	201(b).
CRI	Spouse of U.S. Citizen (Conditional Status	201(b) & 216(a)(1).
IW1	Certain Spouses of Deceased U.S. Citizens	201(b).
IW2	Child of IW1	201(b).

IMMIGRANTS—CONTINUED

Symbol	Class	Section of law
IR2	Child of U.S. Citizen	201(b).
CR2	Child of U.S. Citizen (Conditional Status)	201(b) & 216.
IR3	Orphan Adopted Abroad by U.S. Citizen	201(b).
IR4	Orphan to be Adopted In the United States by U.S. Citizen	201(b).
IR5	Parent of U.S. Citizen at Least 21 Years of Age	201(b).
V15	Parent of U.S. Citizen Who Acquired Permanent Resident Status Under the Virgin Islands Nonimmigrant Alien Adjustment Act.	201(b) & sec. 2 of the Virgin Islands Nonimmigrant Alien Adjustment Act (P.L. 97–271).
	Vietnam Amerasian Immigrants	
AM1	Vietnam Amerasian Principal	584(b)(1)(A).
AM2	Spouse or Child of AM1	584(b)(1)(B).
AM3	Natural Mother of Unmarried AM1 (and Spouse or Child of Such Mother), or Person Who has Acted in Effect as the Mother, Father, or Next-of-Kin of Unmarried AM1 (and Spouse or Child of Such Person).	584(b)(1)(C) of the Foreign Operations, Export Financing, and Related Programs, Appropriations Act, 1988 (As Contained in sec. 101(e) of P.L. 101(e) of P.L. 100–202) as amended.
	Special Immigrants	
SB1	Returning Resident	101(a)(27)(A).
SC1	Person Who Lost U.S. Citizenship by Marriage	101(a)(27)(B) & 324(a).
SC2	Person Who Lost U.S. Citizenship by Serving in Foreign Armed Forces	101(a)(27)(B) & 327.
	Family-Sponsored Preferences **Family 1st Preference**	
F11	Unmarried Son or Daughter of U.S. Citizen	203(a)(1).
F12	Child of F11	203(d).
	Family 2nd Preference (Subject to County Limitations)	
F21	Spouse of Alien Resident	203(a)(2)(A).
C21	Spouse of Alien Resident (Conditional)	203(a)(2)(A) & 216.
F22	Child of Alien Resident	203(a)(2)(A).
C22	Child of Alien Resident (Conditional)	202(a)(2)(A) & 216.
F23	Child of F21 or F22	203(d).
C23	Child of C21&22 (Conditional)	203(d) & 216.
F24	Unmarried Son or Daughter of Alien Resident	203(a)(2)(B).
C24	Unmarried Son or Daughter of Alien Resident (Conditional)	203(a)(2)(B) & 216.
F25	Child of F24	203(d).
C25	Child of F24 (Conditional)	203(d) & 216.
	Family 2nd Preference (Exempt from Country Limitations)	
FX1	Spouse of Alien Resident	202(a)(4)(A) & 203(a)(2)(A).
CX1	Spouse of Alien Resident (Conditional)	202(a)(4)(A) & 216.
FX2	Child of Alien Resident	202(a)(4)(A) & 203(a)(2)(A).
CX2	Child of Alien Resident (Conditional)	202(a)(4)(A) & 216.
FX3	Child of FX1 and FX2	202(a)(4)(A) & 203(d).
CX3	Child of CX1 & CX2 (Conditional)	202(a)(4)(A) & 203(d) & 216.
	Family 3rd Preference	
F31	Married Son or Daughter of U.S. Citizen	203(a)(3).
C31	Married Son or Daughter of U.S. Citizen (Conditional)	216(a)(1).
F32	Spouse of F31	203(d).
C32	Spouse of C31 (Conditional)	203(d) & 216.
F33	Child of F31	203(d).
C33	Child of C31 (Conditional)	203(d) & 216.
	Family 4th Preference	
F41	Brother or Sister of U.S. Citizen	203(a)(4).
F42	Spouse of F41	203(d).
F43	Child of F41	203(d).

IMMIGRANTS—CONTINUED—Continued

Symbol	Class	Section of law
	Employment-Based Preferences	
	Employment 1st Preference (Priority Workers)	
E11	Alien with Extraordinary Ability	203(b)(1)(A).
E12	Outstanding Professor or Researcher	203(b)(1)(B).
E13	Multinational Executive or Manager	203(b)(1)(C).
E14	Spouse of E11, E12, or E13	203(d).
E15	Child of E11, E12, or E13	203(d).
	Employment 2nd Preference (Professionals Holding Advanced Degrees or Persons of Exceptional Ability)	
E21	Professional Holding Advanced Degree or of Exceptional Ability	203(b)(2).
E22	Spouse of E21	203(d).
E23	Child of E21	203(d).
ES1	Soviet Scientist (Prinicipal) Qualified for Status Under Pub. L. 102–509	203(b)(2) and sec. 4 of the Soviet Scientists Immigration.
	Employment 3rd Preference (Skilled Workers, Professionals, and Other Workers)	
E31	Skilled Worker	203(b)(3)(A)(i).
E32	Professional Holding Baccalaureate Degree	203(b)(3)(A)(ii).
E34	Spouse of E31 or E32	203(d)
E35	Child of E31 or E32	203(d).
EW3	Other Worker (Subgroup Numerical Limit)	203(b)(3)(A)(iii).
EW4	Spouse of EW3	203(d).
EW5	Child of EW3	203(d).
	Employment 4th Preference (Certain Special Immigrants)	
SD1	Minister of Religion	101(a)(27)(C) & 203(b)(4).
SD2	Spouse of SD1	101(a)(27)(C) & 203(b)(4).
SD3	Child of SD1	101(a)(27)(C) & 203(b)(4).
SE1	Certain Employees or Former Employees of the U.S. Government Abroad	101(a)(27)(D).
SE2	Spouse of SE1	101(a)(27)(D).
SE3	Child of SE1	101(a)(27)(D).
SEH	Employee of the Mission in Hong Kong or Immediate Family	101(a)(27)(D) & Section 152 of the Immigration Act of 1990.
SF1	Certain Former Employees of the Panama Canal Company or Canal Zone Government	101(a)(27)(E).
SF2	Spouse or Child of SF1	101(a)(27)(E).
SG1	Certain Former Employees of the U.S. Government in the Panama Canal Zone	101(a)(27)(F).
SG2	Spouse or Child of SG1	101(a)(27)(F).
SH1	Certain Former Employees of the Panama Canal Company or Canal Zone Government on April 1, 1979.	101(a)(27)(G).
SH2	Spouse or Child of SH1	101(a)(27)(G).
SJ1	Certain Foreign Medical Graduates (Adjustments Only)	101(a)(27)(H).
SJ2	Accompanying Spouse or Child of SJ1	101(a)(27)(H).
SK1	Certain Retired International Organization Employees	101(a)(27)(I)(iii).
SK2	Spouse SK1	101(a)(27)(I)(iv).
SK3	Certain Unmarried Son or Daughter of International Organization Employee	101(a)(27)(I)(i).
SK4	Certain Surviving Spouses of Deceased International Organization Employee	101(a)(27)(I)(ii).
SL1	Juvenile Court Dependent	101(a)(27)(J).
SM1	Alien Recruited Outside the United States Who Has Served or is Enlisted to Serve in the U.S. Armed Forces for 12 Years (Became Eligible After the Date of Enactment)..	101(a)(27)(K).
SM2	Spouse of SM1	101(a)(27)(K).
SM3	Child of SM1	101(a)(27)(K).
SM4	Alien Recruited Outside the United States Who Has Served or is Enlisted to Serve in the U.S. Armed Forces for 12 Years (Became Eligible As of the Date of Enactment).	101(a)(27)(K).
SM5	Spouse or Child of SM4	101(a)(27)(K).
SR1	Certain Religious Workers	101(a)(27)(C)(ii)(II) & (III).
SR2	Spouse of SR1	101(a)(27)(C)(ii)(II) & (III).
SR3	Child of SR1	101(a)(27)(C)(ii)(II) & (III).
	Employment 5th Preference (Employment Reaction Conditional Status)	
C51	Employment Creation *OUTSIDE* Targeted Areas	203(b)(5)(A).
C52	Spouse of C51	203(d).
C53	Child of C51	203(d).
T51	Employment Creation *IN* Targeted Rural/High Unemployment Area	203(b)(5)(B).
T52	Spouse of T51	203(d).
T53	Child of T51	203(d).

IMMIGRANTS—CONTINUED—Continued

Symbol	Class	Section of law
R51	Investor Pilot Program, Not in Targeted Area	203(b)(5) & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (P.L. 102–395)
	Other Numerically Limited Categories	
	Diversity Immigrants (Beginning in FY 1995)	
DV1	Diversity Immigrant	Section 203(c).
DV2	Spouse of DV1	Section 203(c).
DV3	Child of DV1	Section 203(c).
	Transition for Employees of Certain U.S. Businesses in Hong Kong (Fiscal Years 1991–1993)*	
HK1	Employee of U.S. Business in Hong Kong	Section 124 of the Immigration Act of 1990.
HK2	Spouse of HK1	Section 124 of the Immigration Act of 1990.
HK3	Child of HK1	Section 124 of the Immigration Act of 1990.
	Diversity Transition for Natives of Certain Adversely Affected Foreign States (Fiscal Years 1992–1995)	
AA1	Diversity Transition Immigration	Section 132 of the Immigration Act of 1990.
AA2	Spouse of AA1	Section 132 of the Immigration Act of 1990.
AA3	Child of AA1	Section 132 of the Immigration Act of 1990.

* Although these visas may no longer be issued, some HK visas remain valid through January 1, 2002.

Mary A. Ryan,
Assistant Secretary for Consular Affairs.
[FR Doc. 95–4589 Filed 2–24–95; 8:45 am]
BILLING CODE 4710–06–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17
RIN 2900–AG91

VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: We are, with changes, adopting as a final rule the provisions of an interim final rule promulgated pursuant to The Homeless Veterans Comprehensive Service Programs Act of 1992. The Act authorizes the Department of Veterans Affairs to assist public or nonprofit private entities in establishing new programs to furnish supportive services and supportive housing for homeless veterans through grants. The Act also authorizes VA to provide per diem payments, or in-kind assistance in lieu of per diem payments, to eligible entities that established programs after November 10, 1992 that provide supportive services or supportive housing for homeless veterans, or service centers providing supportive services. This rule contains criteria and requirements relating to the awarding of grants and relating to per diem payments. Accordingly, this rule is necessary so that grants can be awarded and per diem payments can be made.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Roger Casey, Program Manager, VA Homeless Providers Grant and Per Diem Program, Mental Health and Behavioral Sciences Service (111C), U.S. Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, D.C. 20420; (202) 535–7311 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

In a document published in the Federal Register on June 1, 1994 (59 FR 28264–28275), we established an interim final rule to implement provisions of the ''Homeless Veterans Comprehensive Service Programs Act of 1992.'' We solicited comments concerning the interim final rule for 60 days ending August 1, 1994. We received comments from three commenters: the Missouri Veterans Leadership Program, Vietnam Veterans Of America, Inc., and the State of New Jersey Department of Military and Veterans' Affairs. We have carefully considered all of the comments, and they are discussed below.

Based on the rationale set forth in the interim final rule and in this document, we are adopting the provisions of the interim final rule as a final rule, with changes as discussed in this document. This final rule also affirms the information contained in the interim final rule concerning Executive Order 12866 and the Regulatory Flexibility Act.

It was commented that VA ''restore some of the original funding earmarked for technical assistance'' in preparing grant applications. No changes are made based on this comment. The appropriation for the grant and per diem program did not earmark funding for technical assistance.

In addition, with respect to the two-phase application process for obtaining grants, it was commented that ''any requirements for professional consultation or the need for expenditures be reserved for the second

phase when there is some hope that these costs will be reimbursed.'' No changes are made based on this comment. The rule does not require use of professional consultation or any large expenditures for the initial phase of the application process.

It was also suggested that VA make specific allocation of funds to the per diem and grant components of the program. No changes are made based on this comment. Instead of predetermining amounts, it is our view that the amounts should be allocated on an ad hoc basis based on need and availability of funds. Even so, we agree that funding should provide for both per diem and grant awards, and we will ensure that both receive portions of allocations.

The writer also commented that the rating criteria should award additional points to ''veteran-run programs.'' No changes are made based on this comment. The grant and per diem program as authorized under Pub. L. 102–590 does not address this issue, and there does not appear to be a basis for giving preference to veteran-run programs.

Another comment stated that the point system used for rating grants should include points for targeting homeless veterans discharged from VA medical centers. No changes are made based on this comment, since the rule already includes this concept (see 38 CFR 17.711 (d)(2)).

This commenter also disagreed with the statement in the Preamble to the interim final rule that the ''vast majority of homeless veterans are single''. No changes are made based on this comment. We believe that such statement is correct. The statement is consistent with the Executive Summary of the 1990 Annual Report of the Interagency Council on the Homeless, which states that ''Over three-quarters of homeless adults are unattached single men, (and) 8% are unattached single women'' (page 24); and that the ''characteristics of homeless veterans appear to roughly parallel those of other homeless persons of the same sex'' (page 33).

It was also asserted that the grant program should not prohibit use of grant funding to construct, expand, remodel or acquire buildings located on VA owned property. Except as provided for in 38 U.S.C. 8122 or 40 U.S.C. 484, such VA property may not be purchased. In essence, applicants could only ''acquire'' these VA owned properties by lease, and lease payments are operational costs. Pub. L. 102–590 section 3(c) prohibits use of grant funds to support operational costs. Furthermore, the interim final rule limited uses of grant funding to acquisition, expansion and rehabilitation of structures owned by the applicant, or held by the applicant under a capital lease, in order to ensure long-term use of such structures to benefit homeless veterans. However, we are amending § 17.700 by revising the last sentence of paragraph (a) to permit use of grant funding to construct, expand or remodel buildings located on VA medical center grounds. A corresponding change is made in § 17.731(a)(1) to allow such leases to be used to demonstrate site control. We believe that these changes are consistent with the Congressional intent. In this regard, Congress stated:

> The Committee views the bill as a catalyst to spark linkages both between programs within VA as well as between VA and community-based programs. * * * The bill not only seeks to encourage new partnerships between VA programs and those serving in the same communities, but to provide seed money to start up new programs which would work in concert with VA efforts. (138 Cong. Rec. House Report No. 102–721 (July 24, 1992) reprinted in 1992 U.S.C.C.A.N. 4318).

The amendment would provide a means to enhance VA partnerships with community-based programs, and would allow for better and more immediate access to health and other benefits at VA medical centers. Moreover, if a grant recipient whose program was funded on VA medical center grounds ceased to operate the program, VA could seek another community-based organization to occupy the site and conduct a program for homeless veterans that carries out the purposes of the Act.

It was also asserted that the per diem program should not be restricted to new programs established after November 10, 1992. No change to the rule is made based on this comment since this a requirement of Pub. L. No. 102–590 (see section 4(a)).

Two of the commenters asserted that recipients of grants should be able to obtain a grant by providing less than 35 percent of the total project costs. No changes are made based on this comment. VA has no choice in this matter, since Pub. L. 102–590 section 3(c) provides that the amount of a grant ''may not exceed 65 percent of the estimated cost * * *.''

Three commenters asserted that grants should provide for operating costs. No changes are made based on these comments. VA has no choice in this matter since Pub. L. 102–590 section 3(c) states that a grant may not be used to support operational costs. However, it is noted that even though operational costs are not allowed under the grant component, payments under the per diem component necessarily include operational costs.

Several comments were based on incorrect assumptions. It was commented incorrectly that the rule limits funding for remodeling or renovating VA foreclosures acquired under the McKinney Act. The rule does not contain such limitation on the use of funds for remodeling or renovating VA foreclosed properties, and the McKinney Act does not pertain to VA foreclosed properties. It was also incorrectly stated that grant funds were not available to make necessary and reasonable improvements to accommodate access for disabled veterans. The rule contains no such prohibition. In addition, it was incorrectly stated that the rule excludes applicants if they are not United Way member organizations. The rule does not require United Way membership as a condition of eligibility to apply for grants or per diem payments.

Changes are made in the final rule to more clearly set forth the Congressional intent with respect to the meaning of ''new program/new component of existing program''. In this regard Congress stated that:

> The intent of the grant program is to assist in the establishment of new programs, or new components of existing programs, that will provide needed services to homeless veterans. In this regard both newly established organizations and existing organizations would be eligible for grant support for the furnishing of specified assistance that is needed in the area or community so long as, in the case of existing organizations, they are not already providing that kind of assistance in such area or community. (138 Cong. Rec. S. 17185 (Oct. 7, 1992) reprinted in 1992 U.S.C.C.A.N. 4335, 4336).

The final rule is amended to better reflect this Congressional intent. We are adding a definition of ''area or community'' because it is relevant for determining whether or not the proposed project constitutes a new program or new component of an existing program. In this regard, the ''new program/new component of an existing program'' must be both needed and not already provided by the applicant in the ''area or community''. Since it was intended that organizations be prohibited from receiving grants for the same kind of assistance they already have been providing in an area or community, it is necessary to specify at what point they would be in a different area or community and therefore eligible to receive a grant, assuming all other applicable conditions are met. To better reflect Congressional intent, the

term ''area or community'' is defined to mean ''a political subdivision or contiguous political subdivisions (such as precinct, ward, borough, city, county, State, Congressional district, etc.) with a separately identifiable population of homeless veterans.'' Accordingly, changes are made to the rule to better reflect this Congressional intent.

Changes are made to the ''rating criteria for applications'' section of the rule (§ 17.711) to clarify that grants may be awarded only for new programs or new components of existing programs.

This final rule, which essentially affirms the provisions of the interim final rule, is made effective upon publication. The substantive changes made by this final rule relieve restrictions.

Executive Order 12866: This rule has been reviewed as a ''significant regulatory action'' under E.O. 12866 by the Office of Management and Budget.

List of Subjects in 38 CFR Part 17

Community action programs, Community development, Homeless veterans, Government contracts, Grant programs—Health, Grant programs—homeless veterans, Grant programs—housing and community development, Grant programs—social programs, Grant programs—transportation, Health, Health care, Health facilities, Housing, Intergovernmental relations, Low and moderate income housing, Manpower training programs, Mental health centers, Mental health programs, Motor carriers, Motor vehicles, Public housing, Rent subsidies, Supportive housing, Supportive services, Veterans, Vocational education, Vocational rehabilitation, Work Incentive Programs.

Approved: February 15, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, the interim rule amending 38 CFR part 17 which was published at 59 FR 28625, June 1, 1994, is adopted as final with the following changes:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 38 U.S.C. 7721 note, unless otherwise noted.

2. Section 17.700 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 17.700 Purpose and scope.

(a) * * * This program does not provide for funding to acquire buildings located on VA-owned property. The program does provide for grant funds to be used to construct, expand or remodel buildings located on VA-owned property.

* * * * *

3. Section 17.701 is amended by adding the definition of ''area or community'', and by revising the definition of ''new program/new component of an existing program'' to read as follows:

§ 17.701 Definitions.

* * * * *

Area or community means a political subdivision or contiguous political subdivisions (such as precinct, ward, borough, city, county, State, Congressional district, etc.) with a separately identifiable population of homeless veterans.

* * * * *

New program/new component of an existing program means a proposed program of supportive services, or a proposed addition of supportive services to an existing program, which services are not currently being provided by the entity proposing it, and for which there is a demonstrated need in the area or community served by that entity.

* * * * *

4. Section 17.710 is amended by revising paragraph (a)(7) to read as follows:

§ 17.710 Application requirements.

(a) * * *

(7) Documentation on site control and appropriate zoning, and on the boundaries of the area or community proposed to be served;

* * * * *

5. Section 17.711 is amended by revising paragraphs (b)(4) and the first sentence in (d)(4) to read as follows:

§ 17.711 Rating criteria for applications.

* * * * *

(b) * * *

(4) *Eligible activities.* The activities for which assistance is requested must be eligible for funding under this part (e.g., new programs or new components of existing programs).

* * * * *

(d) * * *

(4) *Need.* VA will award up to 150 points based on the applicant's demonstrated understanding of the needs of the specific homeless veteran population proposed to be served in the specified area or community. * * *

* * * * *

6. Section 17.731 is amended by adding a new sentence at the end of paragraph (a)(1) to read as follows:

§ 17.731 Site control.

(a) * * *

(1) * * * A lease other than a capital lease does not demonstrate site control except for a VA lease as described in § 17.700(a) of this part.

* * * * *

[FR Doc. 95–4654 Filed 2–24–95; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN 110–1–6172a; FRL–5143–9]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee Chapter on Volatile Organic Compounds (VOC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this document, EPA is acting on revisions to the Tennessee State Implementation Plan (SIP) which were submitted on May 18, 1993, by Tennessee, through the Tennessee Department of Air Pollution Control (TDAPC), and contained revisions to chapter 1200–3–18 ''Volatile Organic Compounds (VOC).'' Due to the significance of the revisions, this revised chapter was submitted to replace the current chapter 1200–3–18. These revisions were made to satisfy the VOC Reasonably Available Control Technology (RACT) ''Catch-Up'' requirements contained in the amended Clean Air Act (CAA). EPA is granting conditional approval, full approval or disapproval of the revisions as explained in detail in the Supplementary Information section of this document.

DATES: This final rule will be effective April 28, 1995 unless adverse or critical comments are received by March 29, 1995. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: William Denman Stationary Source Unit, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365

Copies of the material submitted by the State of Tennessee may be examined during normal business hours at the following locations:

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 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.
Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: William Denman, Stationary Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Environmental Protection Agency Region 4, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is (404) 347–3555 x4208. Reference file TN110–1–6172.

SUPPLEMENTARY INFORMATION: On May 18, 1993, Tennessee submitted revisions to chapter 1200–3–18 ''Volatile Organic Compounds'' of their SIP to meet the requirements of the 1990 amendments to the CAA. These requirements are commonly referenced as the ''VOC RACT Catch-Ups.'' Due to the significance of the revisions, this revised chapter was submitted to replace the current chapter 1200–3–18 which had been recently revised to meet the ''VOC RACT Fix-Up'' requirements and was acted on by EPA by publishing a final rulemaking in the Federal Register on April 18, 1994. (see 59 FR 18310) EPA is approving the replacement of the previously federally approved chapter 1200–3–18 except for the following exceptions.

Tennessee failed to submit a rule for the VOC control of perchloroethylene dry cleaners in the VOC RACT Catch-Up submittal of May 18, 1993. However, a rule for the control of VOCs from perchloroethylene dry cleaners was federally approved in 59 FR 18310 on April 18, 1994. Therefore, the federally approved rule 1200–3–18–.28 ''Perchloroethylene Dry Cleaning'' will remain in effect until Tennessee submits a chapter for incorporation into their revised chapter 1200–3–18. Tennessee currently has a rule which regulates toxic emissions from perchloroethylene dry cleaners.

Otherwise, EPA is granting full approval of the submitted revisions with the exception of section 1200–3–18–.24 ''Gasoline Dispensing Facilities—Stage I and Stage II Vapor Recovery'' which will be acted on in a separate document and the following exceptions which are being granted conditional approval or are being disapproved. The approach taken for each of the submitted revisions is described below.

Conditional Approvals

EPA is conditionally approving the following revisions to the Tennessee SIP based upon Tennessee's commitment, in letters dated October 7, 1994, and December 16, 1994. To make the necessary revisions to correct the deficiencies identified below by January 1, 1996, Tennessee held public hearings on its committed revisions on October 19, 1994, and November 21, 1994. At the time of this document, the revisions committed to by Tennessee have been board approved. The conditional approval approach has been chosen to allow Tennessee the necessary time for the revisions to become State effective. If Tennessee fails to meet its commitment on or before January 1, 1996, the conditional approval will convert to a disapproval.

On January 15, 1993, in a letter from Patrick M. Tobin to Governor Ned McWherter, EPA notified the State of Tennessee that EPA had made a finding of failure to submit required programs for the nonattainment area. The revised chapter 1200–3–18 ''Volatile Organic Compounds'' was submitted on May 18, 1993, to satisfy the VOC RACT Catch-Up requirement. The complete submittal stopped the sanctions clock which was started on January 15, 1993, and this conditional approval of the submittal will temporarily stop the Federal Implementation Plan (FIP) clock which was also started on January 15, 1993. The FIP clock will stop permanently if the State fulfills its commitment and the EPA takes final action fully approving the plan. The clock will resume where it stopped and a new sanctions clock will start if any of the following occurs where the conditional approval converts to a disapproval. One, if the State of Tennessee fails to submit anything to meet its commitment, the clock will resume on the date the letter from the EPA to the State finding that it had failed to meet its commitment and that the conditional approval has now been converted to a disapproval. Two, if the State of Tennessee submits an incomplete SIP submittal to meet its commitment, the FIP clock will resume on the date that the EPA sends a letter of incompleteness to the State. Three, if the State submits a SIP submittal for which the EPA takes a final disapproval action, the clock resumes on the effective date of the final action. Additional information on conditional approvals and their effect on sanctions and FIP clocks can be found in a memorandum entitled, ''Impact of Conditional Approvals on Sanction and Federal Implementation Plan (FIP) Clocks'', dated July 14, 1993, from D. Kent Berry, Acting Director, Air Quality Management Division (MD–15) to the EPA Regional Air Directors.

Rule 1200–3–18–.01(1) ''Definitions'': The definition of ''volatile organic compound'' lists perchloroethylene as one of the exempt compounds which have been determined to have negligible photochemical reactivity. While EPA has proposed to revise the federal definition of VOC to exclude perchloroethylene, 57 FR 48490 (October 26, 1992), EPA has not taken final action to do so. Therefore, the State must continue to regulate perchloroethylene as a VOC until EPA takes final action to exclude perchloroethylene as a VOC. EPA is conditionally approving the VOC definition due to the commitment letter referenced above. If Tennessee fails to delete perchloroethylene from the list of exempt compounds and EPA has not approved it as an exempt compound after the commitment date, EPA will disapprove the definition of VOC and the previously federally approved definition of VOC will become effective.

Rule 1200–3–18–.02 ''General Provisions and Applicability'': Tennessee's emission statement, given in paragraph (8), does not fully meet the requirements of section 182(a)(3)(B) of the CAA. If either VOC or NO_X is emitted at or above the minimum required reporting level, the other pollutant must be included in the emissions statement even if it is emitted at levels below the specified cutoffs. Also, in the last sentence of paragraph (8), it is required that the owner or operator certify the reports. The EPA requirement is that an ''official'' of the company certify the reports and since not all operators are officials, Tennessee must change ''owner or operator'' to ''official.'' EPA is conditionally approving the emissions statement due to the commitment letter referenced above. If Tennessee fails to meet its commitment on or before the date in its commitment letter, the conditional approval will convert to a disapproval.

Rule 1200–3–18–.06 ''Handling, Storage, and Disposal of Volatile Organic Compounds (VOC's)'': The phrase ''minimum reasonably attainable'' used in paragraph (1) must be defined in the general definitions section. EPA is conditionally approving this revision due to the commitment letter referenced above. If Tennessee fails to meet its commitment on or before the date in its commitment letter,

the conditional approval will convert to a disapproval.

Rule 1200–3–18–.33 ''Manufacture of Synthesized Pharmaceutical Products'': This rule was the subject of a public hearing on March 18, 1993, and was amended by the State after being officially submitted to EPA. The amended rule was to replace the rule 1200–3–18–.33, officially submitted on May 18, 1993, in its entirety. To date, EPA has not received the amended rule 1200–3–18–.33. EPA is granting conditional approval of rule 1200–3–18–.33 submitted on March 18, 1993, due to the commitment letter referenced above. If Tennessee fails to meet its commitment on or before the date in its commitment letter, the conditional approval will convert to a disapproval.

Rule 1200–3–18–.38 ''Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufacturing Equipment'': In paragraph (2) of this rule, the definition of ''(In) light liquid service,'' sets the level of the concentration of pure component at 20%. This level must be set at 10% to be consistent with the CTG. EPA is granting conditional approval of this rule based on Tennessee's commitment to correct this deficiency. If Tennessee fails to meet its commitment on or before the date in its commitment letter, the conditional approval will convert to a disapproval.

Rule 1200–3–18–.39 ''Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins'': The conversion factor K_1 in the equation in subparagraph (5)(a)(2) is not correct in the form expressed in English units. The correct conversion factor is 2.595×10^{-9} lb-mole/dscf. EPA is conditionally approving this revision due to the commitment letter referenced above which states that Tennessee will correct the deficiency and will use the correct conversion factor in the interim. If Tennessee fails to meet its commitment on or before the date in its commitment letter, the conditional approval will convert to a disapproval.

Rule 1200–3–18–.86 ''Performance Specifications for Continuous Emission Monitoring of Total Hydrocarbons'': The conversion factor of 8.638×10^{-4} that was included in the equation in subparagraph (11)(c) is incorrect and will result in a low bias in total hydrocarbon emission rates. If the stack flow rate is expressed in cubic feet per second, the conversion factor K_1 shall be 5.183×10^{-2}. EPA is conditionally approving this revision due to the commitment letter referenced above which states that Tennessee will correct the deficiency. If Tennessee fails to meet its commitment on or before the date in its commitment letter, the conditional approval will convert to a disapproval.

Disapprovals

EPA is disapproving the following revisions to chapter 1200–3–18 of the Tennessee SIP. Section 110(l) of the CAA provides that EPA shall not approve a SIP revision if the revision interferes with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirements of the CAA. Section 110(k) of the CAA addresses the situation in which an entire submittal, or a separable portion of a submittal, meets all applicable requirements of the CAA. In the case where a separable portion of the submittal meets all of the applicable requirements, partial approval may be used to approve that part of the submittal and disapprove the remainder. Tennessee has begun rulemaking to correct these deficiencies. In the meantime, the rules are disapproved as described below.

Rule 1200–3–18–.03 ''Compliance Certification, Recordkeeping, and Reporting Requirements for Coating and Printing Sources'': As stated in comment #17 in a letter dated December 14, 1993, from EPA to Tennessee, subparagraph (2)(b) must state that the alternate longer period be approved by EPA in addition to the Technical Secretary. Since Tennessee did not correct this deficiency, EPA is disapproving the proposed rule. Therefore, the federally enforceable version of this rule will continue to be the last federally approved rule which is 1200–3–18–.01(5) as approved in 59 FR 18310 on April 18, 1994.

Rules 1200–3–18–.20 ''Coating of Miscellaneous Metal Parts''; 1200–3–18–.79 ''Other Facilities that Emit Volatile Organic Compounds (VOC)'': The exemption in subparagraphs 1200–3–18–.20(1)(b)(2)(vii) and 1200–3–18–.79(1)(d) is not consistent with EPA's guidance on final repair (see Control of Volatile Organic Emissions from Stationary Sources, Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks, EPA 450/2–77–008, May 1977), which recommends a maximum VOC emission rate of 4.8 lbs/gal. Usage of 4.0 gal/day of air-drying materials, as specified in the State rule, corresponds with a VOC emission rate of approximately 25 lbs/day, which is more than five times EPA's recommended rate. Therefore, EPA is disapproving subsections 1200–3–18–.20(1)(b)(2)(vii) and 1200–3–18–.79(1)(d).

Approvals

Except as noted above, EPA is approving the following revisions to Tennessee chapter 1200–3–18 ''Volatile Organic Compounds.''

1200–3–18–.01 Definitions: Tennessee consolidated definitions previously contained throughout the chapter and arranged all definitions in alphabetical order.

1200–3–18–.02 General Provisions and Applicability: This section was revised by moving the compliance certification and recordkeeping requirements to sections 1200–3–18–.03 and .04, adding additional provisions consistent with the EPA's draft VOC Model Rule and adding the emission statement for VOC's.

1200–3–18–.03 Compliance Certification, Recordkeeping, and Reporting Requirements for Coating and Printing Sources and 1200–3–18–.04 Compliance Certification, Recordkeeping, and Reporting Requirements for Non-Coating and Non-Printing Sources: These sections were added to describe in detail the compliance certification, recordkeeping and/or reporting requirements that had previously been contained in General Provisions and Applicability.

1200–3–18–.06 Handling, Storage, and Disposal of Volatile Organic Compounds (VOC's): This section was added to the VOC Chapter to provide a regulation for the handling, storage, and disposal of VOC's.

1200–3–18–.07 Source Specific Compliance Schedules: This section was added to give provisions by which an owner or operator of an existing source can petition for a source-specific compliance schedule.

1200–3–18–.08–.10 These sections were revised to read ''reserved.''

1200–3–18–.22 Bulk Gasoline Plants: This rule was amended to be consistent with EPA's draft VOC Model Rule and expanded applicability to the entire Nashville nonattainment area.

1200–3–18–.23 Bulk Gasoline Terminals: This rule was revised to be consistent with EPA's draft VOC Model Rule which modified the test methods and procedures and extended the applicability to all counties in the Nashville nonattainment area.

1200–3–18–.25 Leaks from Gasoline Tank Trucks: This rule was revised to be consistent with EPA's draft VOC Model Rule which extended the applicability from trucks loaded or unloaded in Davidson and Shelby County to any gasoline truck equipped for gasoline vapor collection.

1200–3–18–.26 Petroleum Refinery Sources & 1200–3–18–.27 Leaks from

Petroleum Refinery Equipment: These rules were revised to be consistent with EPA's draft VOC Model Rule which clarified the applicability.

1200–3–18–.28 Petroleum Liquid Storage in External Floating Roof Tanks & 1200–3–18–.29 Petroleum Liquid Storage in Fixed Roof Tanks: These rules were revised to be consistent with EPA's draft VOC Model Rule which clarified the recordkeeping requirements.

1200–3–18–.31 Solvent Metal Cleaning: This rule was revised to be consistent with EPA's draft VOC Model Rule which lowered the applicability threshold and clarified the compliance requirements.

1200–3–18–.32 Cutback and Emulsified Asphalt: This rule was revised to eliminate any exemptions to this rule.

1200–3–18–.35 Graphic Arts Systems: This rule was revised to include weighted average limitations and to clarify recordkeeping and reporting requirements.

1200–3–18–.79 Other Facilities that Emit Volatile Organic Compounds (VOC): This rule applies to all VOC sources in the Nashville nonattainment that have the potential to emit 100 tons or more per year.

The following rules were added to the VOC chapter to provide regulations for additional source categories.

1200–3–18–.11 Automobile and Light-Duty Truck Coating Operations
1200–3–18–.30 Leaks from Natural Gas/Gasoline Processing Equipment
1200–3–18–.34 Pneumatic Rubber Tire Manufacturing
1200–3–18–.36 Petroleum Solvent Dry Cleaning
1200–3–18–.38 Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufacturing Equipment
1200–3–18–.39 Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins
1200–3–18–.40 Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry
1200–3–18–.86 Performance Specifications for Continuous Emission Monitoring of Total Hydrocarbons
1200–3–18–.87 Quality Control Procedures for Continuous Emission Monitoring Systems (CEMS)

The following rules were revised consistent with the EPA's draft VOC Model Rule. The applicability thresholds were changed from sources having the potential to emit 25 tons per year or greater in Davidson, Hamilton, and Shelby Counties, and 100 tons per year or greater in other counties to those whose maximum theoretical emissions of 10 tons per year or greater in the five-county Nashville nonattainment area, 25 tons per year or above in Hamilton or Shelby County and 100 tons per year or greater in all other counties.

1200–3–18–.12 Can Coating
1200–3–18–.13 Coil Coating
1200–3–18–.14 Paper and Related Coating
1200–3–18–.15 Fabric Coating
1200–3–18–.16 Vinyl Coating
1200–3–18–.17 Coating of Metal Furniture
1200–3–18–.18 Coating of Large Appliances
1200–3–18–.19 Coating of Magnet Wire
1200–3–18–.20 Coating of Miscellaneous Metal Parts
1200–3–18–.21 Coating of Flat Wood Paneling

Sections 1200–3–18–.05, 1200–31–18–.37, 1200–3–18–.41 through .78 and 1200–3–18–.88 through .99 are reserved.

The following rules were added to provide for test methods and compliance procedures.

1200–3–18–.80 Test Methods and Compliance Procedures: General Provisions
1200–3–18–.81 Test Methods and Compliance Procedures: Determining the VOC Content of Coatings and Inks
1200–3–18–.82 Test Methods and Compliance Procedures: Alternative Compliance Methods for Surface Coating.
1200–3–18–.83 Test Methods and Compliance Procedures: Emissions Capture and Destruction or Removal Efficiency and Monitoring Requirements
1200–3–18–.84 Test Methods and Compliance Procedures: Determining the Destruction or Removal Efficiency of a Control Device
1200–3–18–.85 Test Methods and Compliance Procedures: Leak Detection Methods for Volatile Organic Compounds (VOC)

Final Action

EPA is approving the submitted revisions to the Tennessee SIP with the exception of those rules discussed in the Supplementary section of the notice which are either conditionally approved or disapproved. The revised chapter 1200–3–18 ''Volatile Organic Compounds'' provides essentially the same requirements as the previous chapter 1200–3–18 with some sections being more stringent as described above. 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 28, 1995, unless, by March 29, 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 28, 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 28, 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 CAA, 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.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA

forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing.

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing state requirements nor does it substitute a new Federal requirement.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 9, 1995.

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 RR—Tennessee

2. Section 52.2219 is revised to read as follows:

§ 52.2219 Identification of plan—conditional approval.

(a) EPA is conditionally approving the following revisions to the Tennessee SIP contingent on the State of Tennessee meeting the schedule to correct deficiencies associated with the following rules which was committed to in letters dated October 7, 1994, and December 16, 1994, from the State of Tennessee to EPA Region IV.

(1) Rule 1200–3–18–.01 Definitions: Subparagraph (1), the definition of ''volatile organic compound,'' effective April 22, 1993.

(2) Rule 1200–3–18–.02 General Provisions and Applicability: Paragraph (8) effective April 22, 1993.

(3) Rule 1200–3–18–.06 Handling, Storage and Disposal of Volatile Organic Compounds (VOC's): Paragraph (1) effective April 22, 1993.

(4) Rule 1200–3–18–.39 Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins: Subparagraph (5)(a)(2) effective April 22, 1993.

(5) Rule 1200–3–18–.86 Performance Specifications for Continuous Emission Monitoring of Total Hydrocarbons: Subparagraph (11)(c) effective April 22, 1993.

(b) [Reserved]

(c) [Reserved]

3. Section 52.2220 is amended by adding paragraph (c)(123) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(123) A revised chapter 1200–3–18 ''Volatile Organic Compounds'' was submitted by the Tennessee Department of Air Pollution Control (TDAPC) to EPA on May 18, 1993, to replace the current chapter 1200–3–18 in the Tennessee SIP. This chapter had been revised to meet the requirements of the 1990 Clean Air Act Amendments commonly referred to as the ''VOC RACT Catch-Up'' requirements. Rule 1200–3–18–.28 ''Perchloroethylene Dry Cleaners'' which was federally approved in 59 FR 18310 on April 18, 1994, will remain effective.

(i) Incorporation by reference.

(A) Revisions to the State of Tennessee regulations which were effective on April 22, 1993.

(*1*) Chapter 1200–3–18 ''Volatile Organic Compounds,'' except for subchapter 1200–3–18–.24, subparagraph 1200–3–18–.03 (2)(b), subparagraph 1200–3–18–.20 (1)(b)(2)(vii), and subparagraphs 1200–3–18–.79 (1)(a)(3), (1)(c), and (1)(d).

(ii) Other material. None.

* * * * *

4. Section 52.2225 is amended by revising paragraph (b) to read as follows:

§ 52.2225 VOC rule deficiency correction.

* * * * *

(b) Revisions to chapter 1200–3–18 ''Volatile Organic Compounds'' were submitted by Tennessee on May 18, 1993, to meet the requirements added by the 1990 Clean Air Act Amendments (CAAA) commonly referred to as the ''VOC RACT Catch-up '' requirements. The following deficiencies remain in Tennessee chapter 1200–3–18 and must be corrected.

(1) Rule 1200–3–18–.01 (1): The definition of ''volatile organic compound'' must be revised to delete perchloroethylene from the list of compounds that have negligible photochemical reactivity.

(2) Rule 1200–3–18–.02 (8): Tennessee must revise this paragraph to provide that an official of the company certify the reports instead of the owner or operator. This paragraph must also be amended to require NO_X emissions to be reported.

(3) Rule 1200–3–18–.06 (1): The term ''minimum reasonably attainable'' must be explained or defined.

(4) Rule 1200–3–18–.33: This rule for the manufacture of synthesized pharmaceutical products has been amended by the State since the official submittal. The State of Tennessee has committed to submit the revised rule to EPA by January 1, 1996.

(5) Rule 1200–3–18–.38: This rule for leaks from synthetic organic chemical, polymer, and resin manufacturing equipment sets the level of concentration of pure component at 20%. This level must be changed to 10%.

(6) Rules 1200–3–18–.39 (5)(a)(2) and 1200–3–18–.86 (11)(c): The conversion factors must be corrected.

* * * * *

[FR Doc. 95–4539 Filed 2–24–95; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201–39

[FIRMR Amendment 4]

RIN 3090–AF17

Amendment of FIRMR To Remove Provisions for Using GSA Nonmandatory Schedule Contracts for FIP Resources

AGENCY: Information Technology Service, GSA.

ACTION: Final rule.

SUMMARY: This rule revises Federal Information Resources Management Regulation (FIRMR) provisions regarding Federal Information Processing (FIP) multiple award schedule (MAS) contract orders. Specifically, the rule removes the requirement to synopsize orders in excess of $50,000 placed against MAS contracts and incorporates the new guiding principles for FIP MAS orders, including a $2,500 ''micro-purchase'' threshold. The micro-purchase procedures will speed up the acquisition process for low dollar, low risk FIP acquisitions. These changes are examples of GSA's ongoing efforts to improve the MAS program and streamline the procurement process. GSA strongly encourages agencies to use the schedules program as a proven method to purchase commercial goods in a manner that is both time and cost effective.

DATES: This rule is effective March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Judy Steele, FTS/Commercial (202) 501–3194 (v) or (202) 501–0657 (tdd).

SUPPLEMENTARY INFORMATION: (1) A notice of proposed rulemaking was published in the Federal Register on February 23, 1994. This notice removed all provisions for using GSA nonmandatory schedule contracts for FIP resources from the FIRMR. Thirty-four (34) comments were received on the proposed rule. All comments were considered, and, where possible, incorporated into the final rule. For example, several respondents requested that the FIP MAS procedures remain in the FIRMR to ensure that all ordering activities and schedule vendors would know where to find them. Respondents also suggested incorporation of the MAS ''guiding principles'' into the FIRMR procedures. This rule has been revised to reflect their concerns.

(2) To address recurring issues of concern to GSA customer agencies, the General Accounting Office (GAO), and MAS contractors, GSA initiated a MAS Improvement Project in October 1990. GSA prepared a uniform set of ''guiding principles'' to simplify and expedite the ordering process for all types of MAS buys. According to a recent GAO report, agencies state that a reason for failing to comply with the MAS ordering procedures is that it is too time-consuming and difficult. One major objective of the MAS Improvement Project consistent with those concerns was to streamline and unify the procedures for ordering products and services provided under the MAS program. In line with this objective, this rule removes the FIRMR requirement that agencies synopsize orders valued at $50,000 or higher that are placed against FIP MAS contracts. Since the FIP MAS contracts are now indefinite delivery/indefinite quantity contracts, there is no longer a legal requirement to synopsize these orders.

GAO has also previously suggested that the ordering procedures for low dollar value items be less stringent than the procedures which apply to high dollar value orders. A micropurchase threshold of $2,500 is incorporated in the guiding principles which will alleviate that situation. Below the $2,500 threshold, agencies are allowed to place an order to any FIP schedule contractor without seeking competition. Above $2,500, agencies must consider reasonably available information about products offered under MAS contracts to ensure that the selection meets the agency's needs at the lowest overall cost. The guiding principles also reflect that MAS contractors no longer are required to pass on a price reduction extended to only one agency for a specific order to all MAS users. This rule incorporates GSA's guiding principles for MAS acquisitions.

(3) Explanation of the specific changes being made by this issuance are shown below:

(a) Subpart 201–39.5 is removed to delete the synopsizing requirements related to the FIP MAS contracts.

(b) Section 201–39.601–2 is removed since synopsizing is no longer required.

(c) Section 201–39.803–3 is revised to add the MAS ''guiding principles'' which streamline and simplify the procedures for using the FIP MAS contracts.

(d) The FIRMR Index reference is revised to change the phrase ''GSA nonmandatory schedule contract'' to ''GSA nonmandatory FIP schedule contract'' to differentiate the FIP MAS contracts from the newly nonmandatory FSS MAS contract programs.

(4) This rule was submitted to, and approved by, the Office of Management and Budget in accordance with Executive Order 12866, Regulatory Planning and Review. The rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (U.S.C. 601 et seq.).

(5) The Paperwork Reduction Act does not apply because the FIRMR changes do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 41 CFR Part 201–39

Archives and records, Computer technology, Federal information processing resources activities, Government procurement, Property management, Records management, and Telecommunications.

For the reasons set forth in the preamble, GSA is amending 41 CFR Part 201 as follows:

PART 201–39—ACQUISITION OF FEDERAL INFORMATION PROCESSING (FIP) RESOURCES BY CONTRACTING

1. The authority citation for part 201–39 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

Subpart 201–39.5—[Reserved]

2. Subpart 201–39.5 is removed and reserved.

§ 201–39.601–2 [Removed and reserved]

3. Section 201–39.601–2 is removed and reserved.

4. Section 201–39.803–3 is revised to read as follows:

§ 201–39.803–3 Procedures.

(a) Prior to selecting a GSA nonmandatory FIP schedule contract and placing an order, the agency shall justify any restrictive requirement (e.g., an ''all or none'' requirement or a requirement for ''only new'' equipment).

(b) Ordering activities can place orders of $2,500 or less with any GSA nonmandatory FIP schedule contractor. GSA has already determined the prices of items under these contracts to be fair and reasonable.

(c) To reasonably ensure that a selection represents the best value and meets the agency's needs at the lowest overall cost alternative, before placing a MAS order of more than $2,500, an ordering activity should—

(1) Consider reasonably available information about products offered under Multiple Award Schedule contracts; this standard is met if the ordering activity does the following:

(i) Considers products and prices contained in any GSA MAS automated information system (e.g., Information Resources Management—On-line Schedules System); or

(ii) If automated information is not available, reviews at least three (3) price lists.

(2) In selecting the best value item at the lowest overall cost (the price of the item plus administrative costs), the ordering activity may consider such factors as—

(i) Special features of one item not provided by comparable items which are required in effective program performance;

(ii) Trade-in considerations;

(iii) Probable life of the item selected as compared with that of a comparable item;

(iv) Warranty conditions; and

(v) Maintenance availability.

(3) Give preference to the items of small business concerns when two or more items at the same delivered price will meet an ordering activity's needs.

(d) MAS contractors will not be required to pass on to all schedule users a price reduction extended only to an individual agency for a specific order. There may be circumstances where an ordering activity finds it advantageous to request a price reduction, such as where the ordering activity finds that a schedule product is available elsewhere at a lower price, or where the quantity of an individual order clearly indicates the potential for obtaining a reduced price.

(e) Ordering activities should document orders of $2,500 or less by identifying the contractor the item was purchased from, the item purchased, and the amount paid. For orders over $2,500, MAS ordering files should be documented in accordance with internal agency practices. Agencies are encouraged to keep documentation to a minimum.

(f) Requirements or orders shall not be fragmented in order to circumvent the applicable MOL.

5. The reference to ''GSA nonmandatory schedule contract'' in the FIRMR Index is revised to ''GSA nonmandatory FIP schedule contract.''

Dated: January 19, 1995.

Julia M. Stasch,

Acting Administrator of General Services.

[FR Doc. 95–4270 Filed 2–24–95; 8:45 am]

BILLING CODE 6820–25–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7612]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA, Energy.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region I				
Connecticut:				
Darien, town of, Fairfield County	090005	January 19, 1973, Emerg.; January 2, 1981, Reg.; March 2, 1995, Susp.	3–2–95	March 2, 1995.
Ellington, town of, Tolland County	090158	July 29, 1975, Emerg.; March 15, 1982, Reg.; March 2, 1995, Susp.	3–2–95	Do.
Killingly, town of, Windham County	090136	September 5, 1975, Emerg.; January 3, 1985, Reg.; March 2, 1995, Susp.	3–2–95	Do.
New Britain, city of, Hartford County	090032	August 22, 1973, Emerg.; July 16, 1981, Reg.; March 2, 1995, Susp.	3–2–95	Do.
Suffield, town of, Hartford County	090038	June 28, 1978, Emerg.; August 15, 1979, Reg.; March 2, 1995, Susp.; October 28, 1983, Rein.; March 16, 1995, Susp.	3–2–95	Do.
Region VI				
Louisiana:				
Grand Isle, city of, Jefferson Parish	225197	August 28, 1970, Emerg.; October 30, 1970, Reg.; March 23, 1995, Susp.	3–23–95	March 23, 1995.
Gretna, city of, Jefferson Parish	225198	August 14, 1970, Emerg.; June 18, 1971, Reg.; March 23, 1995, Susp.	3–23–95	Do.
Harahan, city of, Jefferson Parish	225200	April 19, 1973, Emerg.; June 15, 1973, Reg.; March 23, 1995, Susp.	3–23–95	Do.
Jean Lafitte, town of, Jefferson Parish	220371	October 1, 1971, Reg.; March 23, 1995, Susp .	3–23–95	Do.
Jefferson Parish, unincorporated areas	225199	July 10, 1970, Emerg.; October 1, 1971, Reg.; March 23, 1995, Susp.	3–23–95	Do.
Kenner, city of, Jefferson Parish	225201	November 13, 1970, Emerg.; June 25, 1971, Reg.; March 23, 1995, Susp.	3–23–95	Do.
Westwego, city of, Jefferson Parish	220094	April 27, 1973, Emerg.; June 28, 1976, Reg.; March 23, 1995, Susp.	3–23–95	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: February 21, 1995.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95–4758 Filed 2–24–95; 8:45 am]

BILLING CODE 6718–21–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 73, and 74

[MM Docket No. 92–168]

Broadcast Services; Low Power Television, and Television and FM Radio Translator License Renewal

AGENCY: Federal Communications Commission.

ACTION: Final rule; confirmation of effective date.

SUMMARY: In the Report and Order in MM Docket No. 92–168 (59 FR 63049, December 7, 1994, Column three, FR Doc 94–28768) the Commission adjusted the renewal schedule of low power television, FM radio translator, and television translator stations to correspond with that of full service radio or television stations operating in the same State, eliminated FCC Form 348, and modified FCC Form 303–S. The instant document announces that necessary Office of Management and Budget approval for these amendments was received on December 20, 1994, and the actions taken in the Report and Order thus became effective on that date.

EFFECTIVE DATES: The regulation amending 47 CFR parts 1, 73 and 74, published at 59 FR 63049, December 7, 1994, is effective on December 20, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Mass Media Bureau, 202–776–1648, or Rita McDonald, Mass Media Bureau, 202–739–0753.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 1

Reporting and recordkeeping requirements.

47 CFR Parts 73 and 74

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 95–4555 Filed 2–24–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–139; RM–7149 and 7484]

Radio Broadcasting Services; Oshkosh, Winneconne and Townsend, Wisconsin and Menominee, Michigan

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 280C3 for Channel 280A at Oshkosh, Wisconsin, modifies the license for Station WMGV(FM) and changes the community of license from Oshkosh to Winneconne, Wisconsin, substitutes Channel 279C3 for Channel 280A at Menominee, Michigan, and modifies the license for Station WHYB to specify operation on the higher class channel, in response to a petition filed by Value Radio Corp and CJL Broadcasting, Inc. *See* 55 FR 11412, March 28, 1990. The coordinates for Channel 280C3, Winneconne, are 44–15–09 and 88–44–48. Canadian concurrence has been obtained for Channel 279C3 at Menominee at coordinates 45–06–21 and 87–46–43. The counterproposal filed by Independence Broadcasting Wisconsin Corp. requesting allotment of Channel 278C3 to Townsend, Wisconsin, has been withdrawn. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 90–139, adopted February 10, 1995, and released February 21, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 280A, Oshkosh, and by adding Winneconne, Channel 280C3.

3. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 280A and adding Channel 279C3, Menominee.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–4694 Filed 2–24–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 76

[MM Docket 92–266; FCC 95–43]

Cable Television Act of 1992—Rate Regulation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On its own motion, the Federal Communication Commission (the ''Commission'') has adopted a Ninth Order on Reconsideration in order to allow small cable operators and low-price systems that have been provided with transition relief to adjust their transition rates to reflect increases in inflation. Between April 1, 1995 and August 31, 1995, cable operators that have been afforded transition relief may adjust their rates to reflect the net of a 5.21% inflation adjustment, minus any inflation adjustments they have already received. In the future, all transition relief systems may join other operators by making inflation adjustments on an annual basis, no earlier than October 1, of each year and no later than August 31 of the following year to reflect the final GNP–PI through June 30 of the applicable year.

EFFECTIVE DATE: April 1, 1995.

FOR FURTHER INFORMATION CONTACT: Paul D'Ari, Cable Services Bureau (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Ninth Order on Reconsideration in MM Docket No. 92–266, FCC 95–43, adopted February 3, 1995 and released February 6, 1995.

The complete text of this Ninth Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (''ITS, Inc.'') at (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Synopsis of the Ninth Order on Reconsideration

A. Background

In the Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92–266 (''Rate Order''), 58 FR 29736 (May 21, 1993), the Commission developed a benchmark formula for the purpose of establishing initial rates for regulated services. Under the benchmark approach, regulated cable systems were required to calculate an applicable benchmark, an estimate of the rate that a cable system with similar characteristics, but subject to effective competition, would be permitted to charge. Cable systems whose rates exceeded the applicable benchmark were generally required to reduce their rates either to the benchmark or by 10%, whichever reduction was less. This 10% ''competitive differential'' represented the average difference that the Commission determined existed between the rates of competitive and noncompetitive systems.

In the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking (''Second Reconsideration Order''), 59 FR 17943 (April 15, 1994), the Commission refined the econometric model, recalculated the competitive differential, and concluded that a competitive differential of 17% more accurately estimates the difference between effectively competitive and noncompetitive cable rates. Accordingly, the Commission required most systems with rates above the benchmark to either reduce their regulated rates to a level that represented their September 30, 1992 regulated revenues, reduced by 17% (mitigated by annual inflation increases, changes in external costs and changes in the number of programming channels) or to submit a cost-of-service showing supporting higher rates.

The Commission granted two classes of cable operators transition relief, by not requiring them to implement the full 17% reduction rate. The first category of systems that were provided with transition relief is systems owned by ''small operators,'' defined as operators serving 15,000 or fewer subscribers and not affiliated with a larger operator. Systems owned by small operators were not required to reduce rates by 17%. Rather these operators were allowed to use the permitted rate charged on March 31, 1994 to establish initial restructured rates, and adjust accordingly to reflect

external costs until the Commission completed its study of prices and costs experienced by small operators.

The second category of systems that were provided with transition relief is systems that charge relatively low prices for regulated services. Low-price systems are defined as systems (1) whose March 31, 1994 rates were below the benchmark rate, or (2) whose March 31, 1994 rates were above their March 31, 1994 benchmark rates, but whose March 31, 1994 full reduction rates are below their March 31, 1994 benchmark rates as determined under FCC Form 1200. During the transition period, systems whose March 31, 1994 rates were below the benchmark rate had their rates capped at March 31, 1994 levels. Systems whose March 31, 1994 rates were above the benchmark, but whose full reduction rates were below the benchmark were only required to reduce their rates to, but not below, the benchmark.

The Commission stated that it would not require small cable operators and low-price systems that were provided with transition relief to make full competitive rate reductions until the Commission collected and analyzed data about such operators' prices and costs, and determined whether the competitive rate reduction was appropriate.

Systems entitled to transition relief have been permitted to increase their rates to reflect increases in external costs and a per channel adjustment when increasing the number of channels. The Commission decided not to allow such systems, however, to increase their transition rates to reflect increases in inflation until the transition rate equals their full reduction rate. The Commission determined that because the full reduction rate rises with inflation, as well as with changes in external costs and channel changes, a transition rate system's hypothetical full reduction rate may eventually exceed the transition rate. The Commission decided, therefore, that if a system's transition rate and the full reduction rate became equal, that system would be entitled to take advantage of inflation adjustments.

The Commission also stated that after it has determined whether it should require transition relief operators to reduce their rates in accordance with an appropriate competitive differential, those systems will be entitled to an aggregate inflation adjustment equal to the GNP–PI inflation adjustments for the period beginning October 1, 1992 through the most recent June 30. For those systems that have already received some inflation adjustment, because their hypothetical full reduction rate exceeded their transition rate, the Commission stated that the system will receive the net of the aggregate inflation adjustment minus any inflation adjustment already received. The Commission found that such systems will be eligible for additional inflation adjustments on an annual basis, but no earlier than September 30 of each year to reflect the final GNP–PI through June 30 of the applicable year.

B. Discussion

On its own motion, the Commission found that low-price systems and small operators that have been provided with transition relief should no longer be prevented from adjusting their rates to reflect changes in inflation. In the Second Order on Reconsideration, 59 FR 17943 (April 15, 1994), the Commission decided to defer implementing the inflation adjustment for transition relief systems because it was not yet requiring them to reduce their rates by the competitive differential. The Commission decided that it would provide transition relief systems with the opportunity to make inflation adjustments after it developed a better picture of the price/cost profiles of these systems and determined the appropriate competitive differential for such systems. In making the decision, the Commission stated that it expected to complete the collection of cost/price data within nine months.

Because the Commission has not yet completed the collection of this data and nearly ten months have passed since the Commission released the Second Order on Reconsideration, the Commission finds that it would be unfair to further delay implementation of inflation adjustments for transition relief systems. The Commission is concerned that a further delay in permitting transition relief systems to make inflation adjustments could be particularly burdensome on small operators because many small operators may not have the financial resources to withstand the impact of not being able to make inflation adjustments.

The Commission also finds that low-price systems should not be required to experience any further delays in implementing inflation adjustments. In the Second Order on Reconsideration, the Commission found that because their prices are significantly lower than those charged by most noncompetitive systems, low price systems may face unusual demand, costs or other influences that were not captured in the Commission's analysis. A further delay in allowing low-price systems to make inflation adjustments may, therefore, impose a substantial burden upon those operators.

Accordingly, between April 1, 1995 and August 31, 1995, cable operators that have been afforded transition relief may adjust their rates to reflect the net of a 5.21% inflation adjustment, minus any inflation adjustments they have already received. This adjustment accounts for the 3% inflation that regulated cable operators were permitted to recover for the September 30, 1992 to September 30, 1993 period, and the 2.15% inflation factor that operators were permitted to recover between October 1, 1994 and August 31, 1995 for the October 1, 1993 to June 30, 1994 period.

With one exception, however, transition relief systems will not receive the full 5.21% inflation adjustment because, under the old rules, they received an inflation adjustment from September 30, 1992 to the date they were subject to regulation for the purpose of establishing their initial rates prior to May 15, 1994. The exception is for most low price systems that had their March 31, 1994 rates above the benchmark, but their full reduction rate below the benchmark. When these systems set their rates for the period after May 15, 1994, they lost the inflation adjustment they received prior to May 15, 1994, because they were required to reduce their rates to the benchmark. Therefore, they will be permitted to adjust their rates to reflect the full 5.21% inflation factor. If, however, their actual post-May 15, 1994 rate reduction was less than their earlier inflation adjustment, they will be permitted to receive the 5.21% inflation adjustment minus the difference between their inflation adjustment and their actual post-May 15, 1994 rate reduction.

The Commission determined in the Second Order on Reconsideration that, because the full reduction rate rises with inflation, a transition rate system's hypothetical full reduction rate may eventually exceed the transition rate. The Commission decided that a transition rate system will be entitled to take an inflation adjustment once the hypothetical full reduction rate and transition rate become equal. Therefore, those transition relief systems that have already received this inflation adjustment, because their hypothetical full reduction rate exceeded their transition rate, will only be allowed to receive the net of the aggregate inflation adjustment minus any inflation adjustment already received.

With the inflation adjustment they received prior to May 15, 1994 and the inflation adjustment the Commission is

granting them now, transition relief systems will be able to adjust their rates to reflect the same inflation adjustment that the Commission has granted all other operators. Moreover, in the future, all transition relief systems may join other cable operators in making inflation adjustments on an annual basis, no earlier than October 1 of each year and no later than August 31 of the following year to reflect the final GNP–PI through June 30 of the applicable year.

Administrative Matters

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, the Commission's final analysis with respect to the Ninth Order on Reconsideration is as follows:

Need and purpose of this action. The Commission, in compliance with section 3 of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. 543 (1992), pertaining to rate regulation, adopts revised rules and procedures intended to ensure that cable services are offered at reasonable rates with minimum regulatory and administrative burdens on cable entities.

Summary of issues raised by the public in response to the Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis. The Chief Counsel for Advocacy of the United States Small Business Administration (SBA) filed comments in the original rulemaking order. The Commission addressed the concerns raised by the Office of Advocacy in the Report and Order and Further Notice of Proposed Rulemaking.

Significant alternatives considered and rejected. In the course of this proceeding, petitioners representing cable interests and franchising authorities submitted several alternatives aimed at minimizing administrative burdens. The Commission has attempted to accommodate the concerns expressed by these parties. In this order, the Commission is providing relief to small systems and low-price systems by permitting them to adjust their transition rates with an inflation adjustment.

Paperwork Reduction Act

The requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and are found to impose a new information collection requirement on the public. Implementation of the new requirement will be subject to approval by the Office of Management and Budget.

Ordering Clauses

Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), 303(r), 612, 622(c) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 532, 542(c) and 543, the rules, requirements and policies discussed in this Ninth Order on Reconsideration, are adopted and part 76 of the Commission's rules, 47 CFR part 76, is amended as set forth below.

It is further ordered that the Secretary shall send a copy of this Order to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (1981).

It is further ordered that the requirements and regulations established in this decision shall become effective on April 1, 1995.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Title 47, Part 76 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat. as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 535, 542, 543, 552 as amended, 106 Stat. 1460.

2. Section 76.922 is amended by revising paragraph (d)(2) to read as follows:

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

* * * * *

(d) * * *

(2) *Inflation Adjustments.* The residual component of a system's permitted charge may be adjusted annually for inflation. The annual inflation adjustment shall be based on inflation occurring from June 30 of the previous year to June 30 of the year in which the inflation adjustment is made, except that the first annual inflation adjustment shall cover inflation from September 30, 1993 until June 30 of the year in which the inflation adjustment is made. The adjustment may be made after September 30, but no later than August 31, of the next calendar year. Adjustments shall be based on changes in the Gross National Product Price Index as published by the Bureau of Economic Analysis of the United States Department of Commerce. Cable systems that establish a transition rate pursuant to paragraph (b)(4) of this section may not begin adjusting rates on account of inflation before April 1, 1995. Between April 1, 1995 and August 31, 1995 cable systems that established a transition rate may adjust their rates to reflect the net of a 5.21% inflation adjustment minus any inflation adjustments they have already received. Low price systems that had their March 31, 1994 rates above the benchmark, but their full reduction rate below the benchmark will be permitted to adjust their rates to reflect the full 5.21% inflation factor unless the rate reduction was less than the inflation adjustment received on an FCC Form 393 for rates established prior to May 15, 1994. If the rate reduction established by a low price system that reduced its rate to the benchmark was less than the inflation adjustment received on an FCC Form 393, the system will be permitted to receive the 5.21% inflation adjustment minus the difference between the rate reduction and the inflation adjustment the system made on its FCC Form 393. Cable systems that established a transition rate may make future inflation adjustments on an annual basis with all other cable operators, no earlier than October 1 of each year and no later than August 31 of the following year to reflect the final GNP–PI through June 30 of the applicable year.

* * * * *

[FR Doc. 95–4554 Filed 2–24–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 940710–4292; I.D. 022195E]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure of a Commercial Fishery

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

ACTION: Closure of a commercial fishery for king mackerel.

SUMMARY: NMFS closes the commercial hook-and-line fishery for king mackerel

in the exclusive economic zone (EEZ) in the Florida west coast sub-zone. This closure is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: February 22, 1995, through June 30, 1995.

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

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (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 by regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act.

Catch limits recommended by the Councils and implemented by NMFS for the Gulf of Mexico migratory group of king mackerel set the commercial quota of king mackerel in the Florida west coast sub-zone at 865,000 lb (392,357 kg). That quota was further divided into two equal quotas of 432,500 lb (196,179 kg) for vessels in each of two groups by gear types—vessels fishing with run-around gillnets and those using hook-and-line gear. The quota for vessels using hook-and-line gear was reached and the commercial fishery for vessels using such gear was closed December 20, 1994 (59 FR 66276, December 23, 1994). On February 1, 1995, the fishery was reopened by an emergency interim rule (60 FR 7134, February 7, 1995) that revised the 1994–95 fishing year commercial quota to 732,500 lb (332,256 kg) for vessels using hook-and-line gear and imposed a daily possession/landing limit of 125 king mackerel for such vessels.

Under the provisions of the emergency interim rule (50 CFR 642.32(c)), NMFS is required to close the commercial fishery for king mackerel for vessels using hook-and-line gear in the Florida west coast sub-zone when the revised quota is reached, or is projected to be reached, by publishing notification in the Federal Register. NMFS has determined that the revised commercial quota of 732,500 lb (332,256 kg) for Gulf group king mackerel for vessels using hook-and-line gear in the Florida west coast sub-zone was reached on February 21, 1995. Hence, the commercial fishery for king mackerel for such vessels in the Florida west coast sub-zone is closed effective 12:01 a.m., local time, February 22, 1995, through June 30, 1995, the end of the fishing year.

The Florida west coast sub-zone extends from the Alabama/Florida boundary (87°31′06″ W. long.) to (1) the Dade/Monroe County, Florida boundary (25°20.4′ N. lat.) from November 1 through March 31; and (2) the Monroe/Collier County, Florida boundary (25°48′’ N. lat.) from April 1 through October 31.

NMFS previously determined that the commercial quota of king mackerel from the western zone of the Gulf of Mexico was reached and closed that segment of the fishery on September 24, 1994 (59 FR 49356, September 28, 1994). Subsequently, NMFS determined that the commercial quota of king mackerel for vessels using run-around gillnets in the Florida west coast sub-zone of the eastern zone of the Gulf of Mexico was reached and closed that segment of the fishery on February 3, 1995 (60 FR 7716, February 9, 1995). Thus, with this closure, all commercial fisheries for king mackerel in the EEZ are closed from the U.S./Mexico border through the Florida west coast sub-zone through June 30, 1995.

Except for a person aboard a charter vessel, during the closure, no person aboard a vessel permitted to fish under a commercial allocation may fish for, retain, or have in possession in the EEZ Gulf group king mackerel from the closed zones. A person aboard a charter vessel may continue to fish for king mackerel in the closed zones under the bag limit set forth in § 642.24(a)(1)(i), provided the vessel is under charter and the vessel has an annual charter vessel permit, as specified in § 642.4(a)(2). A charter vessel with a permit to fish on a commercial allocation is under charter when it carries a passenger who fishes for a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones taken in the EEZ, including those harvested under the bag limit, may not be purchased, bartered, traded, or sold. This prohibition does not apply to trade in king mackerel from the closed zones that were harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 642.32(c) and is exempt from under E.O. 12866.

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

Dated: February 21, 1995.

David S. Crestin,

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

[FR Doc. 95–4651 Filed 2–21–95; 5:02 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 38
Monday, February 27, 1995

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV–95–955–1]

Vidalia Onions Grown in Georgia; Order Directing That a Referendum be Conducted

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible producers of Vidalia onions to determine whether they favor continuance of the marketing order regulating the handling of Vidalia onions grown in the production area.

DATES: The referendum will be conducted from March 1 through March 31, 1995. To vote in this referendum, growers must have been producing Vidalia onions during the period January 1 through August 15, 1994.

ADDRESSES: Copies of the marketing order may obtained from the office of the referendum agent at P.O. Box 2276, Winter Haven, Florida, 33883–2276, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: William J. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 2276, Winter Haven, Florida, 33881–2276; telephone: (813) 299–4770, or Shoshana Avrishon, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2536–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–3610.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 955 [7 CFR Part 955], hereinafter referred to as the ''order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by the producers. The referendum shall be conducted during the period March 1 through March 31, 1995, among Vidalia onion producers in the production area. Only producers that were engaged in the production of Vidalia onions during the period of January 1 through August 15, 1994, may participate in the continuance referendum.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether producers favor continuation of marketing order programs. The Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of Vidalia onions represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the Secretary will not only consider the results of the continuance referendum. The Secretary will also consider other relevant information concerning the operation of the order; the order's relative benefits and disadvantages to producers, handlers, and consumers; and whether continued operation of the order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all producers affected by the order favor termination, and such majority produced for market more than 50 percent of the commodity covered under such order.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0160 for Vidalia onions. It has been estimated that it will take an average of 10 minutes for each of the approximately 250 producers of Vidalia onions to cast a ballot. Participation is voluntary. Ballots postmarked after March 31, 1995, will not be included in the vote tabulation.

William J. Pimental and Christian D. Nissen of the Southeast Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct such referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR part 900.400 *et seq.*).

Ballots will be mailed to all producers of record and may also be obtained from the referendum agents.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: February 21, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–4740 Filed 2–24–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 308, 310, 318, 320, 325, 326, 327, and 381

[Docket No. 95–005N]

Information Briefings: Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Announcement of outreach activities.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing a series of public outreach activities to provide information on the proposed rule titled ''Pathogen Reduction; Hazard Analysis and Critical Control Points (HACCP) Systems'' that was published on February 3, 1995. These activities consist of six briefings on the proposal; three scientific/technical conferences; and one two-day public hearing. These

activities are intended to assist the public in understanding the proposed rule and in providing comments on the proposed rule.

DATES: See Supplementary Information for dates of hearings.

ADDRESSES: See Supplementary Information for locations of hearings.

FOR FURTHER INFORMATION CONTACT: Dan Vitiello, Director, Planning and Analysis, Planning Office, Policy, Evaluation and Planning Staff, FSIS, USDA, Room 6904 Franklin Court, Washington, DC 20250, (202) 501–7138.

SUPPLEMENTARY INFORMATION: On February 3, 1995, FSIS published a proposed rule titled ''Pathogen Reduction; Hazard Analysis and Critical Control Points (HACCP) Systems'' (60 FR 6774). The proposal provides a number of requirements applicable to Federal and State-inspected meat and poultry establishments. The proposed requirements are designed to reduce the occurrence and numbers of pathogenic organisms in meat and poultry products, thereby reducing the incidence of foodborne illness associated with the consumption of these products.

Information Briefings

To assist the public in understanding the proposal, FSIS is holding six briefings as follows. Each briefing will run from 1:00 p.m. to 5:00 p.m. Any person who wishes to attend any of the information briefings should contact the FSIS Planning Office at (202) 501–7138.

Date	City/state	Location	Contact
Mar. 7	San Francisco, Oakland, CA	Henry J. Kaiser Convention Center, 10 Tenth Street, Oakland, CA 94607.	Linda Russell, (202) 501–7138.
Mar. 14	Dallas, TX	Dallas Grand Hotel, 1914 Commerce St., Dallas, TX 75201, (214) 747–7000; 1–800–421–0011.	Dan Vitiello (202) 501–7138.
Mar. 16	Chicago, IL	Holiday Inn O'Hare Airport, 5440 North River Rd., Rosemont, IL 60018, (708) 671–6350.	Ken Elane, (202) 501–7138.
Mar. 21	Atlanta, GA	Richard Russell Federal Building, 75 Spring St., SW., Atlanta, GA 30303.	Ron Niemeyer, (202) 501–7138.
Mar. 23	New York, NY	Federal Building, 26 Federal Plaza, Room 305, New York, NY 10278.	Ken Elane, (202) 501–7138.
Mar. 30	Washington, DC	Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703) 418–1234.	Linda Russell (202) 501–7138.

The format for each briefing will be the same:

1. A panel of subject matter specialists will explain various aspects of the proposal.
2. Attendees will submit any questions they have, in writing.
3. Panelists will answer the questions.

Scientific/Technical Conferences

FSIS also plans to hold three conferences, each addressing a specific scientific/technical issue. Information on each specific conference will be published separately at a later date.

The three conferences are scheduled to be held as follows:

Issue: ''New Technology to Improve Food Safety''

April 12–13, Chicago, IL, Holiday Inn O'Hare Airport, 5440 North River Road, Rosemont, IL 60018, (708) 671–6350

Issue: ''The Role of Microbiological Testing in Verifying Food Safety''

May 1–2, Philadelphia, PA, Holiday Inn-Independence Mall, Fourth and Arch Streets, Philadelphia, PA 19106, (215) 923–8860

Issue: ''An Evaluation of the Role of Microbiological Criteria in Establishing Food Safety Performance Standards in Meat and Poultry Products''

May 18–19, Washington, DC, Georgetown University, Conference Center, 3800 Reservoir Road, Washington, DC 20007, (202) 687–3200

Public Hearing

Lastly, FSIS is planning to hold a two-day public hearing for those commenters who wish to submit oral comments in response to the proposed rule. (Oral comments may also be provided to FSIS by contacting the persons listed in the proposed rule). The public hearing will be held:

May 30–31, Washington, DC, Georgetown University Conference Center, 3800 Reservoir Road, NW., Washington, DC 20007, (202) 687–3200

Done at Washington, DC, on: February 17, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–4498 Filed 2–24–95; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 211

[Docket No. 94N–0421]

RIN 0905–AE63

Current Good Manufacturing Practice for Finished Pharmaceuticals; Positron Emission Tomography

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to permit manufacturers of positron emission tomography (PET) radiopharmaceuticals to apply to the agency for approval of an exception or alternative to the requirements of the current good manufacturing practice (CGMP) regulations. This action is intended to relieve PET manufacturers, nearly all of whom are small entities, from regulations that might result in unsafe handling of PET radiopharmaceuticals, that are inapplicable or inappropriate, or that otherwise do not enhance safety or quality in the manufacture of PET radiopharmaceuticals.

DATES: Written comments by March 29, 1995. FDA proposes that any final rule that may issue based on this proposal become effective on its date of publication in the Federal Register.

ADDRESSES: Submit written comments 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 W. Levchuk, Center for Drug Evaluation and Research (HFD–322), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0095.

SUPPLEMENTARY INFORMATION:

I. Introduction

PET is a diagnostic imaging modality consisting of onsite production of radionuclides that are intravenously injected into patients for diagnostic purposes. The potential usefulness of a PET radiopharmaceutical is based upon

the product's interaction with a biochemical process in the body. For example, the product may be substituted for glucose in anaerobic glycolysis, theoretically localizing in ischemic tissues where glucose metabolism is the predominant energy source (epileptic foci, acute vascular insufficiency states).

The manufacture of PET radiopharmaceuticals consists of a process that takes place within a few hours. A target material is irradiated by a cyclotron; chemical synthesis takes place in a programmed, automated apparatus; and the final solution is compounded and filled. The biological distribution of a PET radiopharmaceutical in the body is monitored by a positron tomograph, or PET scanner, which detects the photons emitted as a result of the radioactive decay of the PET radiopharmaceutical.

PET manufacturing procedures differ in a number of important ways from those associated with the manufacture of conventional drug products:

- Because of the short half-lives of PET radiopharmaceuticals (some of which are only minutes long), PET facilities generally manufacture the products in response to daily demand for a relatively small number of patients.
- Manufacturing is typically done on a small scale and only a few lots are produced each day. Thus, the daily production of a PET facility is normally handled by few employees, sometimes by one production operator and a part-time support person.
- PET radiopharmaceuticals must be administered to patients in a short period of time because of the brief half-lives of the products. Any prolonged manufacturing time or testing or release delays would reduce the useful clinical life of the product.
- Unlike most pharmaceuticals, PET radiopharmaceuticals usually do not enter a general drug distribution chain. An entire lot (one vial) is usually distributed directly from the PET facility to a single medical department, to a physician for administration to patients, to a radiopharmacy for dispensing, or to another site close to the PET facility. The receiving facilities are in a geographic proximity that will allow for receipt and use within the product's half-life parameters.

The agency believes that there are fundamental principles of the CGMP regulations that need to be applied to drug manufacturing processes, including those for PET radiopharmaceuticals, to ensure the safety and efficacy of the finished products. However, as just noted, certain features are unique to the manufacture of PET products. Part 211 (21 CFR part 211), which is primarily directed to the regulation of conventional drug products, contains requirements and specific language which might result in unsafe handling of PET radiopharmaceuticals, are inapplicable or inappropriate, or which otherwise do not enhance drug product quality in the manufacture of PET radiopharmaceuticals.

FDA is therefore proposing to amend its regulations to permit manufacturers of PET radiopharmaceuticals to apply to the agency for approval of an exception or alternative to the requirements of part 211 as they apply to the manufacture of PET radiopharmaceuticals. A request for an exception or alternative must contain either an explanation why compliance with a particular requirement of the CGMP regulations is unnecessary or cannot be achieved, or a description of alternative procedures or controls that satisfy the purpose of the CGMP requirement. Both of these must include all necessary supporting data. Alternatively, the request may include other information justifying an exception or alternative. The request for an exception or alternative may be approved by the agency if it is determined that the requestor's compliance with the CGMP requirement is unnecessary to provide suitable assurance that the drug meets the requirements of the act as to safety and it has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess, or if compliance with the requirement cannot be achieved. In addition, the request for an exception or alternative may be approved if the requestor's alternative procedures or controls satisfy the purpose of the CGMP requirement, or if the requestor's submission otherwise justifies an exception or alternative. The agency may withdraw approval of an exception or alternative if it finds, on the basis of new information, that the criteria for approval are no longer met. Such withdrawal will be accomplished by providing written notice, and the reasons for the action, to the original requestor.

The agency will also periodically provide guidance to the industry on the application of the CGMP regulations to PET radiopharmaceuticals.

Elsewhere in this issue of the Federal Register, FDA is publishing: (1) A notice of availability of a draft guideline to assist persons in determining whether certain manufacturing practices, procedures, and facilities used for PET radiopharmaceuticals are in compliance with FDA's CGMP regulations; and (2) a notice of a public workshop and FDA guidance on the regulation of PET radiopharmaceuticals.

FDA is requesting written comments within 30 days after the date of publication of this proposed rule. In addition, FDA is proposing that any final rule that may publish as a result of this proposal become effective on its date of publication in the Federal Register. The proposed rule would permit manufacturers of PET radiopharmaceuticals to apply to FDA for approval of an exception or alternative to the requirements of the CGMP regulations. Accordingly, the proposed rule, if finalized, is a substantive rule which, in the discretion of the agency, grants or recognizes an exemption or relieves a restriction. (See 5 U.S.C. 553(d)(1) and 21 CFR 10.40(c)(4)(i).) In addition, the Commissioner of Food and Drugs finds good cause under 21 CFR 10.40(a)(2) for providing 30 days for comments instead of 60 days and under 5 U.S.C. 553(d)(3) and 21 CFR 10.40(c)(4)(ii) for making a final rule based on this proposal effective upon its publication in the Federal Register. The manufacturing process for PET radiopharmaceuticals is sufficiently different from that of other regulated products that application of certain CGMP requirements to PET radiopharmaceuticals is impractical. Because PET radiopharmaceuticals are already in use, a longer comment period or a later effective date may delay FDA approval or hinder appropriate application of CGMP regulations to PET radiopharmaceuticals, that are necessary to protect the integrity of the drug manufacturing process.

II. Request for Comments

Interested persons may, on or before March 29, 1995, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) 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.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency certifies that the proposed rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

For the reasons explained above, FDA proposes that any final rule based on this proposal become effective on the date of publication in the Federal Register.

V. Paperwork Reduction Act of 1980

This proposed rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Current Good Manufacturing Practice for Finished Pharmaceuticals: Positron Emission Tomography

Description: The proposal would permit manufacturers of PET products to apply to the agency for approval of an exception or alternative to the requirements of the CGMP regulations. The regulation is intended to relieve PET manufacturers, nearly all of whom are small entities, from regulations that might result in unsafe handling of PET radiopharmaceuticals, that are inapplicable or inappropriate, or that otherwise do not enhance safety or quality in the manufacture of PET radiopharmaceuticals.

Description of Respondents: Businesses; small businesses.

ESTIMATED ANNUAL REPORTING BURDEN:

Section	Number of Respondents	No. of Responses Per Respondents	Total Annual Responses	Hours Per Response	Total Hours
21 CFR 211.1(d)	60	1	60	4	240

We have submitted a copy of this proposed rule to OMB for its review of these information collections. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503.

List of Subjects in 21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 211 be amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

1. The authority citation for 21 CFR part 211 continues to read as follows:

Authority: Secs. 201, 501, 502, 505, 506, 507, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, 356, 357, 360b, 371, 374).

2. Section 211.1 is amended by adding new paragraph (d) to read as follows:

§ 211.1 Scope.

* * * * *

(d) The Director of the Center for Drug Evaluation and Research or the Director of the Office of Compliance, Center for Drug Evaluation and Research, may approve an exception or alternative to any application of this part to the manufacture of positron emission tomography (PET) radiopharmaceuticals. Requests for such exceptions or alternatives should ordinarily be made in writing. However, in certain circumstances, such requests may be made orally and permission may be granted orally. Oral requests and oral approvals must be followed by written requests and written approvals. Approval of a request for an exception or alternative must be obtained from either specified Director prior to the use of any affected PET radiopharmaceutical.

(1) A request for an exception or alternative is required to contain one of the following:

(i) An explanation, with supporting data as necessary, why compliance with a particular requirement of this part is unnecessary or cannot be achieved;

(ii) A description, with supporting data as necessary, of alternative procedures or controls that satisfy the purpose of the requirement; or

(iii) Other information justifying an exception or alternative.

(2) The Director may approve a request for an exception or alternative if the Director finds one of the following:

(i) The requestor's compliance with the requirement is unnecessary to provide suitable assurance that the drug meets the requirements of the act as to safety, and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess, or compliance with the requirement cannot be achieved;

(ii) The requestor's alternative procedures or controls satisfy the purpose of the requirement; or

(iii) The requestor's submission otherwise justifies an exception or alternative.

(3) The Director may withdraw approval of an exception or alternative if the Director finds, on the basis of new information, that the criteria for approval in paragraph (d)(2) of this section are no longer met. Withdrawal of approval shall be accomplished by providing written notice of such

withdrawal, and the reasons for the withdrawal, to the original requestor.

Dated: February 17, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–4690 Filed 2–24–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

Alaska Permanent Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed program amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Alaska permanent regulatory program (hereinafter, the ''Alaska program'') under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*) (SMCRA). The proposed amendment consists of revisions to rules pertaining to fees, adoption by reference, general permitting requirements, permit application information requirements, environmental resource information requirements, reclamation and operation plan, processing of permit applications, permitting for special categories of mining, exploration, small operator assistance program, bonding, performance standards, inspection and enforcement, and general provisions. The amendment is intended to revise the Alaska program to be consistent with the corresponding Federal regulations, clarify ambiguities, and improve operational efficiency. The amendment consists of proposed changes to the Alaska program as required by Part 902.16 of the Code of Federal Regulations and program deficiency letters dated November 1, 1989, February 7, 1990, and January 15, 1993.

DATES: Written comments must be received by 4:00 p.m., m.s.t. March 29, 1995. If requested, a public hearing on the proposed amendment will be held on March 24, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t. on March 14, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Alaska program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contracting OSM's Casper Field Office.

Guy Padgett, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, 100 East B Street, Room 2128, Casper, WY 82601–1918, (307) 261–5776

Mr. Jules Tileston, Director, Division of Mining and Water Resources, Alaska Department of Natural Resources, 3601 C Street, Suite 800, Anchorage, Alaska 99503–5935, (907) 762–5163

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION

I. Background on the Alaska Program

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

II. Proposed Amendment

By letter dated January 26, 1995 and FAX transmittals dated February 13 and 14, 1994 (Administrative Record No. AK IV–01), Alaska submitted proposed Amendment IV to its permanent program pursuant to SMCRA (SPATS AK–004–FOR). Alaska's proposed Amendment IV consists of: changes to the Alaska program as required by 30 CFR Part 902.16; changes in response to program deficiency letters from OSM dated November 1, 1989, February 7, 1990, and January 15, 1993; and changes to Alaska's own initiative. The provisions of the Alaska Administrative Code (AAC) that Alaska proposes to revise are: 11 AAC 05.010(a)(9) and 11 AAC 90.011, fees; 11 AAC 90.001, adoption of rules by reference; 11 AAC 90.002, responsibilities; 11 AAC 90.003, interim permits; 11 AAC 90.023, identification of interests and compliance information; 11 AAC 90.025, authority to enter and ownership information; 11 AAC 90.045(a), geology description; 11 AAC 90.049, surface water information; 11 AAC 90.083(b), reclamation plan requirements, roads; 11 AAC 90.097, transportation facilities; 11 AAC 90.099, placement of coal mine waste in underground workings; 11 AAC 90.117, processing of permit applications; 11 AAC 90.125, commissioner's findings; 11 AAC 90.126, improvidently issued permits; 11 AAC 90.127, permit conditions; 11 AAC 90.129, permit revisions and renewals; 11 AAC 90.149, alluvial valley floors; 11 AAC 90.163, exploration that substantially disturbs or is conducted in areas designated unsuitable for mining; 11 AAC 90.173, eligibility for small operator assistance; 11 AAC 90.207, self-bonding provisions; 11 AAC 90.321, hydrologic balance; 11 AAC 90.323, water quality standards; 11 AAC 90.325, diversions and conveyance of flow; 11 AAC 90.327, stream channel diversions; 11 AAC 90.336, impoundment design and construction; 11 AAC 90.337, impoundment inspection; 11 AAC 90.341, underground mine discharges; 11 AAC 90.345, surface and ground water monitoring; 11 AAC 90.375, public notice of blasting; 11 AAC 90.391, disposal of excess spoil or coal mine waste; 11 AAC 90.401, coal mine waste, refuse piles; 11 AAC 90.407, coal mine waste, dams and embankments; 11 AAC 90.409, coal mine waste, return to underground workings; 11 AAC 90.423, protection of fish and wildlife; 11 AAC 90.443, backfilling and grading; 11 AAC 90.457, Revegetation success standards; 11 AAC 90.491, construction and maintenance of roads and other transportation and support facilities; 11 AAC 90.601, inspections; 11 AAC 90.613, cessation orders, 11 AAC 90.901, applicability; 11 AAC 90.902, exception for coal extraction incidental to the extraction of other minerals; 11 AAC 90.907, public participation; and 11 AAC 90.911, definitions.

Specifically, Alaska proposes to:

—Revise 11 AAC 05.010(a)(9) and 90.011 to move the regulatory requirements for permit fees to the fee provisions for the whole department, and to set a fee for incidental boundary revisions;

—Revise 11 AAC 90.002 and delete 90.003, to eliminate provisions for continued operation or exploration under interim permits;

—Repeal and readopt 11 AAC 90.023 to clarify and add requirements for identification of ownership and control interests and compliance histories;

—Revise 11 AAC 90.025 to require ownership information for owners, lessees, and purchasers of record of

the surface and coal to be affected and owners of record of surface and mineral estates contiguous to the proposed permit area;

—Revise 11 AAC 90.045 to clarify the geologic strata for which permit application information is required.

—Revise 11 AC 90.049 to add ''alkalinity'' as a parameter required in surface water information;

—Revise 11 AAC 90.083 to require plans and schedule for road reclamation;

—Revise 11 AAC 90.097 to require descriptions of temporary fords and low water crossings;

—Revise 11 AAC 90.117(b) to clarify conditional permit issuance when unabated violations are under appeal;

—Revise 11 AAC 90.125 to add written findings regarding unabated violations for application approval or permit issuance;

—Add a new rule at 11 AAC 90.126 regarding permits subsequently found to have been improvidently issued due to unabated violations, including requirements for abatement plans or permit suspension or revocation;

—Revise 11 AAC 90.127 to require updates of ownership and control information when certain cessation orders are issued;

—Repeal and readopt 11 AAC 90.129 to add additional application requirements and procedures for major revisions, to revise the time schedules for processing of revisions, and to clarify that revisions are processed separately from associated renewal applications;

—Revise 11 AAC 90.149 to require that permit application information for alluvial valley floors include factors contributing to the collection and storage of water, regulation of flow of ground or surface waters, and water availability;

—Revise 11 AAC 90.163 to require a permit application for exploration in areas designated unsuitable for mining, for removal of more than 250 tons of coal under an exploration permit to require that coal testing is necessary for development of a surface coal mining operation for which a permit will soon be submitted, and to require that the demonstration must evidence that the entire reserve will not be removed and that other means of exploration are not adequate;

—Revise 11 AAC 90.173 to alter the proportions of coal produced by other operations that would be attributed to an applicant for small operator assistance under various ownership and control scenarios;

—Add at 11 AAC 90.207 new requirements for self-bonding;

—Revise 11 AAC 90.321, 90.325, 90.327, and 90.341 to replace the phrases ''water treatment facility[ies],'' ''treatment facilities,'' and ''erosion control structures'' with the phrase ''siltation structures;''

—Revise 11 AAC 90.336 to require spillways for a 100-year, 6-hour storm event for impoundments meeting the criteria of 30 CFR 77.216(a), and for a 25-year, 6-hour storm event for impoundments not meeting those criteria;

—Add a new requirement at 11 AAC 90.337 that all impoundments be inspected quarterly for structural weakness or other hazardous conditions;

—Revise 11 AAC 90.345 to require that surface water monitoring be conducted at both upstream and downstream monitoring sites in all receiving water bodies;

—Revise 11 AAC 90.391 to allow coal mine waste to be placed in excess spoil fills under certain circumstances, and to add requirements for slope protection and revegetation or other surface protection;

—Revise 11 AAC 90.401 to grant the commissioner discretion in allowing less than four feet of cover on refuse piles;

—Revise 11 AAC 90.407 to provide spillway design and operation for dams and embankments of coal mine waste that meet the criteria of 30 CFR 77.216(a);

—Revise 11 AAC 90.423 to require reports of state-listed or federally-listed species, to add consultation requirements for determining whether the operation may proceed, and to add requirements for, on request, informing the U.S. Fish and Wildlife Service of certain resource information;

—Revise 11 AAC 90.443 to require that all spoil generated and all reasonably available spoil be used to backfill remining operations, and to allow for use of spoil for blending in non-steep slope areas;

—Revise 11 AAC 90.457 to require, for some land uses, consultation with state agencies in specifying stocking and planting requirements, to add utility and time-in-place requirements for woody species to be counted, and to specify normal husbandry practices;

—Revise 11 AAC 90.491 to add design, construction, maintenance, and reclamation requirements for roads and facilities;

—Revise 11 AAC 90.601 by adding new requirements allowing the commission to establish inspection frequency on certain abandoned sites;

—Revise 11 AAC 90.603 by adding new requirements for updating ownership and control information after issuance of a cessation order;

—Revise 11 AAC 90.901 by adding provisions allowing for termination of jurisdiction and reassertion of jurisdiction in specified circumstances;

—Add a new rule at 11 AAC 90.902 specifying the requirements for exemption from regulation for coal extraction incidental to the extraction of other minerals;

—Revise 11 AAC 90.907 to allow for provision of documents to the public by mail in some instances, and to require the availability of documents for five years after bond release;

—Repeal and readopt 11 AAC 90.911 (definitions), including revision or addition of the definitions of ''alluvial valley floor,'' ''applicant,'' ''best technology currently available,'' ''coal,'' ''collateral bond,'' ''commissioner,'' ''compaction,'' ''cumulative measurement period,'' ''cumulative production,'' ''cumulative revenue,'' ''current assets,'' ''current liabilities,'' ''department,'' ''existing structure,'' ''fixed assets,'' ''fragile land,'' ''historic land,'' ''imminent danger to the health and safety of the public,'' ''incidental boundary revision,'' ''intermittent stream,'' ''irreparable damage to the environment,'' ''liabilities,'' ''major revision,'' ''mining area,'' ''natural hazard land,'' ''net worth,'' ''operation,'' ''operator,'' ''other minerals,'' ''ownership or control,'' ''parent corporation,'' ''perennial stream,'' ''performing any function or duty under this Act,'' ''permanent,'' ''permit,'' ''permit area,'' ''permittee,'' ''person,'' ''previously mined area,'' ''reclamation plan,'' ''significant imminent environmental harm to land, air, or water resources,'' ''siltation structure,'' ''soil horizons,'' ''soil survey,'' ''surface coal mining and reclamation operation,'' ''surface coal mining operations,'' ''[SMCRA],'' ''tangible net worth,'' ''topsoil,'' and ''unwarranted failure to comply''; and

—In the above and in other rules, make minor editorial and codification revisions.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable

program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Alaska program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t. on March 14, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specific date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

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

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 902

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 21, 1995.

Peter A. Rutledge,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–4683 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 913

[IL–089]

Illinois Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Illinois regulatory program (hereinafter referred to as the ''Illinois program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to 23 parts of Title 62 of the Illinois Administrative Code (IAC) pertaining to permit fees, definitions, coal exploration, permitting, environmental resources, reclamation plans, special categories of mining, small operator assistance, bonding, performance standards, inspection, enforcement, civil penalties, administrative and judicial review, and certification of blasters. The amendment is intended to revise the Illinois program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by the recently revised Federal regulations, provide additional safeguards, clarify ambiguities, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., [C.S.T.], March 29, 1995. If requested, a public hearing on the proposed amendment will be held on March 24, 1995. Requests to speak at the hearing must be received by 4:00 p.m., [C.S.T.], on March 14, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr.

James F. Fulton, Director, Springfield Field Office, at the address listed below.

Copies of the Illinois program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Springfield Field Office.

James F. Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 511 West Capitol, Suite 202, Springfield, Illinois 62704, Telephone: (217) 492–4495

Illinois Department of Mines and Minerals, 300 West Jefferson Street, Suite 300, Springfield, Illinois 62791, Telephone: (217) 782–4970

FOR FURTHER INFORMATION CONTACT:

James F. Fulton, Director, Springfield Filed Office, Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the June 1, 1982, Federal Register (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 913.15, 913.16, and 913.17.

II. Description of the Proposed Amendment

By letter dated February 3, 1995 (Administrative Record No. IL–1615), Illinois submitted a proposed amendment to its program pursuant to SMCRA. Illinois submitted the proposed amendment in response to an August 5, 1993, letter (Administrative Record No. IL–1400) that OSM sent to Illinois in accordance with 30 CFR 732.17(c), in response to required program amendments at 30 CFR 913.16(s), (t), and (u), and at its own initiative. The provisions of the 23 parts of Title 62 of the IAC that Illinois proposes to amend are discussed below.

A. 62 IAC 1700—General

Illinois proposes the following revisions to Illinois §§ 1700.11 and 1700.16.

1. Section 1700.11—Applicability

Illinois is adding new subsections (f)(1) and (f)(2) pertaining to termination of jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation. These amendments mirror Federal regulations at 30 CFR 1700.11 (d)(1) and (d)(2). Subsection (f)(1) specifies under what circumstances the Department may terminate its jurisdiction under the initial program and the permanent program. Subsection (f)(2) specifies under what circumstances the Department shall reassert jurisdiction under the regulatory program. Statutory and regulatory citations were proposed to be updated through the section.

2. Section 1700.16—Fees and Forfeitures

Illinois is amending subsection (a) by requiring that fees collected under the provision of the Surface Coal Mining Land Conservation and Reclamation Act (State Act) be deposited in the Coal Mining Regulatory Fund, rather than the general revenue fund. This proposed amendment reflects recent statutory changes to the State Act at 225 ILCS 720/9.07.

B. 62 IAC 1701. Appendix A—Definitions

Illinois proposes adding definitions for Applicant Violator System, Federal violation notice, land eligible for remining, ownership or control link, State violation notice, and wetland. It is also revising the definitions for historic lands, substantially disturb, and violation notice.

''Applicant Violator System or AVS'' means the computer system maintained by OSM to identify ownership or control links involving permit applicants, permittees, and persons cited in violation notices.

''Federal violation notice'' means a violation notice issued by OSM or by another agency or instrumentality of the United States.

A reference to Illinois' regulations at 62 IAC 1762 and 1764 was added to the ''Historic lands'' definition.

''Land eligible for remining'' means those lands that would otherwise be eligible for expenditures for section 402(g)(4) or section 404 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(g)(4), 1234).

''Ownership or control link'' means any relationship included in the definition of owned or controlled or owns or controls at 62 IAC 1773.5(a) and (b) or in the violations review provisions of 62 IAC 1773.15(b). It includes any relationship presumed to constitute ownership or control under the definition of ''owned or controlled'' or ''owns or controls'' unless such presumption has been successfully rebutted under the provisions of 62 IAC 1773.24 and 1773.25.

''State violation notice'' means a violation notice issued by a State regulatory authority or by another agency or instrumentality of State government.

The definition of substantially disturb, for purposes of coal exploration, is revised to exclude impact to air by blasting.

''Violation notice'' means any written notification from a governmental entity, whether by letter, memorandum, judicial or administrative pleading, or other written communication, of violation of the Act; any Federal regulation promulgated pursuant thereto: a State program; or any Federal or State law or regulation pertaining to air or water environmental protection in connection with a surface coal mining operation. It includes, but is not limited to, a notice of violation; an imminent harm cessation order; a failure-to-abate cessation order; a final order, bill or demand letter pertaining to a delinquent civil penalty; a bill or demand letter pertaining to delinquent abandoned mine reclamation fees; and a notice of bond forfeiture, where one or more violations upon which the forfeiture was based have not been corrected.

''Wetland'' means land that has a predominance of hydric soils (soils which are usually wet and where there is little or no free oxygen) and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation (plants typically found in wet habitats) typically adapted for life in saturated soil conditions. Areas which are restored or created as the result of mitigation or planned construction projects and which function as a wetland are included within this definition even when all three wetland parameters are not present.

C. 62 IAC 1761.11—Areas Where Mining is Prohibited or Limited

At subsection (d)(2), Illinois is proposing to delete the phrase ''including surface areas by planned subsidence.''

D. 62 IAC 1772—Requirements for Coal Exploration

Illinois is proposing to revise the following sections of part 1772.

1. Section 1772.11—Notice of Requirements for Exploration Removing 250 Tons of Coal or Less

Subsection (b)(5) is proposed to be amended in order to clarify that the referenced forms are required to be submitted with a coal exploration notice only if such forms are required by the Department's Oil and Gas Division.

2. Section 1772.12—Permit Requirements for Exploration Removing More than 250 Tons of Coal

Subsection (d)(2) is proposed to be amended by replacing the word ''operation'' with the word ''permit.''

Subsection (d)(2)(C) is proposed to be amended by replacing the reference ''agency with jurisdiction over State Historic Preservation'' with ''Illinois Historic Preservation Agency.''

E. 62 IAC 1773—Requirements for Permits and Permit Processing

Illinois is proposing to revise or add the following sections of part 1773, with the exception of section 1773.15(a)(1), consistent with changes made to the Federal regulations at 30 CFR 773 on October 28, 1994 (59 FR 54306).

1. Section 1773.15—Review of Permit Applications

Illinois is proposing to revise subsection (a)(1) by removing reference to its informal conference at § 1773.13(c) and adding a reference to its public hearing at § 1773.14.

Illinois is proposing to revise subsection (b)(1) to assure a decision with respect to permit issuance or denial is based upon complete information relating to ownership, control, and violations by requiring its review to include information obtained pursuant to §§ 1773.22, 1773.23, 1778,13, and 1778.14.

Illinois is proposing to revise subsection (b)(2) to read as follows. ''(2) Any permit that is issued on the basis of a presumption supported by certification under 62 IAC 1778.14 that a violation is in the process of being corrected, on the basis of proof submitted under subsection (b)(1)(A) of this section that a violation is in the process of being corrected, or pending the outcome of an appeal described in subsection (b)(1)(B) of this section, shall be conditionally issued.''

2. Section 1773.20—Improvidently Issued Permits: General Procedures

Subsection (b)(2)(B) is proposed to be revised to read as follows. ''(B) Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and * * *.''

Existing subsection (b)(3) is proposed to be redesignated (b)(2)(C). New subsection (b)(3) is proposed to be added to read as follows. ''(3) The provisions of § 1773.25 shall apply when the Department determines: (A) Whether a violation, penalty or fee existed at the time that it was cited, remains unabated or delinquent, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal; and (B) whether any ownership or control link between the permittee and the person responsible for the violation, penalty or fee existed, still exists, or has been severed.''

The proposed revision to subsection (c)(4) read as follows. ''(4) Rescind the permit. If the Department decides to rescind the permit, it shall give at least 30 days written notice to the permittee. If the Department decides to rescind the permit, it shall issue a notice in accordance with § 1773.21. In either case, the permittee shall be given the opportunity to request review of the notice under 62 IAC 1847.3. The Department's decision shall remain in effect during the pendency of the review, unless temporary relief is granted under 62 IAC 1847.3(k).''

3. Section 1773.21—Improvidently Issued Permits: Rescission Procedures

At subsection (a), Illinois proposes to add the phrase ''consistent with the provisions of section 1773.25'' after the words ''and the Department finds.''

Subsection (c) is proposed to be deleted.

4. Section 1773.22—Vertification of Ownership or Control Application Information

New § 1773.22 requires the Department, prior to the issuance of a permit, to verify ownership or control information through manual data sources and through automated data sources, including the Applicant Violator System. Upon completion of the review, the Department shall update all ownership or control information on the Applicant Violator System.

5. Section 1773.23—Review of Ownership or Control and Violation Information

New § 1773.23 requires the Department to review all reasonably available information concerning violation notices connected with ownership or control links. The Department shall not approve the application unless and until it determines that violations have been corrected or are in the process of being corrected. Following the Department's decision on the application, the Department shall enter all relevant information related to such decision or withdrawal into the Applicant Violator System.

6. Section 1773.24—Procedures for Challenging Ownership or Control Shown in the applicant Violator System

New § 1773.24 establishes the procedures to be followed if a person wishes to challenge an ownership or control link between a person and any other person shown in the Applicant Violator System. The section provides procedures for direct appeals of such links to OSM by persons who have been so linked. The section also provides for challenges concerning the status of violations to which persons shown on the Applicant Violation System have been linked. The section further provides information on the challengers right for appeal of OSM's decision to the Department of the Interior's Office of Hearings and Appeals and the opportunity for those persons making a challenge to obtain a temporary relief from any adverse use of the challenged link or violation information during the pendency of such challenge.

7. Section 1773.25—Standards for Challenging Ownership or Control Links and the Status of Violations

New § 1773.25 establishes standards for challenges to ownership or control links and for challenges to the status of violations. The section allocates responsibilities between OSM and State regulatory authorities for resolving issues related to ownership and control and provides the standards for evidence to resolve such issues.

F. 62 IAC 1774.13—Permit Revisions

At subsection (b)(2)(E), a significant revision shall be required for land use changes involving greater than 5 percent of the ''total permit acreage'' instead of the ''original total permit acreage.''

Exceptions to the 5 percent cumulative total limit were added at new subsections (b)(2)(E)(i) and (ii). The proposed addition of subsection (b)(2)(E)(i) would allow the accumulation of the 5 percent limit to restart upon issuance of a significant revision that addresses all previous land use changes approved via insignificant revisions. The proposed addition of subsection (b)(2)(E)(ii) would allow acreage added by incidental boundary revisions to be included in the total permit acreage used to determine the 5 percent limit if the acreage has been addressed previously in a significant revision.

New subsection (d)(6) provides for public notice of and a ten-day comment period for incidental boundary revision applications which propose new surface acreage or planned subsidence shadow area to the original permit.

G. 62 IAC 1778.15—Right of Entry Information

At subsection (a), Illinois is proposing to eliminate the requirement for underground coal mining applications to contain a description of the documents upon which the applicant bases his or her legal right to enter and mine for underground mining areas (shadow areas), including the right to subside within the shadow area. Right of entry information would still be required for the permitted surface areas at underground mines.

At subsection (e), Illinois is proposing to add the phrase ''including planned subsidence operations.''

Illinois is proposing to add new subsection (f) to require applications for additions to the underground mining areas (shadow areas) to contain a notarized statement by a responsible official of the applicant attesting that all necessary mining rights, including the right to subside, if applicable, have been or will be obtained prior to mining.

H. 62 IAC 1779—Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources

Illinois is proposing to revise the following sections of part 1779 for consistency with changes made to the Federal regulations at 30 CFR 779 on May 27, 1994 (59 FR 27932).

1. Section 1779.22—Land Use Information

Section 1779.22 pertains to surface mining permit application requirements for pre-mining land use information. Illinois is proposing to delete § 1779.22 and to reorganize the repealed provisions at subsection (a) into 62 IAC 1780.23(a).

2. Section 1779.25—Cross Sections, Maps and Plans

Subsections (a)(11) (A), (B), and (C) are proposed to be deleted. Subsection (a)(11)(D) is proposed to be deleted from this section and relocated to 62 IAC 1780.23(a)(3).

Statutory citations in subsection (b) are updated.

I. 62 IAC 1780.23—Reclamation Plan: Pre-Mining and Post-Mining Information

Illinois is revising this section for consistency with changes made to the Federal regulations at 30 CFR 780 on May 27, 1994 (59 FR 27932). The section title is changed from ''Reclamation Plan: Post-mining Land Uses'' to ''Reclamation Plan: Pre-Mining and Post-Mining Information.''

New subsections (a), (a)(1), and (a)(2) contain the pre-mining land use information provisions of existing 62 IAC 1779.22(a) with one addition. At new subsection (a)(1), one new provision was added which requires that in the case of previously mined land, the use of the land prior to any mining shall also be described to the extent such information is available.

New subsection (a)(3) contains the soil map provision of existing 62 IAC 1779.25(a)(11)(D). The substantive provisions of existing subsections (a), (a)(1), (a)(3), and (a)(4) are redesignated new subsections (b), (b)(1), (b)(2), and (b)(3). Existing subsection (a)(2) pertaining to detailed management plans for a post-mining use of grazing is deleted.

Existing subsection (b) is redesignated new subsection (c).

J. 62 IAC 1783—Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources

Illinois is proposing to revise the following sections of part 1783 for consistency with changes made to the Federal regulations at 30 CFR 783 on May 27, 1994 (59 FR 27932).

1. Section 1783.22—Land Use Information

Section 1783.22 pertains to underground mining permit application requirements for pre-mining land use information. Illinois is proposing to delete § 1783.22 and to reorganize the repealed provisions at subsection (a) into 62 IAC 1784.15(a).

2. Section 1783.25—Cross Sections, Maps and Plans

Subsections (a)(11) (A), (B), and (C) are proposed to be deleted. Subsection (a)(11)(D) is proposed to be deleted from this section and relocated to 62 IAC 1784.15(a)(3).

Statutory citations in subsection (b) are updated.

K. 62 IAC 1784.15—Reclamation Plan: Pre-Mining and Post-Mining Information

Illinois is proposing to revise this section for consistency with changes made to the Federal regulations at 30 CFR 784 on May 27, 1994 (59 FR 27932). The section title is changed from ''Reclamation Plan: Post-Mining Land Uses'' to ''Reclamation Plan: Pre-Mining and Post-Mining Information.''

New subsections (a), (a)(1), and (a)(2) contain the substantive pre-mining land use information provisions of existing 62 IAC 1783.22(a) with one addition. At new subsection (a)(1), one new provision was added which requires that in the case of previously mined land, the use of the land prior to any mining shall also be described to the extent such information is available.

New subsection (a)(3) contains the soil map provision of existing 62 IAC 1783.25(a)(11)(D). The substantive provisions of existing subsections (a), (a)(1), (a)(2), and (a)(3) are redesignated new subsections (b), (b)(1), (b)(2), and (b)(3).

Existing subsection (b) is redesignated new subsection (c).

L. 62 IAC 1785—Requirements for Permits for Special Categories of Mining

Illinois is proposing to revise the following sections of part 1785.

1. Section 1785.17—Prime Farmlands

At subsection (a), Illinois is proposing to delete the following language: ''Nothing in this section shall apply to any permit issued prior to the date of enactment of the Federal Act, or to any revisions or renewals thereof, or to any existing surface mining operations for which a permit was issued prior to the date of enactment of the Federal Act, as determined by the Department prior to September 29, 1981. For lands for which a request for exemption was initially made or pending on or after September 29, 1981.''

Existing subsections (a)(5) and (6) pertaining to an acreage limitation on the amount of exempted prime farmland are deleted. Existing subsection (a)(7)(A) was redesignated subsection (a)(5). Existing subsection (a)(7)(B) pertaining to a preliminary exemption review is deleted.

At subsection (d)(1), the sentence ''The State recognizes that the permit cannot be issued without the required consultation with USDA'' is deleted.

2. Section 1785.23—Minor Underground Mine Facilities Not at or Adjacent to the Processing or Preparation Facility or Area

Illinois proposes to revise subsection (d)(3) by requiring written comments be filed within the public comment period.

The revision to subsection (e)(1) requires the Department to make its final decision to approve, deny, or modify the complete application for a permit within 20 days following the close of the public comment period.

Subsection (g)(1) is proposed to be amended to require the Department to notify persons who filed comments or

objections to the application of its final decision, to replace the word ''disapprove'' with the word ''deny'' for consistency with other sections of the regulations dealing with approval and denial of application, and to delete the requirement that it publish a public notice of its final action. The regulatory citation in subsection (g)(2) is corrected.

M. 62 IAC 1795—Small Operator Assistance

Illinois is proposing to revise the following sections of part 1795 to implement recently amended sections of the State Act at 225 ILCS 720/2.02 and 3.15 and for consistency with revisions made to the Federal regulations at 30 CFR 795 on May 31, 1994 (59 FR 28136).

1. Section 1795.1—Scope and Purpose

Illinois proposes to amend the purpose statement at subsection (b) to read as follows. ''The purpose of the program is to provide for eligible operators a determination of probable hydrologic consequences including the engineering analysis and designs necessary for the determination; cross-sections, maps and plans; geologic drilling and statement of results of test borings and samplings; archaeological and historical information collection and relevant plan preparation; pre-blast surveys and pre-blast survey reports; and site specific resource information collection and relevant plan preparation which are required components of the permit application under 62 IAC 1772 through 1785.''

2. Section 1795.4—Definitions

At subsection (b) the definition of qualified laboratory is revised by deleting the language ''statement of results of test borings or core samples under the Small Operator Assistance Program and which meets the standards of section 1795.10'' and adding the language ''or other studies and/or reports or plans under the Small Operator Assistance Program which meet the standards of section 1795.10.''

3. Subsection 1779.6—Eligibility for Assistance

At subsection (a), the statute citation is updated.

At subsection (b), the criteria for eligibility for assistance is revised to read as follows. ''Establishes that his or her probable total attributed annual production from all locations on which the operator is issued the surface coal mining and reclamation operations permit will not exceed 300,000 tons.

At subsection (b)(1) and (b)(2), Illinois proposes changing the percentage of ownership of applicant from 5 percent to 10 percent with respect to the baseline above which ownership will play a role in determining attributed coal production.

5. Section 1795.9—Program Services and Data Requirements

Illinois proposes to revise subsection (a) by adding studies, reports, and plans to the types of services referenced in subsection (b) that are available to eligible operators.

Subsection (b) lists the specific technical services authorized for the Small Operator Assistance Program (SOAP). At subsection (b)(1), Illinois proposes to include engineering analysis and designs necessary for the determination of probable hydrologic consequences. At subsection (b)(2), Illinois proposes to add drilling as an authorized SOAP service. Illinois proposes to add new subsection (b)(3) which provides for cross-sections, maps and plans required by 62 IAC 1779.25 and 1783.25. New subsection (b)(4) provides for collection of archaeological and historical information and related plans required by 62 IAC 1779.12(b), 1780.31, 1783.12(b) and 1784.17, and any other archaeological and historical information required by the Department. New subsection (b)(5) provides for preblast surveys and reports pursuant to the provisions of 62 IAC 1816.62. New subsection (b)(6) provides for site specific resource information and protection and enhancement plans for fish and wildlife habitats and other environmental values required by the Department under 62 IAC 1779.19, 1780.16, 1783.19, and 1784.21, and information and plans for any other environmental values required by the Department under the State Act.

6. Section 1795.12—Applicant Liability

At subsection (a)(1), the word ''report'' is replaced by the word ''reports.''

At subsection (a)(2), the applicant shall reimburse the Department if the program administrator finds that the applicant's actual and attributed production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.

At subsection (a)(3), the applicant and its successor shall reimburse the Department if the permit is sold, transferred, or assigned to another person and the original permittee's and transferee's total actual and attributed production exceeds 300,000 tons during the 12 months immediately following the date on which the permit was originally issued. If the permit is transferred during the 12-month period immediately following the permit issuance date, the determination of adherence to the 12-month, 300,000 ton limit shall be performed by combining the actual and attributed production of both parties for the 12-month period immediately following the date of original permit issuance.

At subsection (b), the definition of good faith is deleted.

N. 62 IAC 1800—Bonding and Insurance Requirements for Surface Coal Mining and Reclamation Operations

1. Section 1800.5—Definitions

Subsection (b)(4) is revised to allow Illinois to accept letters of credit from banks organized or authorized in other states and from banks organized or authorized in the United States by national charter provided that if the bank does not have an office for collection in Illinois, there shall be a confirming bank designated with an office in Illinois that is authorized to accept, negotiate, and pay the letter upon presentment in Illinois.

2. Section 1800.20—Surety Bonds

Subsections (b)(2) through (b)(5), which contained surety bond conditions, are deleted.

3. Section 1800.21—Collateral Bonds

Subsection (b)(1) is revised to allow Illinois to accept letters of credit from banks organized or authorized to do business in Illinois, in other States, and from banks organized or authorized in the United States by national charter provided that if the bank does not have an office for collection in Illinois, there shall be a confirming bank designated with an office in Illinois.

O. 62 IAC 1816—Permanent Program Performance Standards—Surface Mining Activities and 62 IAC 1817 Permanent Program Performance Standards—Underground Mining Activities

Illinois proposed revisions to the following sections. Regulatory citations were updated, as necessary, throughout the sections. Since most of the surface mining and underground mining regulations in these sections are identical, the revisions are being combined for discussion purposes, unless otherwise noted.

1. Section 1816.13—Casing and Sealing of Drilled Holes: General Requirements; Section 1817.13—Casing and Sealing of Exposed Underground Openings: General Requirements

Illinois is proposing to require that exposed underground openings be backfilled. The references to ''cased, sealed, or otherwise managed'' and ''closed'' are replaced with the reference to ''backfilled.''

2. Section 1816.15—Casing and Sealing of Drilled Holes: Permanent; Section 1816.15—Casing and Sealing of Underground Openings: Permanent

Illinois is proposing to require that exposed underground openings be backfilled. The references to ''capped, sealed, backfilled, or otherwise properly managed'' are replaced with the reference to ''backfilled.''

3. Sections 1816.22/1817.22—Topsoil and Subsoil

Illinois is proposing to delete subsection (b)(2) to eliminate the acreage restriction on topsoil substitutes that may be approved through the insignificant permit revision process. Therefore, existing subsection (b)(1) is redesignated subsection (b).

4. Sections 1816.41/1817.41—Hydrologic Balance Protection

Illinois proposes to revise subsection (c)(2) by specifying that ground water monitoring reports shall be submitted by the first day of the second month following the reporting period, unless the Department specifies an alternative reporting schedule.

Illinois proposes to revise subsection (e)(2) by removing the requirement to send National Pollutant Discharge Elimination System (NPDES) reports to the Department concurrently with those sent to the Illinois Environmental Protection Agency and adding the requirement that NPDES reports are to be sent to the Department by the first day of the second month following the reporting period.

5. Sections 1816.46/1817.46—Hydrologic Balance: Siltation Structures

The introductory sentence in subsection (e) is being changed to read ''Exemptions to the requirements to pass all drainage from disturbed areas through a siltation structure may be granted if * * *.'' Subsection (e) is proposed to be revised to provide for a second exemption. The exemption provided by new subsection (e)(2)(A) will allow the use of the alternative sediment control measures described in § 1816.45(b) in lieu of siltation structures. The permittee will have to demonstrate that these measures are the best technology currently available (BTCA) to meet the effluent limitations and water quality standards for the receiving waters set forth in § 1816.42. Existing subsection (e)(2) is redesignated as (e)(2)(B).

6. Section 1816.79—Protection of Underground Mining

Section 1816.79 is reorganized. The word ''coal'' is proposed to be removed from existing subsection (a), and the subsection reference is removed. Existing subsection (a)(1) is redesignated subsection (b), and existing subsection (a)(2) is redesignated subsection (a).

7. Sections 1816.97/1817.97—Protection of Fish, Wildlife, and Related Environmental Values

Illinois is proposing to delete the reference to the Illinois Endangered Species Protection Act at subsection (b).

8. Sections 1816.116/1817.116—Revegetation: Standards for Success

The State Act was recently amended at 225 ILCS 720/3.15 to change the revegetation responsibility period from five years to two years for areas eligible for remining. Sections 1816/1817.116(a)(2)(B) are proposed to be amended to implement this statute by adding the phrase ''except that on lands eligible for remining, the period of responsibility (until September 30, 2004) shall be two (2) full years.''

Existing § 1816/1817.116(a)(2)(F), concerning augmentation requirements for high capability cropland areas, are proposed to be deleted and replaced with new provisions pertaining to wetlands augmentation. New §§ 1816/1817.116(a)(2)(F) specify that wetlands shall be considered augmented when significant alterations are made to the size or character of the watershed, pumping is used to maintain water levels, or neutralizing agents, chemical treatments or fertilizers are applied to the wetland area. Water level management using permanent water control structures is considered a normal husbandry practice.

Sections 1816/1817.116(a)(3)(E) are proposed to be amended to clarify that pasture and/or hayland or grazing land on non-previously disturbed areas are subject to a 90 percent ground cover standard for a minimum of any 2 years of a 10-year period prior to the release of the performance bond, except the first year of the 5-year extended responsibility period. The 1-year attempt limit for substituting corn productivity for 1 year of hay productivity is proposed to be removed from subsection (a)(3)(E). Sections 1816/1817.116(a)(3)(E) are also being revised to allow 1 year substitution of crops in lieu of hay on limited capability land, provided the Department determines that the practice is proper management.

New §§ 1816/1817.116(a)(3)(F) specify that small isolated areas which were disturbed from activities such as, but not limited to, signs, boreholes and power poles, shall be considered successfully revegetated if the operator can demonstrate that the soil disturbance was minor, the soil has been returned to its original capability, and the area is supporting its approved post-mining land use at the end of the responsibility period.

Section 1816.116(a)(4)(A)(ii) is proposed to be amended to allow the Department to approve a field to represent small isolated areas of the same capability if it determines that the field is representative of reclamation of such areas. The small isolated areas shall maintain a successful ground cover as determined by subsection (a)(3)(E). Productivity results on the field shall be applicable to the small isolated areas.

New §§ 1816/1817.116(a)(5)(A) specify that wetland revegetation criteria shall be deemed successful when the wetland vegetation criteria in the Corps of Engineers Wetlands Delineation Manual have been achieved following sampling procedures specified in that manual. New §§ 1816/1817.116(a)(5)(B) further specify that areas designed to support vegetation in the approved plan shall have a minimum aerial coverage of 30 percent. The testing procedure in §§ 1816/1817.117(d)(1) through (3) shall be used to evaluate the extent of cover. Aerial cover shall be determined to be present if any approved wetland species is measured at the increment. The percentage of aerial cover shall be established for the area tested by taking the total number of measurements where aerial cover was determined to be present.

New §§ 1816/1817.116(c) are proposed to be added to provide for the use of reference areas to establish target yields in lieu of the Agricultural Lands Productivity Formula (ALPF) for cropland and hayland. Other requirements and procedures of 62 IAC 1816.116(a)(4) shall be applicable. Reference areas used to establish success standards must meet the requirements in paragraphs (1) through (8).

Paragraph (1) requires that if the fields to be represented contain in total 800 acres or more, the reference area shall contain at least 40 acres. If the field(s)

to be represented is smaller than 800 acres, the reference area shall be the greater of 5 percent of the field(s) to be represented or 1 acre.

Paragraph (2) requires that each reference area be representative of the soils of the field(s) to be represented. The permittee shall provide adequate documentation of the soils and soil quality present in the reference area.

Paragraph (3) requires that each year the permitted provide a statement by a Federation of Certifying Boards in Agriculture, Biology, Earth and Environmental Sciences-certified professional or a certified agronomist that the management of the reference area is equivalent to the field(s) to be represented. The permittee shall describe the proposed management of the reference area in a proposal.

Paragraph (4) requires that reference areas be located within six miles of the field(s) to be represented.

Paragraph (5) requires right-of-entry on the reference area for authorized representatives of the Department and the Illinois Department of Agriculture be secured by written agreement or consent for the entire time period in which the reference area will be used.

Paragraph (6) requires that proposed reference areas be submitted for Department approval no later than February 15 of the year in which they are proposed to be used.

Paragraph (7) requires that the reference areas have yields established by whole field harvest and shall be documented by the Illinois Department of Agriculture. Paragraph (8) requires that yields determined for the reference area be those used for determination of success of revegetation unless the Department determines that management practices have not been equivalent during the course of the year or the Department determines that growing conditions have not been representative of the fields to be tested.

9. Sections 1816.117/1817.117—Revegetation: Tree and Shrub Vegetation

The State Act was amended at 225 ILCS 720/3.15 to change the revegetation responsibility period from five years to two years for areas eligible for remining. Sections 1816/1817.117(a)(1) are proposed to be amended to implement this statute by requiring that on lands eligible for remining, the period of responsibility (until September 30, 2004) shall be two full years for trees and shrubs. Also, until September 30, 2004, on lands eligible for remining, trees and shrubs need not have been in place for three years; however, such trees and shrubs shall not be counted in determining success during the same calendar year in which they were planted.

Sections 1816/1817.117(a)(3) are proposed to be amended to clarify that erosion control structures, including pond embankments, shall not require the planting of trees and shrubs.

Sections 1816/1817.117(b) are proposed to be amended to clarify that planting arrangements such as hedgerows, border plantings, clump plantings, shelterbelts, and open herbaceous areas which increase diversity and edge effect within wildlife areas may be approved by the Department on a case-by-case basis prior to planting such areas.

Sections 1816/1817.117(c)(1) are proposed to be revised by replacing the word ''area'' with the word ''field.'' These sections are also revised by adding a requirement that once field boundaries are established in a submittal, the boundaries shall not be changed unless the Department approves a request in accordance with 62 IAC 1774.13.

10. Section 1817.121—Subsidence Control

Illinois proposes to add new subsection (c)(3) to require operators to promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation operations permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.

11. Section 1817.131—Cessation of Operations: Temporary

At subsection (b), three typographical errors were corrected. The word ''conduct'' was changed to ''conducts'' in the first sentence. The word ''affected'' was added and the word ''are'' was corrected to the word ''area'' in the second sentence.

12. Sections 1816.133/1817.133—Post-Mining Land Capability

At subsection (a)(2)(C) a typographical error was corrected by replacing the word ''bound'' by the word ''found.''

13. Sections 1816.151/1817.151—Primary Roads

At subsection (a), Illinois proposes to specify that the certification shall be submitted within 30 days after completion of construction. Illinois also defines completion of construction to mean that the road is being used for its intended purpose as determined by the Department.

14. Section 1817.182—Minor Underground Mine Facilities Not at or Adjacent to the Processing or Preparation Facility or Area

At subsection (a), Illinois corrected a typographical error by replacing the word ''is'' with the word ''if.''

At subsection (d)(4), Illinois corrected a typographical error by replacing the word ''existing'' with the word ''restore.''

At subsection (l), Illinois corrected the regulatory citation by replacing ''1817.103'' with ''1817.102.''

15. Sections 1816.190/1817.190—Affected Acreage Map

At subsection (a), Illinois is proposing to delete the phrase ''and to the county clerk.''

At subsection (b), Illinois is requiring the permittee to submit an additional copy of the affected acreage report, which the Department will then forward to the county clerk. Illinois is also requiring that one of the copies contain the original signature of a company official. Also, statutory citations are being updated in subsection (b).

16. Section 1816.Appendix A—Agricultural Lands Productivity Formula—Permit Specifics Yield Standard

Illinois proposed several changes for the ''Permit Specifics Yield Standard'' section. The two existing paragraphs are amended and reorganized into subsections (a) and (b), respectively, and new provisions were added at subsections (c) through (f).

Language is added at redesignated subsection (a) to clarify that ALPF target calculation procedures are applicable to limited capability lands and that targets are to be based on the soils which are disturbed within the permit area.

The existing provisions in redesignated subsection (b) are now subject to the provisions of subsections (c) through (f).

New subsection (c) specifies that the Department shall provide for establishment of specific yield standards for the individual capability groups to be weighted for an individual pit (geographically distinct mining area) if multiple permits are adjacent and confined to a single continuous pit, or multiple pits are not adjacent but are within an individual permit.

New subsection (d) specifies that if an individual mining pit is present in more than one county, annual target yield adjustments shall be based on the county with the greater permit acreage.

New subsection (e) specifies that after mining operations have ceased and at

the request of the permittee, the Department shall recalculate the yield standards for the permit (pit) based solely on the soils which were disturbed. Recalculated targets shall be applicable to all areas tested for productivity, after approval of the recalculation. Approved significant revisions after permanent cessation of mining shall cause the targets to be recalculated.

New subsection (f) specifies that at the request of the permittee, the Department shall consolidate prime farmland and high capability targets, provided the Department determines that the soil reconstruction of the high capability land is equal to or better than the prime farmland.

17. Section 1816.Appendix A—Agricultural Lands Productivity Formula—Agricultural Lands Productivity Formula Sampling Method

Illinois proposed changes for the ''Agricultural Lands Productivity Formula Sampling Method'' section. In the last paragraph of this section, a revision was made to require the Department and the Illinois Department of Agriculture to jointly request the operator to verify yields by harvest weight. Reason Number 3 for this verification request was deleted.

P. 62 IAC 1825.14—High Capability Lands: Soil Replacement

At subsection (e), Illinois proposes adding the title of ''Compaction.''

Subsection (e)(1) is revised by adding the word ''above'' after the regulatory citation ''Section 1825.14(a). Illinois added new subsection (e)(1)(E) to specify that excessive compaction is also indicated by other diagnostic methods approved by the Department, in consultation with the Illinois Department of Agriculture and the U.S. Department of Agriculture, Soil Conservation Service.

At subsection (e)(2), Illinois is proposing an additional method for the Department to evaluate excessive compaction. The permittee will have a choice between the existing provision and the new provision which specifies that compaction alleviation is required unless the permittee can demonstrate that the requirements of 62 IAC 1816.116 or 1816.117, as applicable, have been met without compaction alleviation on areas reclaimed in a similar manner. A second new provision in subsection (e)(2) requires the Department to retain sufficient bond at the time of Phase II bond release if it determines that compaction alleviation may be needed to achieve the revegetation success requirements.

Q. 62 IAC 1840—Department Inspections

1. Section 1840.11—Inspections by the Department

At subsection (d) the heading ''Aerial inspections'' was added.

Illinois proposed new subsections (g) and (h) to address inspections at sites which have been abandoned without completion of reclamation or abatement of violations. The proposed amendments are consistent with 30 CFR 840.11 (g) and (h), as amended on November 28, 1994 (59 FR 60876).

New subsection (g) contains the criteria required for classifying a site as abandoned. Before a site can qualify for a change in inspection frequency, Illinois must make a written finding that the site meets the abandoned site definition criteria.

New subsection (h) contains the criteria for selecting an alternate inspection frequency commensurate with the public health and safety and environmental considerations present at each specific site. Illinois must conduct a complete inspection of the abandoned site and provide public notice of its findings. A written finding, which addresses all the criteria contained in this section, justifying the alternative inspection frequency selected must be prepared and maintained for public review.

2. Section 1840.17—Review of Decision Not to Inspect or Enforce

Subsection (a) is proposed to be revised by requiring the request for review to be submitted within 30 days from the date the citizen is notified of the decision. Failure to file a request for informal review within this time period shall result in a waiver of the right to such review.

Subsection (c) is proposed to be amended to reference 62 IAC 1847.3 of the regulations for formal review of the Department's decision not to inspect or enforce, rather than section 8.07 of the State Act.

R. 62 IAC 1843—State Enforcement

Illinois proposes revisions to the following sections of part 1843.

1. Section 1843.13—Suspension or Revocation of Permits

At subsection (a)(1), the phrase ''Except as provided in subsection (b) below'' is deleted.

At subsection (a)(3), the existing provisions are deleted. New provisions were added which specify that the Department shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the Federal Act, the State Act, 62 IAC 1700 through 1850 or the permit during 3 or more State inspections of the permit area within any 12-month period. If after such review, the Department determines that a pattern of violations exists or has existed, an order to show cause as provided in subsection (a)(1) shall be issued.

Existing subsection (b) was deleted, and existing subsection (c), (d), (e), and (f) were redesignated as (b), (c), (d), and (e), respectively.

2. Section 1843.23—Enforcement Actions at Abandoned Sites

This new section specifies that the Department may refrain from issuing a notice of violation or cessation order for a violation at an abandoned site, as defined in 62 IAC 1840.11(g), if abatement of the violation is required under any previously issued notice or order.

S. 62 IAC 1845.12—When Penalty Will be Assessed

Illinois is proposing to amend subsection (d) by adding a requirement that the Department take into account the factors set forth in § 1845.13 in determining whether to assess a penalty below $1,100. Illinois is also codifying its long-standing policy of assessing a penalty below $1,100 if it is the permittee's second or more related violation within a 12-month period.

T. 62 IAC 1847—Administrative and Judicial Review

Illinois proposes revisions to the following sections of part 1847.

1. Section 1847.3—Hearings

The section heading is changed from ''Permit Hearings'' to ''Hearings.''

At subsection (a), Illinois is specifying that administrative review under this section also applies to decisions not to inspect or enforce under 62 IAC 1840.17 and permit decisions issued pursuant to 62 IAC 1785.23.

At subsection (i), Illinois is proposing to change the time period from 15 to 10 days for filing of written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director.

At subsection (j), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming or modifying or vacating the proposed decision if written exceptions are filed.

At subsection (l)(2), Illinois is adding the provision that judicial review may be requested if the Department also failed to act within specified time limits.

2. Section 1847.4—Citation Hearings

At subsection (j), Illinois is proposing to change the time period from 15 to 10 days for filing of written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director.

At subsection (k), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming or modifying or vacating the proposed decision if written exceptions are filed.

3. Section 1847.5—Civil Penalty Assessment Hearings

At subsection (m), Illinois is proposing to change the time period from 15 to 10 days for filing of written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director.

At subsection (n), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming or modifying or vacating the proposed decision if written exceptions are filed.

4. Section 1847.6—Show Cause Hearings

At subsection (k), Illinois is proposing to change the time period from 15 to 10 days for filing of written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director.

At subsection (l), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming or modifying or vacating the proposed decision if written exceptions are filed.

5. Section 1847.7—Bond Forfeiture Hearings

At subsection (j), Illinois is proposing to change the time period from 15 to 10 days for filing of written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director.

At subsection (k), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming or modifying or vacating the proposed decision if written exceptions are filed.

U. 62 IAC 1848.5—Notice of Hearing

Proposed new subsection (f) implements a July 7, 1993, amendment to § 2.11 of the State Act pertaining to permit hearing notices. If the hearing concerns review of a permit decision under 62 IAC 1847.3, a notice containing the information set forth in subsection (a) and (b) shall be published in a newspaper of general circulation published in each county in which any part of the area of the affected land is located. The notice shall appear no more than 14 days nor less than 7 days prior to the date of the hearing. The notice shall be no less than ⅛ page in size, and the smallest type used shall be 12 point and shall be enclosed in a black border no less than ¼ inch wide. The notice shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. Any deviations from the requirements of this subsection attributable to the publishing newspaper shall not be grounds for postponement or continuance of the hearing, nor will such errors necessitate that the notice be republished.

V. 62 IAC 1850—Training, Examination and Certification of Blasters

Illinois proposes revisions to the following sections of part 1850.

1. Section 1850.13—Training

At subsection (a), a typographical error was corrected by replacing the word ''person'' with the word ''persons.''

At subsection (b)(14), various regulation and statute citations were corrected.

2. Section 1850.14—Examination

Illinois proposed to amend subsection (a) by removing the requirement that notification of a scheduled examination be made in writing.

Illinois proposed to amend subsection (b) by removing the requirement that notification of a scheduled reexamination be made by letter.

3. Section 1850.15—Application and Certification

Subsection (a) is proposed to be amended by shortening the deadline for receipt of applications from 45 days to 30 days and by shortening the deadline for review of applications from 30 to 15 days.

4. Section 1850.16—Denial, Issuance of Notice of Infraction, Suspension, Revocation, and other Administrative Actions

Subsection (b) is proposed to be entitled ''Notice of Infraction.'' At subsections (b)(1)(A) and (b)(1)(D), various regulatory and statute citations are corrected. Subsection (b)(3) is revised by requiring the blaster to file a request for review with the Department and removing the existing forwarding provision. The requirement to include specified information in the request was removed. The hearing regulation reference was corrected. The hearing is proposed to be held at one of the Department's offices, and the existing location provision is removed.

Subsection (c) is proposed to be entitled ''Notice of Show Cause.'' At subsection (c)(2), the word ''public'' was deleted, and the hearing regulation citation was corrected. At subsection (c)(3), the hearing regulation citation was corrected.

5. Section 1850.17—Judicial Review

This section is proposed to be repealed as the provision for judicial review is contained elsewhere in Illinois' regulations.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Springfield Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., [C.S.T.], on March 14, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak

at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 16, 1995.

Richard Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–4681 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 944

Utah Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Utah regulatory program (hereinafter, the ''Utah program'') under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*, SMCRA). The proposed amendment consists of revisions to rules pertaining to civil penalties. The amendment is intended to revise Utah's rules to be consistent with recently promulgated revisions to the Utah Coal Reclamation Act of 1979 (Utah Administrative Code (UCA) 40–10 *et seq.*).

DATES: Written comments must be received by 4:00 p.m., m.s.t., March 29, 1995. If requested, a public hearing on the proposed amendment will be held on March 24, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t. on March 14, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this document will be available for pubic review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102

Utah Coal Regulatory Program, Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah 84180–1203, Telephone: (801) 538–5340

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program,

including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, Federal Register (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated February 10, 1995, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–1019). Utah submitted the proposed amendment at its own initiative. The provisions of Utah Coal Maining Rules that Utah proposes to revise are: Utah Administrative Rules (Utah Adm. R.) 645–401–100, 400, 700, 800, and 900, concerning civil penalties, and Utah Admin. R. 645–402–100 and 400, concerning individual civil penalties.

Specifically, Utah proposes to revise Utah Admin. R. 645–401–120, 645–401–410, 645–401–721, 645–401–723.100, 645–401–742, 645–401–910, 645–402–120, 645–402–420, and 645–402–422 by replacing the term ''Board'' with the term ''Division,'' so that the responsibilities for procedures involving the assessment of civil penalties, informal assessment conferences, and lien waivers are shifted from the Utah Board of Oil, Gas, and Mining to the Utah Division of Oil, Gas, and Mining; Utah Admin. R. 645–401–430 by adding the acronym ''UCA'' prior to references to UCA 40–10 *et seq.*; Utah Admin. R. 645–401–810 by adding the phrase ''of receipt'' in order to clarify that a permittee may contest a proposed civil penalty or fact of violation within 30 days of receipt of the proposed assessment or reassessment; Utah Admin. R. 645–401–830 by stating that the formal review of the violation fact or penalty will be conducted by the Board under the provisions of the procedural rules of the Board; and Utah Admin. R. 645–401–910 by clarifying that, if the permittee fails to request a formal hearing, the penalty assessed will become due and payable after, among other things, the Division fulfills its responsibilities under UCA 40–10–20(3)(e);

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t. on March 14, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMRCA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

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

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that

existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 21, 1995.

Peter A. Rutledge,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–4682 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN 110–1–6172b; FRL–5144–1]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee Chapter on Volatile Organic Compounds (VOC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Tennessee for the purpose of establishing regulations for the control of Volatile Organic Compounds (VOC) which meet the requirements of section 182(b)(2) of the 1990 amendments to the Clean Air Act (CAA). In the final rules section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for 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 29, 1995.

ADDRESSES: Written comments should be addressed to William Denman at the Region 4 address below. Copies of the material submitted by the State of Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE, Atlanta, Georgia 30365.

Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: William Denman, Stationary Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Environmental Protection Agency Region 4, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is (404) 347–3555 extension 4208. Reference file TN110–01–6172.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: January 9, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–4540 Filed 2–24–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3400, 3470, and 3480

[WO–300–4120–02–24 1A]

RIN: 1004–AC15

Logical Mining Units (LMU's) in General; LMU Application Procedures; LMU Approval Criteria; LMU Diligence; and Administration of LMU Operations: Extension of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: A proposed rule amending the regulations relating to logical mining units (LMU's) for coal mining operations was published in the Federal Register on Wednesday, December 28, 1994 (59 FR 66874), with a 60-day comment period expiring February 27, 1995. The comment period is being extended for 30 days in response to public request.

DATES: The period for the submission of comments is hereby extended until March 29, 1995. Comments postmarked after this date will not be considered as part of the decisionmaking process on issuance of the final rule.

ADDRESSES: Comments should be sent to the Regulatory Management Team (120), Bureau of Land Management, Room 5555, Main Interior Building, 1849 C Street, N.W., Washington, D.C. 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William Radden-Lesage, (202) 452–0350.

Dated: February 21, 1995.

Sylvia V. Baca,

Acting Assistant Secretary of the Interior.

[FR Doc. 95–4679 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–25, RM–8588]

Radio Broadcasting Services; Waldport, Oregon

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Jarvis Communications, Inc., seeking the allotment of Channel 288A to Waldport, OR, as the community's first local FM service. Channel 288A can be allotted to Waldport in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.4 kilometers (7.7 miles) northwest, at coordinates 44–32–17 North Latitude and 124–03–37 West Longitude, to avoid a short-spacing to vacant but applied-for Channel 288A at Cottage Grove, OR.

DATES: Comments must be filed on or before April 14, 1995, and reply comments on or before May 1, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Matt Jarvis, Jarvis Communications, Inc., Radio Station KORC-AM, P.O. Box 1419, Waldport, OR 97394 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–25, adopted February 9, 1995, and released February 21, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

FEDERAL COMMUNICATIONS COMMISSION.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–4696 Filed 2–24–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–24, RM–8583]

Radio Broadcasting Services; Clarendon, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by ROHO Broadcasting proposing the allotment of Channel 257C2 to Clarendon, Texas, as the community's first local aural transmission service. Channel 257C2 can be allotted to Clarendon in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 257C2 at Clarendon are 34–56–16 and 100–53–16.

DATES: Comments must be filed on or before April 14, 1995, and reply comments on or before May 1, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Keith Hodo, ROHO Broadcasting, P.O. Box 1090, Clarendon, Texas 79226 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–24, adopted February 9, 1995, and released February 21, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–4692 Filed 2–24–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–30, RM–8578]

Radio Broadcasting Services; Madisonville, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Leon Hunt, d/b/a Hunt Broadcasting, proposing the allotment of Channel 272A to Madisonville, Texas, as the community's second local commercial FM service. Channel 272A can be allotted to Madisonville in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.0 kilometers (4.3 miles) northwest to avoid a short-spacing conflict with the licensed site of Station KMJQ(FM), Channel 271C, Houston, Texas. The coordinates for Channel 272A are 31–00–25 and 95–56–30.

DATES: Comments must be filed on or before April 14, 1995, and reply comments on or before May 1, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Christopher D. Imlay, Esq., Booth, Freret and Imlay, 1233–20th Street, NW, Suite 204, Washington, D.C. 20554 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–30, adopted February 9, 1995, and released February 21, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–4695 Filed 2–24–95; 8:45 am]

BILLING CODE 6712–01–F

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1516 and 1552

[FRL–5161–1]

Acquisition Regulation

AGENCY: Environmental Protection Agency.

ACTION: Extension of comments on proposed rule.

SUMMARY: This document extends the due date for comments by 30 days for the proposed revision to the EPA Acquisition Regulation (EPAAR) coverage on cost-plus-award fee (CPAF) contracts (60 FR 5888, January 31, 1995).

DATES: Written comments on this proposed rule must be received on or before April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street SW, Washington, DC 20460, Attn: Louise Senzel (202) 260–6204.

Dated: February 13, 1995.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 95–4593 Filed 2–24–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition to List the Dakota Skipper as Endangered or Threatened

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list the Dakota skipper (Hesperia dacotae Skinner) under the Endangered Species Act of 1973, as amended. The Service finds that the petition does not present substantial scientific or commercial information indicating that the listing may be warranted at this time.

DATES: The finding announced in this document was made on February 16, 1995.

ADDRESSES: Comments, or questions concerning this petition should be submitted to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Shumate, Invertebrate Species Coordinator, Division of Endangered Species, at the above address (612/725–3276).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.), requires that, for any petition to revise the List of Endangered and Threatened Wildlife and Plants that presents substantial scientific and commercial information, the Service make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Section 4(b)(3)(C) requires that petitions for which the requested action is found to be warranted but precluded should be treated as though resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months. Such 12-month findings are to be published promptly in the Federal Register.

On January 21, 1994, The Service received a petition dated January 15, 1994, from Brendan McManus of the Biodiversity Legal Foundation, to list the Dakota skipper (*Hesperia dacotae*) as endangered or threatened and designate critical habitat. The Service made a 90-day finding that the petition presented substantial information indicating that the requested action may be warranted. The 90-day finding was announced in the Federal Register on July 28, 1994 (59 FR 38424). A status review of the species was continued.

The Dakota skipper was designated a category 2 candidate species in the May 22, 1984, Notice of Review (49 FR 21664) and has remained in category 2 to date (January 6, 1989, 54 FR 572; November 21, 1991, 56 FR 58830; and November 15, 1994, 59 FR 59020). A category 2 candidate is a species for which information in the Service's possession indicates that listing is possibly appropriate, but for which insufficient information on biological vulnerability and threats is not currently available to support a proposal for listing under the Act.

The Service has reviewed the petition, literature cited in the petition, information presented by various parties in response to the 90-day finding, other available literature and information, and has consulted with biologists and researchers familiar with the Dakota skipper. On the basis of the best scientific and commercial information available, the Service finds listing is not warranted at this time. The review concludes that there is not persuasive evidence that elevation of the species to category 1 is appropriate and, therefore, the species will be retained in category 2.

The Dakota skipper is a small to medium-sized butterfly found in mid- and tall grass prairie. Information on current status can be summarized as follows. Dakota skippers are reported in Iowa, Minnesota, North and South Dakota, and Manitoba, Canada. The species was formerly found in Illinois. The species is currently known in 12 counties (19 population sites) in Minnesota, 17 counties (32 population sites) in North Dakota, and seven counties (18 population sites) in South Dakota, and in one county (one population site) in Iowa (Royer and Marrone 1992; Ronald Royer, Minot, North Dakota, State University, *in litt.* 1994; Robert Dana, Minnesota Department of Natural Resources, *in litt.* 1994). Unknown Dakota skipper populations may exist; nine of the fifteen respondents to the 90-day notice indicated that additional areas need to be surveyed, including areas of North Dakota, Minnesota, and Iowa.

The Dakota skipper faces loss and degradation of its prairie habitat due to certain harmful burning, haying, grazing and pesticide use practices. Invasion of prairie by alien plants, natural succession, and habitat loss through physical conversion of prairie to other purposes are also negative factors. The Dakota skipper (and its habitat) are in long-term decline, but the demise of the species does not appear imminent. The Service believes additional information is required concerning the species and its threats before making the determination that the species is endangered or threatened within the definition of the Act. Timely protection and appropriate prairie management might eliminate the need to list the species.

Further details regarding the biological status of the species are contained in the administrative finding. Interested persons may obtain a copy of the finding by contacting the office indicated in the **ADDRESSES** section of this notice.

References Cited

Royer, R.A., and G.M. Marrone. 1992. Conservation status of the Dakota skipper (*Hesperia dacotae*) in North and South Dakota. Report to U.S. Fish and Wildlife Svc., Denver, CO. 44 pp.

Author

The primary author of this document is Charles G. Kjos, U.S. Fish and Wildlife Service, Twin Cities Field Office, Bloomington, MN 55425–1665, telephone 612/725–3548.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: February 16, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–4780 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[I.D. 021595A]

Reef Fish Fishery of the Gulf of Mexico; Regulatory Amendment Public Hearings

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

ACTION: Public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene two public hearings on a draft proposed Regulatory Amendment to the regulations implementing the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico. The draft proposed Regulatory Amendment, developed under an FMP framework procedure for adjusting management measures, would decrease the current 20 inch minimum size for red grouper to 18 inches for both commercial and recreational fisheries. A reduction of the current five fish daily bag limit for red grouper in the recreational fishery (five fish for all grouper species combined) may also be considered along with the proposed minimum size limit change. A final Regulatory Amendment to reduce the minimum size limit for red grouper to 18 inches was previously submitted to NMFS for review, approval, and implementation. NMFS subsequently informed the Council that it should consider new fishery information regarding the impacts of the proposed regulatory changes which became available to the Council. Also, NMFS requested that the Council evaluate more completely the expected biological and regulatory impacts of the proposed measures. At the public hearings, the Council will make available for public review and comment the draft proposed Regulatory Amendment and other available information. Based on the public hearing testimony and on a consideration of the new fishery information, the Council intends to make the appropriate changes in the Regulatory Amendment and resubmit it to NMFS.

DATES: Written comments on the draft proposed Regulatory Amendment or on the additional fishery information from NMFS will be accepted until March 10, 1995. The hearings are scheduled from 7 p.m. to 10 p.m. as follows:

1. Thursday, March 9, 1995, in Tampa, FL; and
2. Thursday, March 9, 1995, in Sarasota, FL

ADDRESSES: Copies of the draft proposed Regulatory Amendment are available from, Mr. Steven M. Atran, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609; FAX: 813–225–7015. Written comments on this document should be addressed to the same individual.

The hearings will be held at the following locations:

1. Tampa, FL—Ramada Airport Hotel, 5303 West Kennedy Boulevard, Tampa, FL 33609
2. Sarasota, FL—Holiday Inn Lido Beach, 233 Ben Franklin Drive, Sarasota, FL 34236

FOR FURTHER INFORMATION CONTACT: Steven M. Atran, Populations Dynamics Statistician, 813–228–2815.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs (see **ADDRESSES**) by March 1, 1995.

Additional opportunity for public testimony on this issue will be scheduled at the Council meeting in New Orleans on Wednesday, March 15, beginning at 8:45 a.m. Persons testifying at this meeting must turn in registration cards before the start of the testimony.

Dated: February 21, 1995.

David S. Crestin,

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

[FR Doc. 95–4646 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 38
Monday, February 27, 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

Agricultural Marketing Service

[Docket No. TB–95–07]

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: April 6, 1995.

Time: 1:00 p.m.

Place: United States Department of Agriculture (USDA), Agricultural Marketing Service (AMS), Tobacco Division, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, Room 223, 1306 Annapolis Drive, Raleigh, North Carolina 27608.

Purpose: Review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*) and to discuss the level of tobacco inspection services currently provided to producers by AMS. The Committee will recommend the desired level of services to be provided to producers by AMS and an appropriate fee structure to fund the recommended services.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan, III, Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: February 8, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–4738 Filed 2–24–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

[Docket No. 95–011–1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Corn

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from AgrEvo USA Company seeking a determination of nonregulated status for corn designated as ''Glufosinate Resistant Corn Transformation Events T14 and T25'' genetically engineered for tolerance to the herbicide glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn presents a plant pest risk.

DATES: Written comments must be received on or before April 28, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–011–1, 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. 95–011–01. A copy of the petition and any 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 access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. David Heron, Biotechnologist, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7601.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On December 23, 1994, APHIS received a petition (APHIS Petition No. 94–357–01p) from AgrEvo Company USA (AgrEvo) of Wilmington, DE, requesting a determination of nonregulated status under 7 CFR part 340 for herbicide-tolerant corn designed as ''Gulfosinate Resistant Corn (GRC) Transformation Events T14 and T25.'' As described in the petition, GRC Events T14 and T25 are yellow dent corn plants genetically engineered with a stably integrated gene that encodes the enzyme phosphinothricin-N-aceyltransferase (PAT). The PAT enzyme catalyzes the conversion of L-phosphinothricin, the active ingredient in gulfosinate-ammonium, to an inactive form, thereby conferring resistance to herbicides in the phosphinothricin class. The *PAT* gene in GRC Events T14 and T25 is a synthetic version of the gene isolated from the bacterium *Streptomyces viridochromogenes.* Expression of the *pat* gene is regulated by the 35S promoter and the 35S terminator derived from the plant pathogen cauliflower mosaic virus.

The subject of corn is currently considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences (promoters, and terminators) derived from a plant pathogen. GRC Events T14 and T25

were evaluated in field trials conducted under APHIS permits in 1992 and 1993, and under APHIS notifications in 1993 and 1994. In the process of reviewing the applications for those field trials, APHIS determined that these plants would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), ''plant pest'' is defined as ''any living stage of: Any insect, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.'' APHIS views this definition very broadly. The definition covers direct or indirect injury, disease or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

Several issues associated with GRC Events T14 and T25 are also currently subject to regulation by other agencies. The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 135 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by regulation. Plants that have been genetically modified for tolerance or resistant to herbicides are not regulated under FIFRA because the plants themselves are not themselves considered pesticides.

In cases in which the genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. In conducting such an approval, EPA considers the possibility of adverse effects to human health and the environment from the use of this herbicide.

When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by the EPA under the Federal Food, Drug, and Cosmetic Act (FEDCA) (21 U.S.C. 201 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by the EPA under the FFDCA.

The FDA publishes a statement of policy on foods derived from new plant varities in the Federal Register on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varities, including those developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the ''**ADDRESSES**'' section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the Federal Register announcing the regulatory status of AgrEvo's GRC Events T14 and T25 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 21st day of February 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–4741 Filed 2–24–95; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–813]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Penelope Naas or Gary Bettger, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3534 or 482–2239, respectively.

Final Determination

We determine that certain carbon steel butt-weld pipe fittings from France are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the ''Act''). The estimated margin is shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the publication of the preliminary determination in the Federal Register on October 4, 1994 (59 FR 50565), the following events have occurred:

On October 5, 1994, pursuant to § 353.20(b)(1) of the Department's regulations, Interfit, S.A. (''Interfit''), requested that the final determination in this case be postponed. On November 14, 1994, the Department published in the Federal Register a notice postponing the publication of the final determination in this case no later than February 16, 1995 (59 FR 56461).

From October 10 through October 14, 1994, we verified the responses of Interfit at its offices in Maubeuge, France and Starval in Marly La Ville, France, respectively. On October 17, 1994, we conducted a verification of related party and certain other issues at Vallourec Group Headquarters in Boulogne-Bilancourt, France. During the period of December 20 to 21, 1994, we verified the responses of Interfit, Starval and Vallourec Inc. in Houston, Texas. From December 12 to December 16, 1994, we verified Interfit's cost of production data at its offices in Maubeuge.

On January 23, 1995, and on January 30, 1995, petitioner and respondent submitted case and rebuttal briefs to the

Department. On February 1, 1995, the Department held a public hearing in this investigation.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include ''elbows,'' ''tees,'' ''caps,'' and ''reducers.'' The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the ''bead'' of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is September 1, 1993, through February 28, 1994.

Fair Value Comparisons

To determine whether Interfit's sales for export to the United States were made at less than fair value, we compared the United States price (''USP'') to the foreign market value (''FMV''), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice.

Regarding level of trade, Interfit reported that it sells only to distributors in the United States and the home market.

We made revisions to Interfit's reported data, where appropriate, based on findings at verification.

United States Price

Because Interfit's U.S. sales of certain carbon steel butt-weld pipe fittings were made to an unrelated distributor in the United States prior to importation, and the exporter's sales price methodology was not indicated by other circumstances, we based USP on the purchase price (''PP'') sales methodology in accordance with section 772(b) of the Act.

We calculated Interfit's USP sales based on packed, c.i.f., duty paid, landed prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage, marine insurance, ocean freight, U.S. brokerage, U.S. duties, and rebates. Reported U.S. duties were adjusted based on information collected at verification.

We made an adjustment to USP for value-added tax (''VAT'') assessed on comparison sales in France in accordance with our practice, pursuant to the Court of International Trade (''CIT'') decision in *Federal-Mogul, et al. v. United States*, 834 F. Supp. 1391. *See, Preliminary Antidumping Duty Determination: Color Negative Photographic Paper and Chemical Components from Japan* (59 FR 16177, 16179, April 6, 1994), for an explanation of this tax methodology.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. On this basis, we determined that the home market was viable.

In its May 13, 1994, response, Interfit reported that all home market sales were made to distributors, three of which were related to Interfit. Based on information verified in this investigation, we do not consider Interfit's indirect minority interest in Hardy-Tortauax (''H-T'') and Trouvay & Cauvin (''T&C'') to be a sufficient basis to determine that the parties are ''related,'' as defined in section 771(13) of the Act and 19 CFR 353.45(b). *See,* the Department's concurrence memorandum from the preliminary determination (September 26, 1994, at page 3). However, with respect to the third related distributor, Starval, we determined that its relationship to Interfit (*e.g.*, 100 percent common ownership) satisfies the definition of a related party.

Therefore, we compared Interfit's prices to Starval with Interfit's prices to unrelated parties using the arm's length test as set forth in Appendix II to *Final Determination of Sales at Less than Fair Value: Certain Cold-rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062 (July 9, 1994), and determined that the sales made to Starval were not at arm's length. Accordingly, we requested and received Starval's sales to unrelated customers in the home market. While verifying Starval's sales response, we found that several sales had been reported a number of times. This rendered Starval's home market database unusable for purposes of the final determination. Thus, we have disregarded a small portion of Interfit's home market sales and used sales made by Interfit directly to unrelated parties.

Cost of Production

Petitioner alleged that Interfit made home market sales during the POI at prices below the cost of production (''COP''). Based on petitioner's allegation, we concluded that we had reasonable grounds to believe or suspect that sales were made below COP. In the course of this investigation, we gathered and verified data on production costs.

For purposes of the preliminary determination, because Interfit's cost data was incomplete and submitted too late for consideration, as best information available (''BIA''), we made an adverse assumption that all home market sales were below the COP and based foreign market value on constructed value (''CV''). We then calculated the CV using Vallourec's transfer prices. We stated that we would verify whether those prices were at arm's length.

For the final determination, however, we have reviewed and analyzed respondents COP data. In accordance with our standard practice, we asked Interfit to provide cost data for inputs produced by related parties. Interfit failed to provide data on the cost of pipe, a major input, produced by its related supplier, Vallourec. Therefore, we have valued the input on the basis of BIA and used the resulting COP to test home market sale prices. As BIA we adjusted the transfer prices for the input upward by the average difference between petitioner's acquisition cost of pipe, as reported in the petition, and the transfer price Interfit pays to its supplier.

In order to determine whether home market prices were below the COP within the meaning of section 773(b) of the Act, we performed a product-specific cost test, in which we examined whether each product sold in the home market during the POI was priced below the COP of that product. We calculated COP based on the sum of Interfit's cost of materials, fabrication, general expenses, and packing, in accordance with 19 CFR 353.51(c). For each product, we compared this sum to the home market unit price, net of movement expenses, rebates and selling expenses. We made changes, where appropriate, to submitted COP data, as

discussed above and in the *Interested Party Comments* section of this notice, below.

In accordance with section 773(b) of the Act, we also examined whether the home market sales of each product were made at prices below their COP in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade.

For each product where less than ten percent, by quantity, of the home market sales during the POI were made at prices below the COP, we included all sales of that model for the computation of FMV. For each product where ten percent or more, but less than 90 percent, of the home market sales during the POI were priced below the COP, we disregarded from the calculation of FMV those home market sales which were priced below the COP, provided that the below-cost sales of that product were made over an extended period of time. Where we found that more than 90 percent of respondent's sales were at prices below the COP, and such sales were over an extended period of time, we disregarded all sales of that product.

In order to determine whether below-cost sales had been made over an extended period of time, in accordance with section 773(b)(1) of the Act, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in three or more months of the POI, we did not exclude below-cost sales unless there were below-cost sales in at least three months during the POI. When we found that sales of a product only occurred in one or two months, the number of months in which the sales occurred constituted the extended period of time; *i.e.,* where sales of a product were made in only two months, the extended period of time was two months, where sales of a product were made in only one month, the extended period of time was one month. (*See Preliminary Results and Partial Termination of Antidumping Duty Administrative Reviews: Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan* (58 FR 69336, 69338, December 10, 1993).

Interfit provided no indication that its below cost sales were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade. (*See,* section 773(b)(2); 19 U.S.C. 1677b(b)(2)).

Constructed Value

Where all home market sales of a product were disregarded, we based FMV on CV. We calculated CV based on the sum of the adjusted cost of materials, fabrication, general expenses, U.S. packing costs and profit. We adjusted the cost of materials as discussed in the *Interested Party Comments* section of this notice, below. In accordance with section 773(e)(1)(B)(i) and (ii) of the Act, we (1) included the greater of Interfit's reported general expenses or the statutory minimum of ten percent of the cost of manufacture (''COM''), as appropriate, and (2) for profit, we used the statutory minimum of eight percent of the sum of COM and general expenses.

Price-to-Price Comparisons

For price-to-price comparisons, we calculated FMV based on ex-factory or delivered prices, inclusive of packing to home market customers. We deducted rebates, where appropriate. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(1) of the Act.

In light of the Court of Appeals for the Federal Circuit's decision in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement V. United States,* 13 F. 3d 398 (Fed. Cir., January 5, 1994), the Department can no longer deduct home market movement charges from FMV pursuant to the Department's inherent power to fill in gaps in the antidumping statute. Instead, we adjust for direct movement expenses under the circumstance-of-sale provision of 19 CFR 353.56(a). Accordingly, in the present case, we deducted post-sale home market movement charges from the FMV under the circumstance-of-sale provision of 19 CFR 353.56(a). This adjustment included home market inland freight and insurance.

For both price-to-price comparisons and comparisons to CV, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, pursuant to 19 CFR 353.56(a)(2). In calculating U.S. credit expense, we used the respondent's cost of borrowing in U.S. dollars during the POI. In instances where Interfit had not reported a shipment and/or payment date, we recalculated Interfit's reported credit expense.

We have not made a deduction for direct selling expenses reported by respondent because we determined that these expenses (product liability and inventory carrying costs) are, in fact, indirect selling expenses. However, we have deducted indirect selling expenses, capped by the commissions paid to Vallourec Inc., a related party in the U.S. market. For the preliminary determination, we did not recognize these commissions because we did not have an appropriate benchmark against which to test whether the commission arrangement was at arm's length. However, we verified that Interfit pays the same commissions to both related and unrelated parties, with the exception of a single unrelated party that receives a higher rate. In *LMI–La Metalli Industriale, S.p.A.* v. *United States,* 912 F.2d 455, 459 (Fed. Cir. 1990) (*LMI*), the CAFC indicated that related party commissions can and should be adjusted for if the commissions are at arm's length and are directly related to the sales under review. Because the vast majority of commissions to related and unrelated parties are at a single rate, we find these conditions are met in this case. Therefore, we deducted indirect expenses incurred for home market sales up to the amount of the U.S. commission. We then added the U.S. commission to the FMV or CV, as appropriate.

We adjusted for VAT in the home market in accordance with our practice. (*See* the *United States Price* section of this notice, above.)

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See 19* CFR 353.60.

Final Negative Determination of Critical Circumstances

Petitioner alleged that critical circumstances exist with respect to imports of pipe fittings from France. In our preliminary determination, pursuant to section 733(e)(1) of the Act and 19 CFR 353.16, we analyzed the allegation using the Department's standard methodology. Because no additional information has been submitted since the preliminary determination, the Department performed the same analysis as explained in its preliminary finding. Based on this analysis, the Department determines, in accordance with section 735(a)(3) of the Act, that critical circumstances do not exist with respect to imports of certain carbon steel butt-weld pipe fittings from France.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent using standard verification procedures, including the

examination of relevant sales, cost and financial records, and selection of original source documentation. The public versions of the January 10, 1995, verification reports are available in the Central Unit located in room B–99 of the Department's main building, the Herbert C. Hoover building.

Interested Party Comments

Comment 1

Petitioner contends that Interfit willfully refused, on four separate occasions, to provide from its related party, Vallourec Industries (''Vallourec''), the actual cost of producing carbon steel pipe, a major input in the production of the subject merchandise. Petitioner argues that by repeatedly refusing to respond to the Department's requests for this information, Interfit has not allowed the Department to properly conduct this investigation. Therefore, the Department should apply adverse best information available (''BIA'') in the final determination. Petitioner notes that the BIA approach employed at the preliminary determination (*i.e.*, the assumption that all home market sales are below COP) rewards Interfit for its failure to cooperate. Accordingly, as BIA, the Department should use the margin reported for France in the petition or, in the alternative, the highest non-aberrational margin calculated for Interfit in the preliminary determination.

Interfit argues that it informed the Department that it was willing to accept the consequences of not supplying the cost information, as this task would have required Interfit to provide cost information from four separate related manufacturing units. Thus, Interfit is prepared to accept a BIA finding that all home market sales were below COP.

DOC Position

In light of Interfit's cooperation in this investigation, we disagree with petitioner's argument that the Department should use total BIA in the form of the margin reported for France in the petition, or the highest non-aberrant margin calculated for Interfit in the preliminary determination. Our use of partial BIA is adequate because it allows us to draw an adverse assumption only with respect to the information that Interfit failed to provide. Because we were able to perform a BIA cost test, we have adequately ensured that Interfit does not benefit from its failure to provide information. Therefore, total BIA is unnecessary.

Comment 2

Regarding the constructed value, petitioner contends that the prices from Vallourec to Interfit for carbon steel pipe do not satisfy the statutory requirements outlined in section 773(e)(2). According to petitioner, section 773(e)(2) requires Interfit to demonstrate that: (1) It has sales to unrelated customers in the market under consideration (*i.e.*, France); (2) the prices to those unrelated customers are for pipe that was ''identical or demonstrably comparable to the pipe used by Interfit;'' and (3) the prices that Interfit pays Vallourec are at arm's length. By its own admission, Interfit cannot satisfy the first two elements of the statute, because it concedes that ''Vallourec sells no similar pipe to unrelated customers in France.'' With respect to the third element, according to petitioner, the Department's verification of the prices charged by Vallourec to Interfit and to other unrelated customers demonstrate that the prices to Interfit are preferential.

Thus, petitioner argues that the Department should disregard the transfer prices and use the actual cost of producing the input supplied by Vallourec (carbon steel pipe). However, because Interfit repeatedly refused to provide Vallourec's actual cost of producing carbon steel pipe, the Department is prevented from determining CV and conducting a complete investigation. Therefore, the Department should apply best information available (''BIA'') in the final determination. In particular, the Department should use the margin reported for France in the petition or, in the alternative, the highest non-aberrational margin calculated for Interfit in the preliminary determination.

Lastly, Petitioner argues that even if the Department determines that transfer prices between Vallourec and Interfit are at arm's length, the Department has ''reasonable grounds to believe or suspect'' that the transfer price of the carbon steel pipe is less than the cost of producing the pipe. Petitioner contends that several factors in this investigation provide the Department with ''reasonable grounds to believe or suspect'' that Interfit purchased the pipe from Vallourec at less than the COP. Most notably, petitioner claims Interfit did not provide evidence that Vallourec's price for the pipe was above the cost of producing such pipe, even though the information was requested by the Department numerous times.

Petitioner thus argues that, because the Department has ''reasonable grounds to believe or suspect'' that pipe is being sold at less than COP, even if the transfer prices are accepted under section 773(e)(2), those prices cannot be used in determining CV. Rather, the Department should apply adverse BIA in the final determination, as detailed above.

Interfit claims that the prices it pays to Vallourec reflect the market value (*i.e.*, they are arm's length prices) and therefore, in accordance with section 773(e)(2), should be used for purposes of calculating constructed value. To substantiate its claim that the transfer prices between Vallourec and Interfit are arm's length, Interfit has provided the Department with prices of similar pipe sold to unrelated customers in the European Union (''E.U.''). Interfit argues that, because ''the E.U. is a fully integrated market, with no barriers to trade between its members,'' these sales are, in fact, in the same market (*i.e.*, the market under consideration). Interfit also contends that the term ''merchandise under consideration'' includes both similar and identical merchandise, not only identical merchandise. With respect to the arm's length nature of these sales, Interfit argues that information submitted in this investigation demonstrates that the prices Vallourec charges Interfit are comparable to the prices charged to unrelated customers for almost identical pipe. Moreover, the pipe sold to Vallourec's unrelated customers includes additional processing costs which are not included in the pipe sold to Interfit. These additional costs would more than account for the difference in price. Thus, pursuant to section 773(e)(2), Interfit claims that the Department should use the transfer prices in calculating CV.

With respect to section 773(e)(3), Interfit claims that this section contains a presumption that transfer prices are valid for purposes of calculating CV unless the Department has ''reasonable grounds to believe or suspect'' that they are below COP. To support its claim, Interfit cites *Al Tech Specialty Steel Corporation* v. *United States*, 575 F.Supp. 1277, 1282 (C.I.T. 1983); *FMC Corp.* v. *United States*, 3 F.3d 424 (CAFC 1993); and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany*, 54 FR 18992, 19020, Comment 4 (1989). Therefore, where constructed value is concerned, petitioner, not respondent, must first provide evidence that the transfer prices are below COP; a simple allegation by petitioner is not sufficient. Interfit also argues that its failure to provide evidence that the transfer prices were

above COP does not imply that they were below cost.

Interfit claims that the concurrence memorandum from the preliminary determination (September 26, 1994, at page 3) and a November 15, 1994 letter from the Department to the counsel for Interfit, led the company to believe that the transfer prices would be used so long as they were determined to be at arm's length. Interfit assumed that if the Department had at that time ''reasonable grounds'' to believe that the pipe was sold to Interfit at less than the COP, the Department would have stated that cost was an issue.

DOC Position

The fact that Interfit failed to provide evidence that Vallourec's price for the input pipe was above the cost of producing the pipe, despite numerous requests from the Department for this information, provides the Department with ''reasonable grounds to believe or suspect'' that the transfer prices paid by Interfit were less than Vallourec's cost of production. Therefore, in computing the CV, we have valued the pipe on the basis of the BIA used to calculate COP for the home market sales below cost test. Because the transfer prices have been disregarded in accordance with section 773(e)(3) of the Act, we do not need to address the issue of whether the transfer prices satisfy the criteria under section 773(e)(2). The Department's preliminary determination expressly noted that whether the transfer prices were at arm's length would be examined at verification. In addition, the Department continued to pursue data that would confirm that the transfer prices are above COP. *See*, Supplemental/Deficiency Section D Questionnaire (November 15, 1994), Section D Verification Agenda (December 5, 1994), Fax to Counsel for Interfit (December 8, 1994), and Section D Verification Report (January 12, 1995). Therefore, contrary to Interfit's claims, the question of cost remained an issue.

Suspension of Liquidation

In accordance with section 735(c)(4) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of butt-weld pipe fittings from France, as defined in the ''Scope of Investigation'' section of this notice, that are produced and sold by Interfit and that are entered, or withdrawn from warehouse, for consumption on or after October 4, 1994.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin (percent)
Interfit, S.A.	32.58
All Others	32.58

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notice to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1671(d)).

Dated: February 16, 1995.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–4724 Filed 2–24–95; 8:45 am]

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[A–508–807]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Israel

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Gary Bettger, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0189 and 482–2239, respectively.

Final Determination

We determine that certain carbon steel butt-weld pipe fittings from Israel are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the ''Act''). The estimated margin is shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the publication of the preliminary determination in the Federal Register on October 4, 1994 (59 FR 50568), the following events have occurred:

On October 5, 1994, pursuant to section 353.20(b)(1) of the Department's regulations (19 CFR 353.20(b)(1)(1994), Pipe Fittings Carmiel, Inc. (''Carmiel'') requested that the final determination in this case be postponed. On November 14, 1994, the Department published in the Federal Register a notice postponing the publication of the final determination in this case until not later than February 16, 1995 (59 FR 56461).

On October 20, 1994, Carmiel filed a second supplemental/deficiency response, which included a revised home market sales listing. On November 27, November 28, and December 4, 1994, we verified Carmiel's sales information at its offices in Tel Aviv, Israel. On January 23, 1995, and on January 30, 1995, petitioner and respondent submitted case and rebuttal briefs to the Department.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include ''elbows,'' ''tees,'' ''caps,'' and ''reducers.'' The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the ''bead'' of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is September 1, 1993, through February 28, 1994.

Product Comparisons

Carmiel sold identical products in both Israel and the United States during the POI. Therefore, in making our fair value comparisons, we compared sales of merchandise identical in all respects.

Fair Value Comparisons

To determine whether Carmiel's sales for export to the United States were made at less than fair value, we compared the United States price (''USP'') to the foreign market value (''FMV''), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice. In accordance with 19 CFR 353.58, we made comparisons at the same level of trade.

We made revisions to Carmiel's reported data, where appropriate, based on verification findings.

United States Price

Because Carmiel's U.S. sales were made to unrelated purchasers in the United States prior to importation, and because the exporter's sales price methodology was not indicated by other circumstances, we based USP on the purchase price (''PP'') sales methodology in accordance with section 772(b) of the Act.

We calculated Carmiel's USP based on packed C.I.F. prices to unrelated customers in the United States. We made deductions, where appropriate, for marine insurance, ocean freight, foreign inland freight, port fees, and customs agents fees and expenses.

We made an adjustment to U.S. price for the value-added tax (''VAT'') paid on the comparison sales in Israel, in accordance with our practice, pursuant to the Court of International Trade (CIT) decision in *Federal-Mogul, et al v. United States*, Slip Op. 93–194 (CIT October 7, 1993). (*See Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France*, 59 FR 14136, March 25, 1994).

Foreign Market Value

In order to determine whether the sales in the home market are an adequate basis for the FMV, the Department generally compares the quantity of such or similar merchandise sold in the home market during the POI to the quantity sold for exportation to third countries. In this case, Carmiel made sales only to the United States and Israel during the POI. Based on the substantial quantity of home market sales in relation to its U.S. sales, we determined that the home market was viable.

In our preliminary determination, we stated that the appropriate date of sale is the date of the first written document which sets the price and quantity for the sale (*see Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan; Final Results of Antidumping Duty Administrative Review* (59 FR 12240, 12241; March 16, 1994) and *Antifriction Bearings (Other Than Tapered Rolling Bearings) and Parts Thereof From France, et al.*, (58 FR 39729, 39783; July 26, 1993)). Accordingly, on October 20, 1994, respondent submitted a new home market sales listing using the invoice date as the date of sale. We confirmed at verification that the invoice date is the first written document setting the terms of sale in the home market and is, thus, the appropriate date of sale.

We have calculated FMV using the delivered prices reported by Carmiel in its October 20, 1994 home market sales listing. We adjusted the prices for certain discounts offered to home market customers. Also, in light of the decision of the Court of Appeals for the Federal Circuit in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement v. United States*, 13#F.3d 398 (Fed. Cir., 1994), we adjusted for post-sale home market movement charges under the circumstances-of-sale provision of the Act (Section 773(a)(4)(B)). This adjustment included home market inland freight.

We also made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, pursuant to 19 CFR 353.56(a)(2). In calculating U.S. credit expense, we used the interest rate paid by Carmiel for short-term New Israeli Shekel (''NIS'') loans linked to the dollar. In calculating the home market credit expense, we used Carmiel's borrowing rate for unlinked short-term NIS loans.

We adjusted for VAT in accordance with our standard practice. (*See* the United States Price section of this notice, above.)

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales, as published in the International Monetary Fund's International Financial Statistics (*see* 19 CFR 353.60).

Final Negative Determination of Critical Circumstances

Petitioner alleged that critical circumstances exist with respect to imports of pipe fittings from Israel. In our preliminary determination, pursuant to section 733(e)(1) of the Act and 19 CFR 353.16, we analyzed the allegation using the Department's standard methodology. Because the information on which our analysis was based has not changed, we have performed the same analysis as explained in the preliminary finding. Based on this analysis, the Department determines, in accordance with section 735(a)(3) of the Act, that critical circumstances do not exist with respect to imports of certain carbon steel butt-weld pipe fittings from Israel.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent using standard verification procedures, including the examination of relevant sales, cost and financial records, and selection of original source documentation.

Interested Party Comments

Comment 1

Carmiel argues that U.S. sales relating to the September 22, 1993, invoice are outside the period of investigation. The company claims that the terms of these sales were set in the purchase order, which is dated March 25, 1993. Carmiel argues that while the actual quantity shipped changed slightly before the shipment date, this change was very small and resulted from limitations imposed by the size of the shipping containers.

DOC Position

We agree with respondent. Carmiel appropriately excluded these sales from its U.S. sales listing because the terms of the sales were set well before the POI. We agree that the change in quantity was minor and does not constitute a change in the basic terms of the sale.

Comment 2

At verification, Carmiel officials notified the Department that they had not reported an additional home market discount which was given to customers who made prompt payments. The information pertaining to these discounts was submitted to the Department after the verification was completed, and the Department returned the information as untimely. Carmiel argues that the Department should accept the information and make an adjustment for this discount. According to Carmiel, these discounts were inadvertently omitted from the company's response because the response was prepared by an outside consultant using data that was not computerized. Furthermore, Carmiel argues that the information should be considered verified, regardless of when

it was submitted, because the team verified the actual prices paid on home market sales.

Petitioner argues that the Department should deny Carmiel the adjustment because the information was submitted after the deadline for submission of factual information. Petitioner notes that Carmiel chose not to report this information on a timely basis.

DOC Position

We agree with petitioner. Section 353.31(a)(i) of the Department's regulations states that the last date factual information can be submitted for consideration in a final determination is ''seven days before the scheduled date on which the verification is to commence.'' This information was not submitted prior to the start of verification and, therefore, it is untimely. It also is unclear that the information was ''inadvertently'' omitted as Carmiel claims. At verification, Carmiel officials stated that they had chosen not to report this discount because the value of the discount was insignificant compared to the amount of work involved. Thus, even if the Department were to consider inadvertency as an excuse, it has not been established in this instance. Finally, while the Department's verifiers did examine several home market sales, they saw no documentation regarding these discounts and thus, there is no basis for considering these discounts to have been verified.

Comment 3

Carmiel argues that the Department should calculate the home market credit expense using a higher interest rate than that used for the preliminary determination. Carmiel points out that, at verification, the team saw evidence of company borrowing at a much higher interest rate, indicating that the company's home market credit costs were actually higher than reported. Using the lower rate to make the credit adjustment would understate the company's expenses. Therefore, the Department should use either the higher rate, or an average of the reported rate and the higher rate.

Petitioner claims that there is no verified information indicating the extent of Carmiel's borrowing which is taken out at the higher interest rate. While officials stated that the majority of Carmiel's short-term financing was at the higher rate, this claim was not substantiated. Additionally, petitioner argues, rational economic behavior suggests that the majority of Carmiel's financing would be at the lower rates. Moreover, the Department does not possess enough verified information to appropriately weight the two rates in order to calculate an average. Finally, petitioner points out that Carmiel chose to report the lower, more conservative rate.

DOC Position

Carmiel reported the lower rate in its response, and we verified this rate. While we also verified that Carmiel received some financing at the higher rate, we do not have verified information regarding the total amount of Carmiel's borrowings at this rate. We agree with petitioner that without knowing what portion of Carmiel's short-term financing is at the higher rate, it is not possible to calculate a relevant average of the two rates. Therefore, we have used the lower interest rate reported by respondents in making the home market credit adjustment.

Comment 4

Carmiel states that the Department's adjustments for VAT in this case are a misapplication of the statute because Carmiel reported its home market sales ''net'' of VAT. Carmiel recognizes that this adjustment was made as a result of the CIT decision in *Federal-Mogul Corp v. United States*, 15 ITRD 1127 (CIT 1993); however, Carmiel argues that the court also misinterpreted the statute. According to Carmiel, the statute only requires the Department to adjust for VAT when it is included in or added to the home market prices reported. Thus, when the tax is not included in or added to the prices reported, the Department should not then add the tax to FMV. Carmiel claims that adding VAT to both FMV and USP, as was done in the preliminary determination, resulted in significant distortions to Carmiel's margin.

Petitioner argues that the Department appropriately adjusted for VAT by adding the tax to both FMV and USP and that this adjustment did not distort Carmiel's margins. Petitioner cites *Calcium Aluminate Coment, Cement Clinker and Flux from France*, 59 FR 14136, 14138 25, 1994) in support of the argument that the Department must include an adjustment for VAT in the USP to account for VAT in the home market. Because respondent has reported home market sales values excluding VAT, the Department should add VAT to the net FMV and USP.

DOC Postition

The statute provides for dumping determinations to be made on a tax inclusive basis. Section 772(d)(1)(c) of the Act provides for an offsetting adjustment to U.S. price, based on the presumption that home market prices include VAT. Accordingly, the Department has insisted that HM prices be reported on a VAT inclusive basis (*see Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from The Federal Republic of Germany*, 54 FR 18992, May 3, 1989). Allowing respondents to choose whether to report HM prices net of taxes would allow them to partially determine their own dumping margins. Because respondent reported its home market sales net of VAT, we have added the VAT back onto the home market price and adjusted the USP accordingly.

Comment 5

Petitioner argues that two companies, Keshta Ltd. (''Keshta'') and Keshet Steel Import/Export Company (''Keshet''), are so closely related to Carmiel that the three companies should be treated as one for the purposes of the final determination.

Carmiel states that since it reported the sales of both Keshet and Keshta, the companies are essentially being treated as one company. Furthermore, since Carmiel is the only exporter, Keshet and Keshta would be subject to the all others rate (Carmiel's rate) if they did begin to export to the United States.

DOC Position

We verified that neither Keshet nor Keshta made sales to the United States during the POI. Moreover, we verified that the sales of both Keshet and Keshta were included in Carmiel's home market sales response. Therefore, the three companies have been treated as one company for purposes of this determination.

Comment 6

Petitioner argues that certain of Carmiel's movement expenses are most likely incurred by value and, thus, should have been allocated by value rather than by weight.

Carmiel argues that the results of allocating by value versus allocating by weight will be virtually the same given the small amounts in question and the fact that the price and weight of the elbows in question rise proportionately. Furthermore, Carmiel states that the costs were allocated according to the Department's instructions. Therefore, the Department should continue to use the costs as allocated by Carmiel and as verified by the Department.

DOC Position

We agree with petitioner that marine insurance and agents fees should have

been allocated by value, rather than weight. In response to Carmiel's assertion that it followed the Department's instructions, we note that the Department's August 3, 1994 deficiency questionnaire, at page 4, instructed respondent to allocate expenses on the basis that they are incurred. Since these expenses are incurred by value, they should be allocated on such basis. Accordingly, we have reallocated marine insurance and agents fees by value.

Comment 7

Petitioner states that the payment date for one home market invoice should be corrected based on findings at verification.

Carmiel notes that, while several payment dates were found to be incorrect at verification, the payment date problems were minor and resulted from the fact that its records are not computerized. Therefore, correcting the payment dates will not have a significant effect. Nonetheless, respondent states that all of the verified payment dates should be corrected.

DOC Position

We agree with both petitioner and respondent. It would be inappropriate to use payment dates which we know to be incorrect for the final determination. Therefore, we have corrected the misreported payment dates on the verified sales. We have used these corrected payment dates to calculate the home market credit adjustment.

Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of butt-weld pipe fittings from Israel, as defined in the ''Scope of Investigation'' section of this notice, that are produced and sold by Carmiel and that are entered, or withdrawn from warehouse, for consumption on or after October 4, 1994.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin (percent)
Pipe Fittings Carmiel, Inc.	8.84
All Others	8.84

Adjustment of Deposit Rate for Countervailing Duties

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that ''[no] product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation for dumping or export subsidization.'' This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no basis to require a cash deposit or bond for that amount.

Accordingly, the level of export subsidies as determined in the final affirmative determination in the concurrent countervailing duty investigation of certain carbon steel butt-weld pipe fittings from Israel, which was 2.26 percent, will be subtracted from the margin for cash deposit or bonding purposes. This results in a deposit rate of 6.58 percent for Carmiel and a deposit rate of 6.58 percent for all others.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notice to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Dated: February 16, 1995.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–4725 Filed 2–24–95; 8:45 am]

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[A–533–811]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Sue Strumbel, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1442.

Final Determination

We determine that certain carbon steel butt-weld pipe fittings from India are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the ''Act''). The estimated margins shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the publication of the preliminary determination in the Federal Register on October 4, 1994 (59 FR 50562), the following events have occurred:

On October 5, 1994, Sivanandha Pipe Fittings Ltd. (Sivanandha) and Karmen Steels of India (Karmen), requested that the final determination in this case be postponed. On November 14, 1994, the Department published in the Federal Register a notice postponing the publication of the final determination in this case until February 16, 1995 (59 FR 56461).

From October 31 to November 5, 1994, we verified Sivanandha's and Karmen's sales information in Madras, India.

We received case and rebuttal briefs on January 23 and January 30, 1995, respectively, from petitioner and respondents.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include ''elbows,'' ''tees,'' ''caps,'' and ''reducers.'' The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the ''bead'' of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is

provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Karmen's Exports of Refurbished Pipe Fittings

Karmen reported that it has an arrangement with a Singaporean company, under which the Singaporean company supplies Karmen with rusty pipe fittings. Karmen reconditions and refurbishes these pipe fittings and sends them to the Singaporean company's U.S. customer. Petitioner and Karmen agree with the Department's preliminary determination that these ''sales'' of refurbished pipe fittings are not subject to this investigation.

For purposes of this final determination, we are continuing to treat these ''sales'' as outside the scope of our investigation and, hence, not subject to any potential antidumping order on butt-weld pipe fittings from India. Karmen essentially performs a tolling service for its Singaporean customer. Moreover, Karmen does not ''substantially transform'' these pipe fittings.

Substantial transformation generally refers to a degree of processing or manufacturing resulting in a new and different article. Through that transformation, the new article becomes a product of the country in which it was processed or manufactured. See Cold-Rolled Steel from Argentina, 58 FR 37062, 37065 (1993) (Appendix I). Commerce makes these determinations on a case-by-case-basis. See, e.g., Certain Fresh Cut Flowers from Colombia, 55 FR 20291, 20299 (1990); Limousines from Canada, 55 FR 11036, 11040 (1990).

In determining whether Karmen substantially transformed these pipe fittings, we examined whether the degree of processing or manufacturing resulted in a new and different article. Karmen receives rusty pipe fittings from Singapore, it removes the rust, paints the fitting, and forwards it to the Singaporean company's customer. We do not consider this refurbishing process as substantially transforming the subject merchandise because it remains a pipe fitting after refurbishment. Therefore, because Karmen does not substantially transform the merchandise, we do not consider it as falling within the scope of this proceeding.

Period of Investigation

The period of investigation (POI) is September 1, 1993 through February 28, 1994, for Sivanandha and August 1, 1993 through February 28, 1994, for Karmen. The preliminary determination in this investigation provides an explanation regarding the different POIs for each company.

Such or Similar Comparisons

For Sivanandha, in making our fair value comparisons, we first compared merchandise identical in all respects in accordance with the Department's standard methodology. If no identical merchandise was sold, we compared the most similar merchandise, as determined by the model-matching criteria contained in Appendix V of the questionnaire (Appendix V) (on file in Room B–099 of the main building of the Department of Commerce (Public File)). For the U.S. sales compared to sales of similar merchandise, we made an adjustment, pursuant to 19 CFR 353.57, for physical differences in merchandise.

Karmen did not make home market or third country sales of the subject merchandise. Therefore, we based foreign market value (FMV) on constructed value (CV), in accordance with section 773(a)(2) of the Act.

Fair Value Comparisons

To determine whether Sivanandha's and Karmen's sales for export to the United States were made at less than fair value, we compared the United States price (USP) to the FMV, as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice.

We made revisions to Sivanandha's and Karmen's reported data, where appropriate, based on verification findings.

United States Price

Because Sivanandha's and Karmen's U.S. sales of subject merchandise were made to unrelated purchasers prior to importation into the United States, and exporter's sales price methodology was not indicated by other circumstances, we based USP on the purchase price (PP) sales methodology in accordance with section 772(b) of the Act.

We calculated Sivanandha's USP based on packed, CIF prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, containerization, ocean freight, and marine insurance.

We recalculated Sivanandha's marine insurance expense, so it is allocated on a value basis instead of a weight basis.

For Sivanandha, in accordance with Section 772(d)(1)(B) of the Act, we added the amount of import duties imposed on inputs which were subsequently rebated upon exportation of the finished merchandise to the United States.

We also made an adjustment for taxes paid on the comparison sales in India, in accordance with our practice, pursuant to the Court of International Trade (CIT) decision in Federal-Mogul, et al v. United States, 834 F. Supp. 1993. See, Color Negative Photographic Paper and Chemical Components Thereof from Japan, 59 FR 16177, 16179, April 6, 1994 for an explanation of this tax methodology.

We calculated Karmen's USP based on packed, CIF prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, containerization, ocean freight, and marine insurance. We recalculated Karmen's marine insurance expense, so it is allocated on a value basis instead of a weight basis.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating Sivanandha's FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Based on this comparison, we determined that Sivanandha's home market was viable.

For Sivanandha, we calculated FMV based on delivered prices, inclusive of packing to home market customers. From these prices, we deducted commission, where appropriate.

In light of the Court of Appeals for the Federal Circuit's decision in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, 13 F. 3d 398 (Fed. Cir., January 5, 1994), the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we adjust for those expenses under the circumstance-of-sale (COS) provision of 19 CFR 353.56(a). Accordingly, in the present case, we adjusted for post-sale home market movement charges under the COS provision of 19 CFR 353.56(a). This adjustment included home market inland freight.

For Sivanandha, we also made COS adjustments for differences in quality inspection charges, and credit. In accordance with 19 CFR 353.56(b)(1), we added U.S. indirect selling expenses as an offset to the home market commission, but capped this addition by the amount of the home market commission. Finally, we deducted home market packing expenses and added U.S. packing expenses to Sivanandha's

FMV, in accordance with section 773(a)(1) of the Act.

For Karmen, because it sells the subject merchandise only in the United States, we used CV, pursuant to section 773(e) of the Act. We calculated CV as the sum of the cost of materials, fabrication, general expenses, U.S. packing costs, and profit. We relied upon the submitted CV data but made the following changes where we determined costs were not appropriately quantified or valued: (1) We adjusted the cost of manufacturing to include the cost of excluded electricity expenses; (2) we recalculated finance expense on an annual basis as a percentage of cost of goods sold; (3) we increased SG&A expenses for excluded partner's salary, audit fees and bank charges and recalculated SG&A expense on an annual basis as a percentage of fabrication cost of goods sold; (4) we reduced the manufactured fittings per unit of fabrication cost for amounts that relate to the refurbished fittings; and (5) we reduced the submitted indirect selling expense for the verified overstated amounts. In accordance with section 773(e)(1)(B)(i) and (ii) of the Act, we: (1) Included the greater of either Karmen's reported general expenses or the statutory minimum of ten percent of the cost of manufacture (COM), as appropriate; and (2) used the statutory minimum of eight percent of the sum of COM and general expenses for profit because actual profit was less than eight percent.

In our preliminary determination, we were unable to properly allocate labor and variable manufacturing overhead costs between refurbished pipe fittings and new pipe fittings. However, based on verified information, we are now able to allocate the labor and variable manufacturing overhead costs between refurbished and new pipe fittings. Therefore, for purposes of this final determination, Karmen's CV includes only those costs allocable to new pipe fittings.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See* 19 CFR 353.60.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent using standard verification procedures, including the examination of relevant sales, cost and financial records, and selection of original source documentation.

Interested Party Comments

Comment 1: Karmen and Sivanandha argue that they are not related parties for purposes of this antidumping duty investigation. They contend that, although one individual has a common interest in both companies, in all other respects the two companies are separate.

Petitioner disagrees with respondents' argument. It states that, although the Department verified that Karmen and Sivanandha are separate legal entities, the relationship between the two companies satisfies many of the criteria considered by the Department when deciding whether to ''collapse'' companies.

DOC's Position: We agree with respondents. In general, Commerce will not consider parties related where the ownership interest is less than five percent. *See, e.g.,* Certain Forged Steel Crankshafts from Japan, 52 FR 36984 (1987). This is consistent with Commerce's ''general practice not to collapse related parties except in certain relatively unusual situations, where the type and degree of relationship is so significant that we find there is a strong possibility of price manipulation.'' Antifriction Bearings (Other Than Tapered Roller Bearings: and Parts Thereof from Germany, 54 FR 18992, 19089 (1989). Based on Karmen's supplemental response and our analysis at verification, we confirmed that the ownership between Karmen and Sivanandha is insignificant and that no other factors suggested a strong possibility of price manipulation. (*See* the February 16, 1995, Memorandum from Team to Barbara Stafford for a full discussion of our analysis of this subject.)

Comment 2: Karmen argues that it should be allowed to reduce its cost of manufacturing for the POI to account for the advance import license it purchased from the Indian government. Karmen notes that it originally purchased the license in order to import steel pipe for pipe fittings at duty-free prices. Karmen maintains that it did not use the import license but, instead, produced and exported the subject merchandise using higher-priced domestic pipe inputs. Because it can still import duty-free pipe under the license, Karmen argues that it should be allowed to reduce its production costs by an amount representing the estimated future savings on imported pipe used to manufacture pipe fittings.

Petitioner argues that we should not reduce Karmen's production costs by the potential savings on future duty free imports. Petitioner states that in calculating constructed value, the Department uses the cost of materials incurred at a time preceding the date of exportation of the subject merchandise. Also, the Department's CV questionnaire clearly states that the respondent is to report costs incurred during the POI for purposes of constructed value. Petitioner further claims that the advance license held by Karmen was not used during the POI and, therefore, the future potential savings, if they are realized, will affect costs after the date of exportation of the subject merchandise. Finally, petitioner argues that if the license is used in the future, the effect of the license on Karmen's costs of manufacturing would be taken into account in a future administrative review.

DOC's Position: We believe that the advance import license provides a benefit to Karmen which accrued to the company during the POI due to the fact that it met its export commitment under the license through the use of domestically-purchased pipe inputs. In this case, the benefit from the license relates directly to production and sale of the subject fittings during the POI. Thus, in order to achieve an appropriate matching of production costs and sales revenues for the subject merchandise, we have offset material costs by an amount representing the benefit obtained from the unused import license.

Comment 3: Petitioner argues that the Department should not adjust Karmen's material costs by the income generated by sales of scrap, because subcontractors to Karmen retain the scrap and presumably lower their prices to Karmen to reflect the value of the scrap.

DOC's Position: The Department verified that Karmen permits its subcontractors to keep all scrap generated from the production processes they perform. Hence, Karmen did not sell any scrap during the POI and is not entitled to the scrap adjustment it claimed. We agree with petitioner that the value of the scrap is likely accounted for in the price the subcontractors charge Karmen. Therefore, allowing the adjustment claimed by Karmen would double count the value of scrap.

Comment 4: Regarding the salary of its director, Karmen argues that since the director is an owner, his income is a partner's draw and should not be included in Karmen's total salary expense. Respondent also contends that if the Department determines that the draw must be included in SG&A costs, the Department should only include the amount of the draw that would be comparable to a reasonable salary for management.

Petitioner argues that the director's entire salary should be included as a cost because it is treated as a cost by Karmen in its financial statements and in calculating taxable income. Also, petitioner contends that there is no factual basis by which the Department can establish an amount that would be reasonable salary for management.

DOC's Position: We agree with petitioner. During verification, we discovered that Karmen did not include its director's salary in its reported costs. Karmen's director is not a passive investor; he takes an active role in the company's management. Moreover, the payments made to him during the POI were classified as salary in Karmen's books and records. There is no evidence on the record to indicate that these payments were for anything other than salary. Accordingly, we included the full amount paid to the director in SG&A costs for purposes of the final determination.

Comment 5: Karmen argues that the Department should use verified information to allocate Karmen's labor and variable overhead costs between the pipe fittings it refurbishes and the pipe fittings it manufactures. Respondent further contends that the Department should allocate certain other costs, such as grinding and painting, to both types of fittings since these costs were incurred on both types of pipe fittings.

Petitioner agrees that allocation of a portion of verified costs to refurbished fittings may be appropriate. However, petitioner disagrees that the Department should allocate any expenses for grinding to refurbished pipe fittings because Karmen has not previously indicated that any grinding is involved in the refurbishing process. Petitioner contends that grinding is associated with the beveling process, which is a production step performed before Karmen acquires the rusty pipe fittings.

DOC's Position: The Department verified that shotblasting, punching, painting and grinding costs were incurred by Karmen to refurbish certain of its pipe fittings. Therefore, the Department has allocated a portion of these expenses to the cost of the refurbished fittings.

Comment 6: Karmen argues that SG&A should be allocated to refurbished and manufactured pipe fittings on the basis of weight. Since there are no material costs associated with the refurbished pipe, an allocation based on cost of goods sold would assign too great an amount to manufactured pipe fittings.

Petitioner argues that the Department should deny Karmen's request to allocate SG&A costs by weight instead of cost. Petitioner contends that it is the Department's practice to calculate SG&A costs as a percentage of cost of sales. Petitioner further contends that with respect to the refurbished fittings, Karmen does not manufacture or ''sell'' these fittings. Because Karmen contributes so little value to the refurbished fittings, using product weight to allocate SG&A is plainly distorting.

DOC's Position: We have determined that SG&A expenses should be allocated based on cost of sales rather than on the weight of finished pipe fittings. However, since there are no material costs associated with the refurbished fittings and hence, no material costs were reflected in these ''sales'', we removed material costs related to the manufactured fittings from cost of sales in order to establish an equitable allocation.

Comment 7: Karmen claims that, although not mentioned in the CV verification report, company officials demonstrated at verification that certain indirect selling expenses had been overstated in the CV calculations. Correct amounts were provided and verified.

Petitioner claims that there is no evidence of this on record, and that the original amount should be used.

DOC's Position: Although we did not address this issue in our verification report, respondent is correct in stating that we verified Karmen's actual amount of indirect selling expenses for the POI. Additionally, there is information on the record of this investigation which supports Karmen's verified indirect selling expenses. The source document supporting this expense is in Exhibit 10 of the CV verification report.

Comment 8: Petitioner argues that the Department should use the verified packing cost information for Karmen instead of the reported amount for the final determination. Petitioner also argues that the Department should use the best information available (BIA) for Karmen's foreign inland freight expenses, since Karmen did not provide the supporting documentation requested by the Department.

Karmen argues that although it did not produce supporting documentation for its foreign inland freight expense, the Department should not resort to BIA. Respondent contends that, because the general accuracy of Karmen's responses was established at verification, the Department should use the data ascertained at verification.

DOC's Position: As stated in the Fair Value Comparisons section of this notice, we made revisions to Karmen's data, where appropriate, based on verification findings. Therefore, we have adjusted Karmen's data for packing costs based on verification.

Because Karmen did not provide source documentation for its foreign inland freight expense, we have used as BIA, the highest Indian truck freight rates as provided in a cable from the U.S. embassy in Bombay dated August 3, 1993.

Comment 9: Petitioner claims that we should apply total BIA to Sivanandha because the Department's verification revealed numerous discrepancies in Sivanandha's responses. (The specific discrepancies raised by petitioner are addressed in comments 10 through 17, below.)

Sivanandha refutes each of the discrepancies listed by petitioner and argues that total BIA is inappropriate. (*See,* comments 10 through 17 for Sivanandha's counter arguments.)

DOC's Position: We have determined to accept Sivanandha's verified information because the discrepancies discovered were minor in nature. Overall, Sivanandha's responses were accurate and presented a true picture of its manufacturing and selling processes.

Comment 10: Petitioner argues that certain home market sales reported by Sivanandha as subject merchandise (*i.e.,* seamless carbon steel butt-weld pipe fittings), were sales of welded pipe fittings, which are outside of the scope of this investigation. Petitioner contends that sales of welded pipe fittings that were actually filled with pipe fittings made of seamless pipe cannot be considered as occurring in the ordinary course of trade.

Sivanandha argues that these sales were within the ordinary course of trade and that it correctly reported all sales of the subject merchandise.

DOC's Position: We verified that all of Sivanandha's home market sales were produced using seamless carbon steel. Therefore, we agree with Sivanandha that these sales are properly included in the home market database. Although customers requested welded pipe, the orders were filled with seamless pipe. Since we are investigating sales of seamless pipe to the United States, the home market sales in question should be included for comparison purposes. While we are authorized to exclude sales not in the ordinary course of trade (*e.g.,* trial sales or sales of samples), there is no basis for treating Sivanandha's seamless pipe sales as outside the ordinary course of trade.

Comment 11: Petitioner claims that the product weights were not verified because Sivanandha used standard weights instead of actual weights. Petitioner argues that the standard

weights were not acceptable because the correlation between standard and actual weights was no better than 93 percent.

Sivanandha argues that it was appropriate to use standard weights because most invoices did not list actual weights. According to Sivanandha the 93 percent correlation between actual and standard weights derived at verification supports, rather than undermines, the use of standard weights.

DOC's Position: We disagree with petitioner that Sivanandha's use of standard weights was unreasonable. The 93 percent correlation between actual and standard weights demonstrates the reasonableness. Moreover, even if we were to adjust for the seven percent ''discrepancy'' it would have no effect on the amounts allocated to each size of pipe fitting because Sivanandha used the same methodology for both its home market and U.S. sales.

Comment 12: Petitioner states that Sivanandha did not provide documentation for the cost of gunny bags. Therefore, petitioner argues that packing was not verified. Petitioner also states that Sivanandha did not report any labor costs for packing pipe fittings sold in the home market.

Sivanandha claims that the cost of gunny bags was verified. It also contends that the failure to report the cost of labor for packing home market sales is to its detriment. As a practical matter, Sivanandha points out that there is virtually no labor cost for home market packing since there is no crating on home market sales.

DOC's Position: Normally, the Department applies BIA whenever respondents are unable to support at verification the information provided in their responses. Although Sivanandha failed to provide at verification documentation supporting the cost of gunny bags, the Department is not compelled to apply BIA because the company's overall responses were accurate and verified, and the plausible cost of such bags is very low. Absent alternative publicly available information with respect to the cost of gunny bags, the Department has used the price reported by Sivanandha.

Comment 13: Petitioner lists the following problems with the difference in merchandise adjustment submitted by Sivanandha: incorrect product codes, standard versus actual weight of steel, average price for steel versus price for specific grades of steel, discrepancies in the manner in which Sivanandha reported its labor and variable overhead expenses. Petitioner argues that these problems led the Department to request that Sivanandha resubmit its home market and U.S. sales databases.

Sivanandha admits that it originally did not understand the Department's methodology regarding this adjustment. However, Sivanandha argues that the information was corrected at verification. Therefore, Sivanandha argues that the Department should accept these new verified databases.

DOC's Position: At verification, we discovered that the Sivanandha had not understood the Department's adjustment for differences in merchandise. However, the information required to correct Sivanandha's adjustment was readily available and we verified it. Sivanandha submitted new section B and C databases after verification, and we confirmed that they were identical to the information verified. Therefore, we are accepting Sivanandha's corrected databases.

Comment 14: Petitioner describes other discrepancies pertaining to adjustments for inland freight, credit, bank guarantees, ocean freight, marine insurance, foreign inland freight, and containerization.

Sivanandha claims that many of the costs were estimated because Sivanandha had not yet exported the merchandise to the United States. Also, certain of the discrepancies listed by petitioner were minute fractions of a cent, due to rounding errors. Sivanandha argues that company officials made every effort to supply the verification team with accurate information.

DOC's Position: We view the discrepancies described by petitioner as minor and are using the verified information. We agree with Sivanandha that the company cooperated fully with the Department's investigation and verification.

Comment 15: Petitioner claims that the sum of material, labor, and variable overhead is incorrect in Sivanandha's database, and is concerned that there are additional problems with the November 29, 1994 databases. Therefore, petitioner argues that these databases should not be used and that the Department should use BIA.

DOC's Position: The Department noted that the data was correct, but the program was missing one formula. The Department entered the correct formula, and the spreadsheet is accurate. The Department is accepting these databases for the final determination because we have checked that they match the data we verified.

Comment 16: The petitioner claims that by using the new submission the difference in merchandise adjustment for several sales exceed the 20 percent rule. Hence, for these sales, constructed value should be used.

Sivanandha believes that the petitioner's claim is incorrect. Moreover, according to Sivanandha, petitioner's allegation that the Department should use CV in these sales is untimely.

DOC's Position: Using the November 29, 1994 databases, we have determined that no difference in merchandise adjustments exceeded 20 percent. This issue is therefore moot.

Comment 17: Petitioner claims that the circumstance of sale adjustment for advertising in the home market should not be allowed because the advertising is aimed at Sivanandha's customers, not the customers' customer. Petitioner also argues that the adjustment for quality inspections should not be allowed because, even though the charge appears on the invoice, it is separate from the cost of the merchandise and, therefore, not embedded in the price.

Sivanandha claims that it would be inappropriate to ignore these adjustments because these costs were incurred solely on the home market sales and, therefore, increased the price of the home market sales. Additionally, Sivanandha claims that the quality inspections are performed only if the customer requests the services. The price charged is higher because the cost of the inspection is included in the price reported by Sivanandha.

DOC's Position: We agree with the petitioner that we should not adjust Sivanandha's home market sales for advertising expenses because the costs were not directed to the customers' customer. However, we agree with Sivanandha that we should make an adjustment to its home market prices for technical services when the inspection was performed by a third party because we verified that these costs were included in Sivanandha's price.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of butt-weld pipe fittings from India, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after October 4, 1994.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market values of the subject merchandise exceed the United States prices as shown below. The suspension of liquidation will remain in effect until

further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin (percent)	Deposit (percent)
Karmen Steels of India	1.69	1.69
Sivanandha Pipe Fittings, Ltd	13.99	10.83
All Other	7.84	6.26

Adjustment of Deposit Rate for Countervailing Duties

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that ''[no] product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation for dumping or export subsidization.'' This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no basis to require a cash deposit or bond for that amount.

Accordingly in this investigation, because Sivanandha's FMV is based on home market sales, the antidumping margin must be adjusted. In the concurrent Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings from India, we determined that Sivanandha's export subsidy was 3.16 percent *ad valorem*, which will be subtracted from the margins for cash deposit or bonding purposes. This results in a deposit rate of 10.83 percent for Sivanandha. Since Karmen only has U.S. sales, its FMV is based on CV which reflects export subsidies. Because the export subsidies were reflected in both USP and FMV, the subsidies did not affect the margin calculations using CV.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated preliminary dumping margins, as shown above. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notice to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1671(d)).

Dated: February 16, 1995.

Barbara R. Stafford,

Deputy Assistant Secretary for Investigations.

[FR Doc. 95–4723 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–DS–P

(A–557–808)

Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas McGinty, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5055.

Final Determination

The Department of Commerce (the Department) determines that certain carbon steel butt-weld pipe fittings (''pipe fittings'') from Malaysia are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Scope of Investigation

The merchandise covered by this investigation are certain carbon steel butt-weld pipe fittings (''pipe fittings'') having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include ''elbows,'' ''tees,'' ''caps,'' and ''reducers.'' The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accomodate the ''bead'' of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* (''HTSUS'').

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is September 1, 1994, through February 28, 1994.

Case History

Since the announcement of the preliminary determination on September 27, 1994, the following events have occurred.

On October 4, 1994, we published the notice of preliminary determination in the Federal Register (59 FR 50560). On October 20, 1994, White & Case submitted a notice of appearance on behalf of the Government of Malaysia.

On November 14, 1994, we published the postponement of final determination in the Federal Register (59 FR 56461).

Petitioner was the only interested party to file a case brief in this investigation. Petitioner did so on January 23, 1995.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information available (BIA) is appropriate for Malaysia Mining Corporation Pipe & Fitting Sdn Bhd (MMCPNF), the Malaysian company identified by both petitioner and the U.S. Embassy in Malaysia (by cable to the Department) as the primary exporter of the subject merchandise to the U.S during the POI. Given that MMCPNF did not respond to the Department's questionnaire, we find the company has not cooperated in this investigation.

Our BIA methodology for uncooperative respondents is to assign the higher of the highest margin alleged in the petition or the highest rate calculated for another respondent. Accordingly, as BIA, we are assigning the highest margin among the margins alleged in the petition, adjusted for methodological errors as explained in the Department's initiation notice. *See Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany* (54 FR 18992, 19033, May 3, 1989). The Department's methodology for assigning BIA has been upheld by the U.S. Court of Appeals of the Federal Circuit. (*See Allied Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993)); *see also Krupp Stahl, AG et al. v. United States*, 822 F. Supp. 789 (CIT 1993)).

Critical Circumstances

Petitioner has alleged that critical circumstances exist with respect to imports of the subject merchandise from Malaysia. Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist if:

(A)(i) There is a history of dumping in the U.S. or elsewhere of the class or kind of merchandise which is the subject of this investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of this investigation over a relatively short period.

Since MMCPNF did not respond to our August 12, 1994, letter requesting export shipment information, we determine, as BIA, pursuant to section 776(c) of the Act, that critical circumstances exist with respect to imports of pipe fittings from Malaysia.

Suspension of Liquidation

In accordance with section 735(d)(1) of the Act (19 U.S.C. 1673b(d)(1)), we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of pipe fittings from Malaysia, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after July 6, 1994, (*i.e.*, 90 days prior to the date of publication of our preliminary determination in the Federal Register). The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/Producer/Exporter	Weighted average margin percent
All Companies	194.70

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry within 45 days.

If the ITC determines that material injury or threat of material injury does not exist, the proceedings will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on pipe fittings from Malaysia entered or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: February 16, 1995.

Barbara R. Stafford

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–4720 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE.

International Trade Administration

[A–580–824]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From South Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Peter Wilkniss, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0588.

Final Determination

The Department of Commerce (the Department) determines that certain carbon steel butt-weld pipe fittings (''pipe fittings'') from South Korea are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Scope of Investigation

The merchandise covered by this investigation are certain carbon steel butt-weld pipe fittings (''pipe fittings'') having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-Weld fittings come in a variety of shapes which include ''elbows,'' ''tees,'' ''caps,'' and ''reducers.'' The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accomodate the ''bead'' of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* (''HTSUS'').

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is September 1, 1994, through February 28, 1994.

Case History

Since the announcement of the preliminary determination on September 27, 1994, the following events have occurred.

On October 4, 1994, we published the notice of preliminary determination in the Federal Register (59 FR 50560).

On October 13, 1994, pursuant to section 353.20(b)(1) of the Department's regulations, the Embassy of the Republic of Korea, on behalf of the South Korean producers and exporters of pipe fittings, requested that the final determination in this case be postponed. On November 14, 1994, we published the postponement of final determination in the Federal Register (59 FR 56461).

Petitioner was the only interested party to file a case brief in this investigation. Petitioner did so on January 23, 1995.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the

use of best information available (BIA) is appropriate for Taekwang Bend Ind. Co., Inc. (Taekwang), the South Korean company which accounts for more than 60 percent of all exports of the subject merchandise to the U.S. during the POI. Because Taekwang did not respond to the Department's questionnaire, we find that it did not cooperate in this investigation.

Our BIA methodology for uncooperative respondents is to assign the higher of the highest margin alleged in the petition or the highest rate calculated for another respondent. Accordingly, as BIA, we are assigning the highest margin among the margins alleged in the petition and subsequent amendments to the petition, adjusted for methodological errors as explained in the Department's initiation notice. *See Final Determination of Sales At Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany* (54 FR 18992, 19033, May 3, 1989). The Department's methodology for assigning BIA has been upheld by the U.S. Court of Appeals of the Federal Circuit. (*see Allied Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993)); *see also Krupp Stahl, AG et al. v. United States*, 822 F. Supp. 789 (CIT 1993)). The assigned BIA margin is the same margin that was assigned for the preliminary determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, (19 U.S.C. 1673b(d)(1)), we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of pipe fittings from South Korea, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/Producer/Exporter	Weighted average margin percent
All Companies	207.89

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry within 45 days.

If the ITC determines that material injury or threat of material injury does not exist, the proceedings will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on pipe fittings from South Korea entered or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: February 16, 1995.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–4719 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–549–809]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Julie Anne Osgood, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2815 or 482–0167, respectively.

Final Determination

We determine that certain carbon steel butt-weld pipe fittings exported by Awaji Sangyo (Thailand) Co., Ltd. (AST), from Thailand are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the ''Act''). The estimated margin is shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the publication of the preliminary determination in the Federal Register on October 4, 1994 (59 FR 50568), the following events have occurred:

On November 14, 1994, we published in the Federal Register a notice postponing the publication of the final determination in this case until February 16, 1995 (59 FR 56461). From October 20 to October 26, 1994, we verified the sales information of AST at its offices in Samutprakarn, Thailand. From December 2 to December 6, 1994, we verified AST's cost of production and constructed value data. On January 23 and January 30, 1995, petitioner and respondent submitted case and rebuttal briefs to the Department. A public hearing in this investigation was held on February 6, 1995.

We note that all other producers and exporters of the subject merchandise in Thailand, which export to the United States, are subject to an antidumping duty order currently in effect for this merchandise. (See 57 FR 29702, July 6, 1992.) AST was excluded from this order because in the previous investigation, the Department found its margin of sales at less than fair value at that time to be *de minimis.*

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed of forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.,* threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include ''elbows,'' ''tees,'' ''caps,'' and ''reducers.'' The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the ''bead'' of

the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is September 1, 1993, through February 28, 1994.

Such or Similar Comparisons

In making our fair value comparisons, in accordance with the Department's standard methodology and section 771(16) of the Act, we first compared sales of merchandise identical in all respects. If no identical merchandise was sold, we compared sales of the most similar merchandise, as determined by the model-matching criteria contained in Appendix V of the questionnaire (''Appendix V'') (on file in Room B–099 of the main building of the Department of Commerce (''Public File'')).

Fair Value Comparisons

To determine whether AST's sales for export to the United States were made at less than fair value, we compared the United States price (''USP'') to the foreign market value (''FMV''), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice. For those U.S. sales compared to sales of similar merchandise, we made an adjustment, pursuant to 19 CFR 353.57 (1994), for physical differences in the merchandise. Regarding level of trade, AST reported that it sells to an importer/distributor in the United States and directly to distributors, end users, and a commissionaire agent in Thailand. AST negotiates prices on a sale-by-sale basis and states that it is unable to discern any correlation between selling prices and customer categories. Further, AST states that its selling expenses do not vary by customer category. We examined this issue at verification and found no evidence that AST's prices or conditions of sale differed on the basis of level of trade. Therefore, in keeping with established practice (*see, e.g., Final Results of Administrative Review: Antifriction Bearings and Parts Thereof from the Federal Republic of Germany, et al.* (56 FR 31692, 31709–11; July 11, 1991) and Import Administration Policy Bulletin 92/1, Matching at Levels of Trade, issued on July 29, 1992), and in accordance with 19 CFR 353.58, we have compared AST's U.S. sales to its home market sales to all customers.

We made revisions to AST's reported data, where appropriate, based on findings at verification.

United States Price

Because AST's U.S. sales of certain carbon steel butt-weld pipe fittings were made to an unrelated distributor in the United States prior to importation, and the exporter's sales price methodology was not indicated by other circumstances, we based USP on the purchase price (''PP'') sales methodology in accordance with section 772(b) of the Act.

We calculated PP based on packed, c.i.f. import prices to an unrelated customer in the United States. We made deductions from the U.S. price for foreign brokerage, foreign inland freight, ocean freight and marine insurance.

We made an adjustment to U.S. price for the consumption tax paid on the comparison sales in Thailand, in accordance with our practice, pursuant to the Court of International Trade (CIT) decision in *Federal-Mogul, et al v. United States,* 834 F. Supp. 1391. *See Preliminary Antidumping Duty Determination and Postponement of Final Determination; Color Negative Photographic Paper and Chemical Components Thereof from Japan,* 59 FR 16177, 16179, April 6, 1994, for an explanation of this tax methodology. In accordance with section 772(d)(1)(B) of the Act, we made an addition to the U.S. price for the amount of import duties imposed on inputs which were subsequently rebated upon exportation of the finished merchandise to the United States. (See Comment 2, below.)

Upon exportation of finished pipe fittings, AST receives a drawback of import duties, which is greater than the import duties that would have been assessed had the fittings been sold for home consumption. In our calculation of USP, we limited the addition for drawback to the amount of duties that would have been assessed had the goods been sold in the home market. This approach is consistent with section 772(d)(1)(B) of the Act, which provides that the USP shall be increased by the drawback of any import duties ''imposed in the country of exportation which have been rebated or not collected by reason of exportation of the merchandise to the United States.'' Therefore, we have capped the amount added to USP at the level of the import duties imposed in the country of exportation.

For U.S. sales which had not been shipped and for which payment had not been received, we based AST's credit expense on the average number of days outstanding between shipment and payment for AST's U.S. sales with reported shipment and payment dates. For a discussion of the Department's treatment of the appropriate interest rate to use in the calculation of credit in this investigation, see *Memorandum from Barbara R. Stafford to Susan G. Esserman* (September 26, 1994) on file in room B–099 of the U.S. Department of Commerce.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. On this basis, we determined that the home market was viable.

For purposes of calculating FMV, we used AST's sales to its home market customers and constructed value (CV), as described below.

Cost of Production

Petitioner alleged that AST made home market sales during the POI at prices below the cost of production (COP). Based on petitioner's allegation and other information on the record, we concluded that we had the requisite reasonable grounds to believe or suspect that sales were made below COP. Thus, in accordance with section 773(b), we initiated a cost investigation.

In order to determine whether home market prices were below COP within the meaning of section 773(b) of the Act, we performed a product-specific cost test, in which we examined whether each product sold in the home market during the POI was priced below the COP of that product. We calculated COP based on the sum of AST's cost of materials, direct labor, variable and fixed factory overhead, general expenses, and packing, in accordance with 19 CFR 353.51(c). For each product, we compared this sum to the home market unit price, net of movement expenses and commissions.

With the following exceptions, we relied on submitted and verified COP information. Material costs were modified to reflect only the cost of seamless pipe used in manufacturing the subject merchandise, rather than a pipe cost which included not only seamless pipe for fittings within the scope, but also for fittings outside the scope, and for welded pipe fittings. Also, we used an interest cost based on the combined interest cost of AST and

its parent, ASK, rather than one based on AST's interest costs alone.

Section 773(b) of the Act requires us to examine whether below cost sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade.

For each product where less than ten percent, by quantity, of the home market sales during the POI were made at prices below COP, we included all sales of that model for the computation of FMV. For each product where ten percent or more, but less than 90 percent, of the home market sales during the POI were priced below COP, we disregarded those home market sales which were priced below COP for purposes of calculating FMV, provided that the below-cost sales of that product were made over an extended period of time. Where we found that more than 90 percent of respondent's sales were at prices below COP, and such sales were over an extended period of time, we disregarded all sales of that product for purposes of calculating FMV.

In order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in fewer than three months during the POI, we did not exclude sales unless there were below cost sales in each month of sale. If a product was sold in three or more months, we did not exclude the below-cost sales unless there were below-cost sales in at least three months during the POI.

If sales below cost occurred in three or more months of the POI, they are considered to be made over an extended period of time. When items are sold in just two or three months of the POI, we would consider below cost sales of these items to be over an extended period of time, if they occurred in at least two months of the three months. When items are sold in just one month of the POI, we would consider any below cost sales of these items to be over an extended period of time. (*See Final Determination of Sales at Less Than Fair Value: Saccharin from Korea* (59 FR 58826, November 15, 1994); and *Preliminary Results and Partial Termination of Antidumping Administrative Review: Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof* (58 FR 69336, 69338, December 10, 1993)). AST provided no evidence that the disregarded sales were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade. (*See,* Section 773(b)(2).

Constructed Value

In accordance with section 773(e), we calculated CV based on the sum of the cost of materials (with adjustments as described in the ''Cost of Production'' section of this notice), fabrication, general expenses, U.S. packing costs and profit. The cost of materials included import duties paid on imported seamless pipe used to produce the pipe fittings. The amount of import duties included in CV was equivalent to the duties that would have been imposed had the fittings been sold for home consumption. In accordance with section 773(e)(1)(B)(i) and (ii) of the Act we: 1) included the greater of AST's reported general expenses or the statutory minimum of ten percent of the cost of manufacture (COM), as appropriate; and 2) for profit, we used the statutory minimum of eight percent of the sum of COM and general expenses because actual profit was less than the statutory minimum.

Price-to-Price Comparisons

For price-to-price comparisons, we calculated FMV based on packed, ex-factory or delivered prices to home market customers. From these prices, we deducted commission, where appropriate. We deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(1) of the Act. We also made adjustments, where appropriate, for differences in the physical characteristics of the merchandise in accordance with section 773(a)(1) of the Act.

In light of the Court of Appeals for the Federal Circuit's decision in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement V. United States,* 13 F.3d 398 (Fed. Cir., January 5, 1994), the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we adjust for those expenses under the circumstance-of-sale provision of 19 CFR 353.56(a) and the exporter's sales price offset provision of 19 CFR 353.56(b)(2), as appropriate. Accordingly, in the present case, we deducted post-sale home market movement charges from the FMV under the circumstance-of-sale provision of 19 CFR 353.56(a). This adjustment included home market inland freight.

For both price-to-price comparisons and comparisons to CV, we also made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, pursuant to 19 CFR 353.56(a)(2). In accordance with 19 CFR 353.56(b)(1), we added U.S. indirect selling expenses as an offset to the home market commission, but capped this addition by the amount of the home market commission.

We adjusted for a consumption tax collected in the Thai home market. (*See* the United States Price section of this notice, above.)

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See* 19 C.F.R. 353.60.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent using standard verification procedures, including the examination of relevant sales, cost and financial records, and selection of original source documentation. The public versions of the November 29, 1994, and the January , 1995 verification reports are available for review in the Central Records Unit located in room B–099 of the Department's main building, the Herbert C. Hover Building.

Interested Party Comments

Comment 1

Petitioner observes that according to AST's response, it did not commence integrated production of tees in Thailand until after the POI. However, tees were shipped during the POI. Petitioner claims that these tees must be of Chinese origin because AST identified certain other tees sold during the POI as being of Chinese origin. Petitioner argues that, because the tees in question could not have been produced by AST, the Department should exclude sales of these tees from the investigation.

AST maintains that it has correctly identified all of the Chinese tees which it sold in the home market during the POI. Moreover, AST points out that it indicated in its response that it began a lengthy testing of its integrated production of tees during the POI. AST claims that a limited quantity of tees was produced from these test runs and was sold in the home market. Therefore, AST argues that it properly included these sales in its home market sales listing.

DOC Position

While there are statements in AST's response that would support petitioner's

conclusion, AST's Section D response does refer to a lengthy testing period commencing during the POI. In addition, AST's July 25, 1994, supplemental response in Exhibit 1 specifically identifies certain tees as Chinese tees and the remaining as tees being produced by AST, including certain tees which were shipped during the POI. Because AST identified the Chinese tees in Exhibit 1 of its July 25 response and because the quantity of tees shipped during the POI is commensurate with production over a prolonged test run, we have accepted these tees as tees produced by AST and have included them in the home market data base.

Comment 2

Petitioner claims that the duty drawback amount added to purchase price was greater than the drawback amount included in the constructed value, because the drawback amount added to purchase price included both import duty and value added tax (VAT) paid on purchases of imported pipe, whereas the drawback added to constructed value included only the import duty.

AST maintains that the Department properly excluded the VAT on component material from the constructed value, because AST received a rebate of this VAT upon exportation of the finished product. Section 773(e)(1)(A) of the Act states, in part, that constructed value shall include the cost of materials exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials were used. Therefore, AST contends that the VAT on component materials was properly excluded in the calculation of CV.

DOC Position

In accordance with the section 773(e)(1)(A) of the Act, our practice is to exclude indirect taxes on component materials from CV, if the taxes are rebated upon export. Once we have excluded the VAT on component materials from the constructed value, we must also exclude it from the USP because section 772(d)(1)(C) the Act requires that we add internal taxes to USP but only to the extent that these taxes are included in the FMV. When FMV is based on CV, no VAT is included in CV and we are, thus, precluded from adding VAT to the USP.

Comment 3

AST states that following the rationale of section 773(e)(1)(A), the Department should also not include the import duties on component materials in constructed value because this duty is also either refunded upon export or an exemption of the duty is granted by reason of exportation of the merchandise.

DOC Position

Section 773(e)(1)(A) directs the Department to exclude from constructed value internal taxes applicable in the country of exportation but rebated upon export. We do not consider import duties to be internal taxes. The courts also have recognized that the term ''internal tax'' denotes taxes other than import duties. *See Serampore Indus. Pvt. Ltd. v. United States Dep't of Commerce, Int'l Trade Admin.,* 675 F. Supp. 1354, 1357 (CIT 1987). Therefore, in accordance with past practice (*see, e.g., Offshore Platform Jackets and Piles from the Republic of Korea,* 51 FR 11,795, 11,796 (April 7, 1986)), we have included the import duties on component materials as part of the cost of materials in our calculation of constructed value.

Comment 4

AST states that in July 1992, it was excluded from the July 6, 1992 antidumping duty order on pipe fittings from Thailand (57 FR 29702) because its less than fair value margins were *de minimis.* In view of this fact, AST maintains that the Department should have applied a more rigorous standard in determining whether to initiate an investigation in this case and that, had it done so, the case never would have been initiated. Contrary to suggestions in the petition, AST argues that there was no basis to assume that AST's costs had increased by 100 percent in two years, or that U.S. prices showed significant movement during that time. Therefore, the Department should re-examine its initiation and terminate the instant proceeding.

Petitioner maintains that nothing in the statute bars the filing of an antidumping petition against a specific exporter merely because other exporters of the same product from the same country are already subject to an antidumping duty order, nor does the statute impose a higher burden on petitioner in such circumstances. Because the proceeding was lawfully initiated, no basis exists for questioning the Department's decision to initiate.

DOC Position

The fact that a petition on the same merchandise was filed in 1991 and AST was excluded from the subsequent antidumping duty order was not taken into account in our decision to initiate the current case. A finding at one point in time that a company is not dumping does not create a presumption that the company will not dump in the future. Lacking such a presumption, there is no basis for applying a higher initiation threshold for later filed cases on the same merchandise.

Comment 5

AST claims that the Department should apply the sales-below-cost test to all sales of such or similar merchandise on a combined basis, before applying it on a model-specific basis. This was the approach used in the prior investigation of the subject merchandise (*Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand,* 57 FR 21065, 21070, May 18, 1992).

AST points out that the viability test required by section 773(a) of the Act is done on a such or similar category basis. AST maintains that section 773(b) of the Act, in discussing sales below cost, makes reference to section 773(a). Therefore, the test for below cost sales should also be done on a such or similar category basis.

Further, the language in section 773(b) suggests that the cost test be applied on a such or similar category basis rather than on a model-specific basis. Section 773(b) requires the Department to determine whether ''sales were made at less than the cost of producing the merchandise.'' Because the term ''merchandise'' has a broader connotation than the term ''model'' or ''product, the cost test must be done on a such or similar category basis.

AST claims that the Department's Policy Bulletin 92/3, dated December 15, 1992, on the 10/90/10 test for below cost sales does not provide any basis for performing the cost test solely on a model-specific basis and bypassing the test on a such or similar category basis.

In addition, AST maintains that the legislative history of section 773(b) indicates that Congress intended that the Department consider the rationality of exporter's pricing practices, specifically by giving allowances for model-specific below cost sales at the end of a model year.

Finally, AST points out that it was excluded from the original antidumping duty order on butt-weld pipe fittings from Thailand, because its overall margin of sales at less than fair value

was *de minimis*. During the original investigation, the Department applied the two-tiered cost test and AST has continued to use this test to avoid the possibility of dumping margins. For the Department to apply a new test in this investigation is unfair.

Petitioner asserts that the Department's model-specific cost test is in full accord with the requirements and purpose of Section 773(b) of the Act because this test is the first step to be taken in determining FMV, which is based on sales of particular models or products.

Petitioner adds that the need for a model-specific cost test is particularly evident for a product like pipe fittings. Despite the fact that pipe fittings come in a wide range of sizes, only about 20 percent of the sizes account for about 80 percent of the fittings sold. Below cost sales of low-volume items in the home market might not be screened out by a cost test applied on a such or similar category basis. If these sales happen to be compared to high volume items sold for export to the United States, many less than fair value sales would go undetected. Clearly, the purpose of the cost test would be defeated by such an outcome.

DOC Position

In our final determination, we have adhered to the Department's Policy Bulletin 92/3, which provides that the cost test be done on a model-specific basis. Policy Bulletin 92/3 is in complete accordance with the statute and has been consistently applied by the Department for over two years. The Policy Bulletin states that the cost test is intended to avoid basing FMV on below cost sales. Because FMV is determined on a model-specific basis, the Department has chosen to apply the cost test on a model-specific basis, as well. Otherwise, for certain models, FMV would likely be calculated on below cost sales.

AST claims that because 773(b) of the Act contains a reference to 773(a), the Department is required to conduct the below cost sales test on the same basis as the market viability test. The such or similar viability test is a general test to determine the level of sales activity to determine the efficacy of spending resources in examination of those home market sales. The cost test, on the other hand, is designed to determine which market sales may be used for comparison purposes. Nothing in the statute, the regulations, or the legislative history suggests that tests for general home market activity and for sales below cost must be on the same basis. Because the purposes of the two tests are different and because the reference in section 773(b) to section 773(a) clearly does not compel the Department to use the same procedure for these tests, we followed Department policy and used the model-specific cost test.

AST's claim that use of the term ''merchandise'' in section 773(b) requires the Department to apply the cost test broadly is erroneous. The term ''merchandise'' is used throughout the statute, in some cases with a broad connotation and in others, in a narrower sense. For example, when the statute refers to ''the same general class or kind of merchandise,'' the connotation is broad and includes the entire class or kind of merchandise under investigation. However, when the statute defines ''such or similar merchandise,'' the connotation is narrow, referring to the particular model sold in the home market which is identical, or most similar to, a particular model sold for export to the United States. The fact that section 773(b) of the Act uses the term ''merchandise'' with respect to the cost test does not require us to apply the cost test on a broad basis.

AST claims that Policy Bulletin 92/3 does not provide any basis for ''bypassing'' a cost test using such or similar categories. The Department formulated Policy Bulletin 92/3 as a statement of its intent to implement uniformly a cost test methodology. The Policy Bulletin itself states that the Department's practice will be to apply the model-specific cost test in all future investigations and reviews. The Policy Bulletin need not explain ''bypassing'' the such-or-similar cost test because, to the extent that the such-or-similar test had been used in prior cases, it was no longer Department practice when the Department adopted the model-specific test advocated in the Policy Bulletin.

The Department uniformly has applied the model-specific cost test in both investigations and reviews since the bulletin was released. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Venezuela,* 58 FR 27522, 27533 (May 10, 1993); *Final Results of Antidumping Administrative Review: Sweaters, Wholly or Chiefly of Man Made Fiber, from Korea,* 59 FR 17513, 17515 (April 13, 1994)). Given these circumstances, AST had adequate notice as to Policy Bulletin 92/3's contents and that the Department would apply the model-specific cost test for all future investigations and administrative reviews.

Regarding the legislative history's reference to below-cost end-of-model-year sales, we note that this reference concerns whether below-cost sales are made over an extended period of time. The end-of-model-year sales are not relevant to a discussion of whether or not the cost test can be applied on a model-specific basis.

Comment 6

When AST imports seamless pipe under bond, it becomes liable for the normal duty of 15 percent, plus an additional surcharge of 3 percent, because the import is made under bond. AST states that it receives a rebate or an exemption upon export of finished pipe fittings of the surcharge, as well as the normal duty. Therefore, AST claims that, in accordance with section 772(d)(1)(B) of the Act, both duty and surcharge should be added to the USP.

Petitioner claims that AST has acknowledged that the three percent surcharge is not imposed on seamless pipe used to produce pipe fittings for home consumption. Section 772(D)(1)(c) provides for an increase in USP for taxes rebated upon export but only to the extent that such taxes are added to or included in the home market price. Because the surcharge is not imposed in the home market, the rebate of the surcharge on export should not be added to USP. In the alternative, if the Department determines that the three percent surcharge is imposed on imported pipe used to produce for home consumption, then it should include the full 18 percent duty in the COP.

DOC Position

During verification, we established that the three percent surcharge was imposed on seamless pipe used in the production of home market fittings, in addition to the normal 15 percent duty. Therefore, because both duty and surcharge are assessed on pipe used for home market production and because both are exempted on pipe used for export production, it is appropriate to include both the duty and the surcharge in the drawback amount added to USP. In addition, because both duty and surcharge are clearly a part of the cost of home market pipe fittings, we included both in our calculation of the cost of production.

Comment 7

AST maintains that the Department should not recompute AST's submitted COP and CV interest expense to account for the financing costs of its Japanese parent, Awaji Sangyo K.K. (''ASK''). According to AST, under Japanese generally accepted accounting principles (''GAAP''), only publicly-held companies are required to prepare consolidated financial statements that

include the operating results of their subsidiaries. Because ASK is a privately-held Japanese company and not required to prepare consolidated financial data under Japanese GAAP, AST argues that the Department should base COP and CV interest solely upon AST's audited (unconsolidated) financial statement information.

AST notes that the Department has a long-standing practice of accepting home-country GAAP for purposes of computing COP and CV, unless it can be shown that those practices distort production costs. In this case, AST maintains that use of a consolidated interest calculation would violate ASK's normal GAAP and produce distorted results since AST receives no loans from ASK and did not receive any new investment from its parent during the POI.

AST further asserts that despite ASK's ownership interest in AST, the parent company does not exert ''control'' over its subsidiary's operations. Instead, AST maintains that it operates independently from its parent and does not rely on ASK for its production, sales (other than export sales), engineering, financing, research and development, or management activities.

Lastly, AST argues that the premise underlying the Department's policy of using consolidated interest expense in computing COP and CV (*i.e.*, the fungible nature of invested capital) does not apply in this case. AST asserts that the presumption of easy transfer (fungibility) of money between parent and related affiliate is vitiated by the fact that ASK and AST are located in different countries, whose currency regulation requirements significantly impede the free flow of money between countries.

Petitioner alleges that AST has understated its COP and CV by excluding ASK's financing expense. Petitioner states that, because capital is fungible, the Department requires consolidated interest expense when the parent company maintains control over the subsidiary. ASK maintained control over AST's operations and, for this reason, the financing expenses of ASK and AST were combined in the Department's prior antidumping investigation involving AST. (*Final Determination of Sales at LTFV: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand,* 57 F.R. 21065–69 May 18,1992) Petitioner asserts that there is no reason for the Department to deviate from its approach in the previous determination.

DOC Position

We agree with petitioner and have based our calculation of AST's interest expense for COP and CV on the consolidated operations of AST and ASK. This methodology is consistent with our long-standing practice for computing interest expense in cases involving parent-subsidiary corporate relationships. This methodology has been upheld by the CIT in *Camargo Correa Metals, S.A. v. U.S.*, Consol. Ct. No. 91–09–00641, Slip Op. 93–163, at 14 (CIT August 13, 1993).

As petitioner has pointed out, AST has not provided us with any additional information that would lead us to change our determination, from the 1992 LTFV investigation of *Butt-Weld Pipe Fittings from Thailand,* that the company's interest should be computed based on the consolidated operations of AST and its parent, ASK. AST's argument that ASK is not required under Japanese GAAP to prepare consolidated financial statements ignores the fact that, as a privately-held corporation, ASK is not subject to the same set of accounting principles as publicly-held entities in Japan. As in most countries, one of the major objectives of Japanese GAAP is to ensure consistency in the accounting principles practiced by publicly-held corporations so that investors may make informed decisions as to how they invest their capital. There is no such objective under the Japanese Commercial Code which governs the accounting practices of privately-held companies like ASK. It should be noted, however, that were ASK a public company, certain information submitted by AST indicates that ASK would be required under Japanese GAAP to consolidate the operations of AST in its financial statements.

ASK's ownership interest in AST places the parent in a position to influence AST's financial borrowing and overall capital structure. We note that, contrary to AST's assertions that AST is an independent company and not ''controlled'' by its parent, the two companies share common directors and other corporate officials. In fact, according to AST, the two companies share the same managing director. ASK also acts as the selling agent for AST's export sales and provided the technology, equipment, training, engineers, and capital to establish AST. Based on this information, it is difficult to see how AST's operations are independent of its parent to such an extent that we should ignore our normal practice of computing interest expense on the basis of the consolidated parent and subsidiary.

Regarding AST's claim that it received no intercompany loans or additional capital investment from its parent during the POI, we note that this argument fails to take into consideration any borrowing costs associated with ASK's initial capital investment in the company. AST maintains that all interest expense incurred by ASK pertains solely to the parent's operations. Under this principle, AST would have us accept that its parent funds its own operations largely through borrowing while, at the same time, funding its initial investment in AST solely through equity capital. Such a principle ignores the fact that ASK's capital structure is comprised of both debt and equity and, as such, it is neither possible nor appropriate in our analysis for the company to pick and chose which portions of its parent's operations should incur the additional interest costs associated with borrowed funds.

Lastly, with regard to AST's claim that transfers between AST and its parent are not ''fungible'' due to currency fluctuations and restrictions on currency flows between Thailand and Japan, we note that this argument misrepresents the fungibility principle underlying the Department's practice regarding consolidated interest expense for COP and CV. As noted above, ASK has already purchased a controlling capital interest in AST. ASK's capital structure is comprised of both debt and equity. These monies are fungible. That is, one cannot reasonably know which portion of ASK's capital was used for a specific activity. AST would have us believe that ASK's debt-based capital was used to fund the company's production of nonsubject merchandise, while its less costly equity-based capital was used to establish AST's operations. This ignores the fact that the parent company's capital is used to fund all of its operations and cannot be segmented and apportioned to specific operations in any justifiable manner. Thus, it is the fungibility of the controlling parent's capital structure that is at issue and not, as AST argues, the parent's future ability to transfer funds to its subsidiary.

Comment 8

Petitioner contends that all subject fittings sold in the United States and the home market were made from seamless pipe. AST's submitted pipe costs, however, included welded pipe and pipe used to produce pipe fittings outside the scope of the investigation. Petitioner states that for purposes of the final determination, AST's raw material

costs should reflect only those costs attributable to seamless pipe used in manufacturing the subject merchandise.

AST states that its pipe consumption was calculated based on its normal accounting inventory subledgers which do not track welded and seamless pipe separately. Furthermore, the Department verified that welded pipe accounted for a small percentage of total pipe costs and the price of seamless pipe was not always higher than welded pipe. Therefore, AST argues that excluding welded pipe would not materially alter the weighted average cost of pipe used to produce the subject merchandise.

DOC Position

In computing COP and CV, it is the Departments's practice to include only those costs incurred in manufacturing the subject merchandise. Therefore, we adjusted AST's reported material costs to exclude the costs incurred for welded pipe and pipe inputs that were used to produce merchandise outside the scope of this investigation.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of butt-weld pipe fittings from Thailand, as defined in the ''Scope of Investigation'' section of this notice, that are produced and sold by AST and that are entered, or withdrawn from warehouse, for consumption on or after October 4, 1994.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of AST's subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margin is as follows:

Manufacturer/Producer/ Exporter	Margin percent	Deposit percent
Awaji Sangyo (Thailand) Co., Ltd.	38.41	37.67

Adjustment of Deposit Rate for Countervailing Duties

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that ''[no] product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation for dumping or export subsidization.'' This provision is implemented by section 772(d)(1)(D) of the Act. Because antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no basis to require a cash deposit or bond for that amount.

Accordingly, the level of export subsidies as determined in the most recent administrative review of the countervailing duty order, *Carbon Steel Butt-Weld Pipe Fittings From Thailand; Final Results of Countervailing Duty Administrative Review* (57 FR 5248, February 13, 1992), which was 0.74 percent, will be subtracted from the margin for cash deposit or bonding purposes. This results in a deposit rate of 37.67 percent for AST. We did not determine an ''all others'' rate in this investigation, because all other producers and exporters of butt-weld pipe fittings from Thailand are already subject to an antidumping duty order on this merchandise, which was published in the Federal Register on July 6, 1992 (57 FR 29702).

ITC Notification

In accordance with section 735(b) of the Act, we have notified the ITC of our determination.

Notice to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1671(d)).

Dated: February 16, 1995.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–4727 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–816]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Todd Hansen, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–0167 or 482–1276, respectively.

Final Determination

We determine that certain carbon steel butt-weld pipe fittings from the United Kingdom are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the ''Act''). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the publication of the preliminary determination in the Federal Register on October 4, 1994 (59 FR 50571), the following events have occurred:

On October 3, 1994, pursuant to the Department's regulations (19 CFR 353.20(b)(1) (1994)), BKL Fittings, Ltd. (''BKL''), requested that the final determination in this case be postponed. On November 14, 1994, the Department published in the Federal Register a notice postponing the final determination in this case until February 16, 1995 (59 FR 56461). From November 21 through 23, and November 29 and 30, 1994, we verified the further manufacturing operations and exporter's sales price information of BKL's related entity in Union, New Jersey. From December 12 through 23, 1994, we verified BKL's responses to the Department's antidumping duty questionnaire at company headquarters in Redditch, England. On January 23 and 30, 1995, petitioner and respondent submitted case and rebuttal briefs to the Department. The Department held a public hearing in this investigation on February 2, 1995.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings (''pipe fittings'') having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which includes ''elbows,'' ''tees,'' ''caps,'' and ''reducers.'' The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the ''bead'' of the weld

which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is September 1, 1993, through February 28, 1994.

Such or Similar Comparisons

In making our fair value comparisons, we first compared sales of merchandise identical in all respects, in accordance with the Department's standard methodology. If no identical merchandise was sold, we compared sales of the most similar merchandise, as determined by the model-matching criteria contained in Appendix V of the questionnaire (''Appendix V'') (on file in Room B–099 of the main building of the Department of Commerce (''Public File'')).

Fair Value Comparisons

To determine whether BKL's sales for export to the United States were made at less than fair value, we compared the United States price (''USP'') to the foreign market value (''FMV''), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice. For those U.S. sales compared to sales of similar merchandise, we made an adjustment, pursuant to 19 CFR 353.57, for physical differences in the merchandise.

We compared U.S. sales, where possible, with sales in the home market at the same level of trade, in accordance with 19 CFR 353.58.

We made revisions to BKL's reported data, where appropriate, based on verification findings.

United States Price

Where BKL's U.S. sales of pipe fittings were made to an unrelated distributor in the United States prior to importation, and the exporter's sales price (''ESP'') methodology was not indicated by other circumstances, we based USP on the purchase price sales methodology in accordance with section 772(b) of the Act.

We calculated purchase price based on packed, c.i.f. import prices to an unrelated customer in the United States. We made deductions, where appropriate, for foreign brokerage, foreign inland freight, ocean freight, marine insurance, U.S. brokerage and U.S. duty.

Where sales to the first unrelated purchaser took place after importation of the subject merchandise into the United States, we calculated USP using the ESP methodology, in accordance with section 772(c) of the Act.

For ESP sales, we made deductions, where appropriate, for discounts, foreign brokerage, foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. inland freight, and U.S. brokerage and handling. In addition, we deducted credit expense, indirect selling expense, inventory carrying costs, and commissions to an unrelated agent.

We made an adjustment to USP for value-added tax (''VAT'') assessed on comparison sales in the U.K. in accordance with our practice, pursuant to the Court of International Trade (''CIT'') decision in *Federal-Mogul, et al* v. *United States*, 834 F. Supp. 1391. See *Preliminary Antidumping Duty Determination: Color Negative Photographic Paper and Chemical Components from Japan*, 59 FR 16177, 16179 (April 6, 1994), for an explanation of this methodology.

For pipe fittings that were further manufactured in the United States, we deducted all value added in the United States, pursuant to section 772(e)(3) of the Act. The value added consists of the cost of fabrication and general expenses associated with the further manufacturing operations, as well as a proportional amount of profit or loss attributable to the further manufacture. (*See, e.g., Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from France*, 58 FR 37125 (July 9, 1993).) We calculated profit or loss by deducting from the sales price of the further manufactured merchandise the related production costs and selling expense incurred by the company in both the U.K. and the United States. We then allocated total profit or loss proportionately to all components of cost. We included only the profit or loss allocated to the further manufacturing portion of total cost in our calculation of value added. We adjusted BKL's allocation of general and administrative (''G&A'') expenses for further manufactured sales to an allocation based on cost of sales rather than weight.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. BKL's volume of home market sales was greater than five percent of the aggregate volume of third country sales. Therefore, we determined that the home market constituted a viable basis for calculating FMV, in accordance with 19 CFR 353.48(a).

For purposes of calculating FMV, we used BKL's sales to its home market customers and constructed value (''CV''), as described below. We excluded from the home market database any sales of fittings not manufactured by BKL.

Cost of Production

Petitioner alleged that BKL made home market sales during the POI at prices below the cost of production (''COP''). In the course of this investigation, we gathered and verified data on production costs.

In order to determine whether home market prices were below the COP within the meaning of section 773(b) of the Act, we performed a product-specific cost test, in which we examined whether each product sold in the home market during the POI was priced below the COP of that product. We calculated COP based on the sum of BKL's cost of materials, fabrication, general expenses, and packing, in accordance with 19 CFR 353.51(c). For each product, we compared this sum to the home market unit price, net of movement expenses and rebates. We made changes, where appropriate, to submitted COP data, as discussed in the ''Interested Party Comments'' section of this notice, below.

In accordance with section 773(b) of the Act, we also examined whether the home market sales of each product were made at prices below their COP in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade.

For each product where less than ten percent, by quantity, of the home market sales during the POI were made at prices below the COP, we included all sales of that model for the computation of FMV. For each product where ten percent or more, but less than 90 percent, of the home market sales during the POI were priced below the COP, we did not include in the calculation of FMV those home market sales which were priced below the COP, provided that the below-cost sales of

that product were made over an extended period of time. Where we found that more than 90 percent of respondent's sales were at prices below the COP, and such sales were over an extended period of time, in accordance with section 773(b) of the Act, we disregarded all sales of that product and instead based FMV on CV.

In order to determine whether below-cost sales had been made over an extended period of time, in accordance with section 773(b)(1) of the Act, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in three or more months of the POI, we did not exclude below-cost sales unless there were below-cost sales in at least three months during the POI. When we found that sales of a product only occurred in one or two months, the number of months in which the sales occurred constituted the extended period of time; *i.e.*, where sales of a product were made in only two months, the extended period of time was two months, where sales of a product were made in only one month, the extended period of time was one month.

BKL provided no evidence that the disregarded sales were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade. (*See* Section 773(b)(2); 19 U.S.C. 1677b(b)(2).)

Constructed Value

We calculated CV based on the sum of the cost of materials, fabrication, general expenses, U.S. packing costs and profit. In accordance with section 773(e)(1)(B)(i) and (ii) of the Act we: (1) included the greater of BKL's reported general expenses or the statutory minimum of ten percent of the cost of manufacture (''COM''), as appropriate; and (2) used the greater of BKL's actual profit on sales in the home market or the statutory minimum profit of eight percent of the sum of COM and general expenses.

Price-to-Price Comparisons

For price-to-price comparisons, we calculated FMV based on ex-factory or delivered prices, inclusive of packing to home market customers. We deducted rebates, where appropriate, on home market sales. We deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(1) of the Act. We also made adjustments, where appropriate, for differences in the physical characteristics of the merchandise in accordance with section 773(a)(1) of the Act.

In light of the Court of Appeals for the Federal Circuit's decision in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, 13 F.3d 398 (Fed. Cir., January 5, 1994), the Department can no longer deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we adjust for those expenses under the circumstance-of-sale provision of 19 CFR 353.56(a) and the exporter's sales price offset provision of 19 CFR 353.56(b)(2), as appropriate. Accordingly, in the present case, we deducted post-sale home market movement charges from the FMV under the circumstance-of-sale provision of 19 CFR 353.56(a). This adjustment included home market inland freight.

For both price-to-price comparisons and comparisons to CV, we also made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, pursuant to 19 CFR 353.56(a)(2).

We adjusted for VAT in the home market in accordance with our practice. (*See* the ''United States Price'' section of this notice, above.)

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York (19 CFR 353.60).

Final Affirmative Determination of Critical Circumstances

Petitioner alleged that critical circumstances exist with respect to imports of pipe fittings from the U.K. In our preliminary determination, pursuant to section 733(e)(1) of the Act and 19 CFR 353.16, we analyzed the allegations using the Department's standard methodology. Because no additional information has been submitted since the preliminary determination, the Department is using the same analysis as explained in its preliminary determination and finds, in accordance with section 735(a)(3) of the Act, that critical circumstances exist with respect to imports of certain carbon steel butt-weld pipe fittings from the U.K.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent using standard verification procedures, including the examination of relevant sales, cost and financial records, and selection of original source documentation. Our verification results are outlined in detail in the public version of the verification report (Public File).

Interested Party Comments

Comment 1: BKL contends that the methodology used for the preliminary determination where sales made below the cost of production were excluded in calculating profit for CV is not in accordance with law. According to BKL, Section 773(e)(1)(B) of the Tariff Act of 1930, as amended, provides that profit will be ''equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual commercial quantities and in the ordinary course of trade***'' BKL claims that the statute neither explicitly nor implicitly authorizes CV profit to be calculated solely upon above-cost sales. Further, BKL cites to *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360, 28374 (June 24, 1992) (''*AFBs from France*'') where the Department rejected the argument that the calculation of profit should be based only on sales at prices above the cost of production. BKL contends that excluding below-cost sales would be contrary to law because the Department would be excluding a portion of sales ''of the same class or kind of merchandise.''

Petitioner maintains that the law leaves the decision of whether to include below-cost home market sales in calculating the profit element of CV to the discretion of the Department. While the statute does state that profit is to be calculated based on home market sales of the same general class or kind of merchandise, it also states that such sales must be made ''in the ordinary course of trade.'' According to petitioner, it is entirely consistent with the purpose of the statutory provision to determine that below-cost sales are made outside the ordinary course of trade. Petitioner asserts that this approach advances the statute's purpose by preventing a foreign exporter from indirectly reducing FMV through below cost sales. Finally, petitioner argues that the fact that Commerce has included below-cost sales in the profit calculations in other proceedings does not dictate that the Department must do so in this investigation.

Department's Position: We agree with respondent. The Department's practice has been to calculate profit for constructed value using above- and below-cost home market sales. (*See*

AFBs from France.) Therefore, we have included below-cost sales in our calculation of profit for constructed value in the final determination, and used the greater of the average profit on both above- and below-cost sales or the statutory eight percent minimum profit.

Comment 2: BKL maintains that sales made below cost in one month of the POI do not constitute sales made below cost over an extended period of time. BKL cites to *Tapered Roller Bearings, and Parts Thereof, Finished and Unfinished, From Japan; Final Results of Antidumping Duty Administrative Review*, 57 FR 4960, 4965 (February 11, 1992) (''*TRBs from Japan*'') where the Department stated: ''[W]e use a period of three months to define extended period of time since three months is commonly used to measure corporate, financial, and economic performance.'' According to BKL, this rationale is inconsistent with defining a single month as an ''extended period of time.''

In addition, BKL contends that the Department's position that a single month comprises an ''extended period of time'' is inconsistent with the Department's definition of the term ''relatively short period'' in connection with critical circumstances. BKL argues that for critical circumstances the Department defines the term ''relatively short period'' as covering at least three months.

BKL also contends that if the frequency of below-cost sales is limited to one month of the period of investigation, then that is *prima facie* evidence of sporadic or possibly seasonal sales. Hence, according to the legislative history of the COP provision, these sales should not be disregarded.

Petitioner maintains that the Department's position is clear that if sales are made in less than three months of the POI, then an extended period is the number of months in which sales occur. In support of this argument, petitioner also cites to *TRBs from Japan*. In addition, petitioner argues that respondent has provided no evidence that the sales that occurred in only one month of the POI involved obsolete products or end-of-year sales.

Department's Position: In determining whether sales below cost were made over an extended period of time in accordance with section 773(b)(1) of the Act, the Department has consistently considered an extended period of time to be the lesser of the number of months during the POI in which sales occur or three months for the reason stated in *TRBs from Japan:* ''[T]he use of only a three month time measurement is incomplete since it excludes models that were only sold in one or two months of the review period.''

BKL's contention that the Department is inconsistent in defining a ''relatively short period'' is misguided. It ignores the Department's rationale of needing to preserve the possibility of disregarding below-cost sales in cases where such sales have occurred in only one or two months. This is not a consideration that applies to critical circumstances.

Comment 3: Petitioner contends that by not reporting a portion of its parent's G&A, BKL has understated its total G&A expense for the subject merchandise. Additionally, petitioner argues that the Department should adjust reported G&A expense for the further manufacturing operations to include the other operating expenses which are related to the activities of the company as a whole.

BKL disagrees that any of the G&A expense of its parent company should be allocated to BKL because BKL's entire manufacturing, sales, and R&D activities are conducted without assistance from its parent. The parent company receives periodic operational reports from BKL only for the purpose of evaluating its investment in its capacity as a shareholder. BKL states that allocating its parent company's G&A to subsidiaries when the books and records are not consolidated is inconsistent with the Department's professed policy of relying upon respondent's cost and financial records in COP investigations.

Department's Position: We agree with petitioner that a portion of the G&A expense of BKL's parent company should be allocated to BKL. It is clear from the information on the record of this case that BKL's parent company's involvement in BKL is more than that of a passive investor. The parent company's Overseas Department monitors the operations of BKL through monthly reports from BKL and provides strategic planning and management services to BKL. Accordingly, we have allocated to BKL a proportionate share of the expenses from the Overseas Department of the parent company based on the cost of sales of its overseas affiliates.

Additionally, we have increased the further manufacturing G&A cost to include other operating expenses incurred that had not been included in the reported costs.

Comment 4: Petitioner maintains that the Department should allocate total G&A for the further manufacturing operations based on cost of sales rather than weight of finished fittings because an allocation of G&A based on weight is contrary to the Department's long-standing practice.

Department's Position: For calculations used in our final determination, we have allocated G&A expense based on cost of sales rather than weight. Allocating the G&A costs of the further manufacturing operations based on weight of finished fittings produces a less representative result than allocating based on cost. The weight of fittings varies markedly for fittings of different thicknesses, but the process of finishing the fittings does not vary proportionately to weight. (*See Final Determination of Sales at Less Than Fair Value: Certain All-Terrain Vehicles from Japan*, 54 FR 4864, 4867 (January 31, 1989).)

Comment 5: Petitioner claims that BKL understated its costs through incorrect reporting of its financing expenses. According to petitioner, the finance expense ratios reported by BKL understate the total cost of subject merchandise because, where BKL combined its interest expense with its parent, it did not reduce the cost of sales for the combined group by the intercompany transactions. As a result, the denominator of the calculation (total cost of sales) was inflated. Similarly, petitioner contends that the Department should adjust respondent's financing costs to include its other borrowing not reported, and that interest expense for the further manufacturing operations should be allocated on the basis of cost of sales rather than weight.

BKL claims it has correctly calculated financing expense by combining BKL's financing expense with that of its parent company and dividing by the combined cost of sales. BKL suggests that for purposes of computing net interest expense for CV, the Department should adjust the parent company's interest expense to account for finished goods inventory and trade accounts receivable.

Department's Position: We agree with petitioner that combining the financing expense and cost of sales of BKL and its parent creates a distorted financial expense ratio unless intercompany transactions are eliminated from the calculation. The Department generally calculates net financing expense from the financial statements of the consolidated entity because of the fungible nature of capital. (*See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand*, 57 FR 21065, 21069 (May 18, 1992).) In this investigation, however, the parent company and its subsidiaries do not prepare consolidated financial statements. Additionally, we cannot consolidate the financial data of BKL and its parent company because we are unable to quantify all intercompany

transactions. Since the parent company ultimately controls the capital of all affiliates in which it holds a controlling interest, and due to the nature of certain intercompany transactions, we have used the parent company's financing expense rate as a reasonable surrogate for purposes of our final determination.

We have also adjusted the parent company's CV financing expense rate to allow an offset for credit expenses and inventory carrying cost as is our normal practice.

For purposes of our final determination, we have allocated financing expense of the further manufacturing operations based on cost of sales rather than weight. (*See Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany*, 54 FR 18992, 19076, May 3, 1989.)

Comment 6: Petitioner contends that BKL understated total cost through the incorrect reporting of pension costs. Petitioner argues that BKL excluded certain pension costs in reporting its cost for the subject merchandise, claiming that the pension costs do not reflect the actual costs that will be incurred. According to petitioner, because generally accepted accounting principles (''GAAP'') in the U.K. required BKL to include an additional amount for pension costs in its audited financial statements, such costs must be included in the COP and CV of subject merchandise in order to accurately reflect BKL's fully absorbed cost for subject merchandise.

Department's Position: We agree with petitioner, and have adjusted labor costs to reflect pension expense in conformity with U.K. GAAP for purposes of our final determination. To be in conformity with U.K. GAAP, an entity is required to perform an annual recalculation of pension expense to account for fluctuations in investment performance. The purpose of this recalculation is to more accurately reflect an entity's year-end pension liability. Not adjusting the pension liability to conform with U.K. GAAP would result in an understatement of per-unit costs of production. (*See Calculation Memorandum* from Theresa L. Caherty and Peter S. Scholl to Christian B. Marsh, dated February 9, 1995, (''Proprietary Document'').)

Comment 7: Petitioner states that the Department may not have properly adjusted FMV to account for VAT for any calculations where FMV is based on CV. As a result, petitioner maintains that USP was overstated and BKL's dumping margin was understated.

Respondent cites to *Federal-Mogul Corp. v. U.S.*, 813 F. Supp 856 (CIT 1993), stating the Department is authorized to ''add only the amount of tax actually paid on each home market sale.'' Respondent states that CV is not associated with an amount of VAT actually paid, because CV is not based on actual sales. Thus, an imputed amount for VAT cannot be included in CV.

Department's Position: In accordance with the statute, our practice is to exclude indirect taxes on component materials from CV if the taxes are rebated upon export. Once we have excluded the VAT on component materials from the constructed value, we cannot add the VAT to USP because section 772(d)(1)(C) of the Act requires that we add internal taxes to USP only to the extent that those taxes are included in the FMV.

Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of butt-weld pipe fittings from the U.K., as defined in the ''Scope of Investigation'' section of this notice, that are entered or withdrawn from warehouse for consumption on or after July 6, 1994, the date 90 days prior to the date of publication of our preliminary determination, pursuant to section 735(c)(4)(A) of the Act.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the U.S. price as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin (percent)
BKL Industries, Ltd	48.85
All other producers/exporters ...	48.85

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notice to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S. C. 1671(d)).

Dated: February 16, 1995.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–4726 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–307–812]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Sue Strumbel, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 482–1442.

Final Determination

The Department of Commerce (the Department) determines that certain carbon steel butt-weld pipe fittings (pipe fittings) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (e.g., threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include ''elbows,'' ''tees,'' ''caps,'' and ''reducers.'' The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the ''bead'' of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff

Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is September 1, 1993, through February 28, 1994.

Case History

Since our preliminary determination (50 FR 50561, October 4, 1994) the following events have occurred. On October 14, 1994 the respondents requested a postponement of the final determination. This request was granted (59 FR 56461, November 14, 1994), and the final was postponed by the Department until no later than February 16, 1995. On January 23, 1995, both parties submitted case briefs. On January 23, 1995 petitioner submitted its rebuttal brief.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information available (BIA) is appropriate for all companies. Given that neither of the two named companies responded to the Department's questionnaire, we find that no respondents have cooperated in this investigation.

The Department's usual practice under these circumstances would be to assign respondents the highest margin alleged in the petition as BIA. See Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany (54 FR 19033, May 3, 1989). In this case, however, a fundamental flaw in the petition calculation methodology has led the Department to reject the use of the highest margin alleged in the petition as BIA. Unlike the other Certain Carbon Steel Butt-Weld Pipe Fittings investigations, petitioner was unable to obtain U.S. price quotes for purposes of the initiation. Rather, U.S. price was based upon an average of U.S. Customs import statistics which did not take into account the relationship between the size of the fitting and its value per pound. Moreover, there is no record information which would allow us to make this adjustment to USP. Therefore, we have weight averaged the FMVs of all size fittings in the petition, and compared that average FMV to the average customs U.S. import value in the petition. This yields a single margin for use as BIA of 203.63%. This margin will be assigned to each of the respondents. (*See,* Memorandum on File Dated: February 16, 1995).

Suspension of Liquidation

In accordance with section 733(d)(1) (19 U.S.C. 1673b(d)(1)) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain carbon butt-weld pipe fittings from Venezuela, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted average margin percent
All Companies	203.63

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry within 45 days.

If the ITC determines that material injury or threat of material injury does not exist, the proceedings will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on certain carbon steel butt-weld pipe fittings from Venezuela entered or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: February 16, 1995.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–4722 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–821–807]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Ferrovanadium and Nitrided Vanadium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Louis Apple or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone (202) 482–1769 or (202) 482–4136.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. References to Antidumping and Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 57 FR 1131 (January 10, 1992) (Proposed Regulations), are provided solely for further explanation of the Department's AD practice with respect to amended preliminary determinations. Although, the Department has withdrawn the particular rulemaking proceeding pursuant to which the Proposed Regulations were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. See 60 FR 80 (January 3, 1995).

Scope of Investigation

This investigation covers ferrovanadium and nitrided vanadium. The scope is fully described in the preliminary determination.

Case History

On December 27, 1994, the Department of Commerce (the Department) made its affirmative

preliminary determination of sales at less than fair value in the above-cited investigation (60 FR 438, January 4, 1995).

On January 11, 1995, the petitioner alleged that the Department made a significant ministerial error in the preliminary determination in the above-mentioned investigation and requested that the Department correct this ministerial error accordingly.

In its submission, the petitioner alleged that the Department made a ministerial error in its calculation of the foreign market value (FMV) for SC Vanadium-Tulachermet (Tulachermet). This FMV was used for comparison to sales made by both Tulachermet and Odermet, Ltd. The petitioner's allegation deals with the valuation of vanadium slag, the principal raw material used to produce the subject merchandise.

On January 19, 1995, the Department received comments from Odermet, Ltd. and Tulachermet in response to the petitioner's January 11, 1995 letter regarding a ministerial error. Odermet submitted additional comments on January 26, 1995. However, standard Department practice with respect to preliminary determinations, does ''not permit parties to comment on another party's allegations of significant ministerial errors''. (See the Department's Proposed Rules 57 FR 1133 (January 10, 1992). Any party objecting to the Department's amendment, will have the opportunity to present its arguments in its administrative case briefs and at the hearing.

On January 23, 1995, the Department determined that the petitioner's allegation regarding the ministerial error in our calculation of FMV for Tulachermet, requires correction in an amended preliminary determination (See January 23, 1995, Memorandum from Gary Taverman to Barbara R. Stafford).

Amendment of Preliminary Determination

The Department does not normally amend preliminary determinations since these determinations are only estimated margins subject to verification and may change for the final determination. It is, however, the Department's practice to amend preliminary determinations in those instances involving a significant ministerial error. (See Amendment to Preliminary Determination of Sales at Less Than Fair Value: Fresh Cut Roses From Columbia, 59 FR 51554, 51555 (October 12, 1994) (Roses); and Amendment to Preliminary Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong, 55 FR 19289–90 (May 9, 1990)).

The Department has defined ''significant ministerial errors'' as those unintentional errors which result in a change of the estimated margin of at least 5 absolute percentage points but not less than 25 percent of the calculated margin. See Roses. In this case, these criteria have been met.

In its questionnaire response, Tulachermet reported its consumption of vanadium slag, the principal input used to produce the intermediate product vanadium pentoxide, on the basis of net vanadium content. The Department used as a surrogate value a price quote for vanadium slag expressed in terms of net vanadium pentoxide content. The petitioner alleges that the Department made a significant ministerial error in not converting the consumption factor or surrogate value to reflect the different basis of the surrogate value to the factor consumed.

The Department agrees with petitioner that the reported factor should have been adjusted to a vanadium pentoxide basis. The Department did not intend to apply a surrogate value to consumption factor expressed in an incompatible unit of measure. Furthermore, correcting this ministerial error will result in a change in the estimated margin of greater than 5 absolute percentage points and greater than 25 percent of the original estimated margin. Therefore, pursuant to the Department's practice, the error constitutes a significant ministerial error and the Department is amending the preliminary determination accordingly. The calculations have been corrected by applying the methodology from the petition for converting the consumption factor for vanadium slag from units of net vanadium content to units of net vanadium pentoxide content. The recalculation affects the margin percentage for Tulachermet, Odermet, and the all others rate for non-Russian exporters.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct the U.S. Customs Service to continue to require cash deposit or posting of bond on all entries of subject merchandise from the Russian Federation at the newly calculated rates, that are entered, or withdrawn from warehouse, for consumption on or after the date of the original preliminary determination publication notice in the Federal Register (60 FR 438, January 4, 1995). The suspension-of-liquidation will remain in effect until further notice.

The revised estimated margins are as follows:

Manufacturer/Producer/Exporter	Weighted average margin percent
All exporters located in Russia including SC Vanadium-Tulachermet	94.92
Galt Alloys, Inc.	40.46
Gesellschaft für Elektrometallurgie m.b.H./Shieldalloy Metallurgical Corporation/Metallurg, Inc.	49.18
Marc Rich Co., AG/Glencore International AG	108.00
Odermet, Ltd.	60.09
Wogan Resources, Ltd.	108.00
All others not located in Russia	82.29

ITC Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (ITC) of the amended preliminary determination. If our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry, before the later of 120 days after the date of the original preliminary determination (December 27, 1995) or 45 days after our final determination.

Public Comment

Public hearings in this proceeding will be held to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The tentative schedule for the case briefs, rebuttal briefs, and hearings for this proceeding is described in the preliminary determination. We will make our final determination by May 19, 1995.

Dated: February 17, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–4728 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–533–812]

Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Susan M. Strumbel, Office of

Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1442.

Final Determination

The Department of Commerce (''the Department'') determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (''the Act''), are being provided to manufacturers, producers, or exporters in India of certain carbon steel butt-weld pipe fittings. For information on the estimated net subsidies, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the preliminary determination in the Federal Register, 59 FR 28337 (June 1, 1994), the following events have occurred.

On June 27, 1994, at petitioner's request, we extended the final determination in this investigation to coincide with the final determination in the companion antidumping investigation (59 FR 32955).

On June 30, 1994, petitioner requested that the Department postpone its preliminary determination in the antidumping investigation. Therefore, on July 26, 1994, the Department published in the Federal Register a notice postponing the preliminary antidumping determination and, therefore, also the final countervailing duty determination (59 FR 37961).

On October 5, 1994, respondents requested that the Department postpone the final antidumping and countervailing duty determinations. Therefore, on November 14, 1994, the Department published in the Federal Register a notice postponing the final antidumping and countervailing duty determinations until no later than February 16, 1995 (59 FR 56461).

We conducted verification of the responses submitted on behalf of the Government of India (GOI), Karmen Steels of India (Karmen) and Sivanandha Pipe Fittings Ltd. (Sivanandha) from November 4 through November 7, 1994. We received case briefs on January 24 from petitioner and respondents, and received rebuttal briefs from petitioner on January 31, 1995.

Scope of Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings (''pipe fittings'') having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.,* threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include ''elbows,'' ''tees,'' ''caps,'' and ''reducers.'' The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the ''bead'' of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Applicable Statue and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. References to the Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (Proposed Regulations), are provided solely for further explanation of the Department's CVD practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the Proposed Regulations were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. *See* 60 FR 80 (January 3, 1995).

Injury Test

Because India is a ''country under the Agreement'' within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (''ITC'') is required to determine whether imports of pipe fittings from India materially injure, or threaten material injury to, a U.S. industry. On April 20, 1994, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from India of the subject merchandise (59 FR 18825).

Period of Investigation

For purposes of this final determination, the period for which we are measuring subsidies (the period of investigation (''POI'')) is the respondents' fiscal year: April 1, 1993 to March 31, 1994.

Non-Responding Company

Since Tata did not respond to our countervailing duty questionnaire, we have used best information available (''BIA'') in accordance with section 355.37(a) of the Department's regulations. As BIA, we have used information provided in the petition except where we have calculated a rate for a given program in a previous countervailing duty investigation or administrative review for India which is higher than that provided in the petition. We did not include in the BIA subsidy rate for Tata programs for which we have no basis to calculate a benefit (*i.e.,* programs for which rates are not calculated in the petition, programs not previously investigated, or programs previously found not used). Based on this approach, we calculated a BIA rate for Tata of 61.56 percent *ad valorem*.

Calculation of Country-Wide Rate

In determining the benefits to the subject merchandise from the various programs described below, we used the following calculation methodology. We first calculated a country-wide rate for each program. This rate comprised the ad valorem benefit received by each firm weighted by each firm's share of exports of the subject merchandise to the United States. The program rates were then added together to arrive at the country-wide rate.

Pursuant to 19 CFR 355.20(d) of the Department's regulations, we compared the total ad valorem benefit received by each firm to the country-wide rate for all programs. The rates for Karmen, Sivanandha and Tata were significantly different from the country-wide rate. Therefore, all three companies received company-specific rates. The country-wide rate will be assigned to all other manufacturers, producers and exporters.

Karmen's Exports of Refurbished Pipe Fittings

Karmen has an arrangement with a Singaporean company, under which the Singaporean company supplies Karmen with rusty pipe fittings. Karmen reconditions and refurbishes these pipe fittings and ships them directly to the Singaporean company's U.S. customer. For purposes of the preliminary determination, we considered this refurbished merchandise to be covered by this proceeding. However, we stated

that we would seek additional information concerning: (1) The nature and extent of the processing operation, and (2) the extent to which the refurbished pipe fittings are being subsidized.

For purposes of this final determination, we are treating the ''sales'' of Singaporean pipe as outside of the scope of our investigation and, hence, not subject to any potential countervailing duty order on butt-weld pipe fittings from India. Karmen essentially performs a tolling service for its Singaporean customer. Moreover, Karmen does not ''substantially transform'' these pipe fittings. Substantial transformation generally refers to a degree of processing or manufacturing resulting in a new and different article. Through that transformation, the new article becomes a product of the country in which it was processed or manufactured. See Cold-Rolled Steel from Argentina, 58 FR 37062, 37065 (1993) (Appendix I). The Department makes these determinations on a case-by-case-basis. See, e.g., Certain Fresh Cut Flowers from Colombia, 55 FR 20491, 20299 (1990); Limousines from Canada, 55 FR 11036, 11040 (1990).

In determining whether Karmen substantially transformed these pipe fittings, we examined whether the degree of processing or manufacturing resulted in a new and different article. Karmen receives rusty pipe fittings from Singapore, it removes the rust, paints the fitting, and forwards it to the Singaporean company's customer. We do not consider this refurbishing process as substantially transforming the subject merchandise because it remains a pipe fitting after refurbishment. Therefore, because Karmen does not substantially transform the merchandise, we do not consider it as falling within the scope of this investigation.

However, we have also determined that the benefits received by Karmen under two of the countervailable export subsidy programs discussed below (pre-shipment financing and income tax deductions under 80HHC) cannot be limited exclusively to Karmen's export sales of new pipe fittings (*i.e.*, all Karmen's export sales excluding the Singaporean transactions). In neither instance is there any indication that Karmen is precluded from receiving these benefits on its refurbishing operations. Therefore, we have included the fee Karmen receives for refurbishing the Singaporean pipe fittings as part of the denominator for calculating the *ad valorem* subsidy rate. This is consistent with past practice. When we cannot specifically tie the receipt of an export subsidy to a subset of export sales, such as exports of the subject merchandise, we divide the total value of the export subsidy received by the total value of exports. (*See, e.g.,* Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India, 56 FR 52521, (October 21, 1991), Final Affirmative Countervailing Duty Determination; Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, 53 FR 24763, 24767 (June 30, 1988) (Redraw Rod)). (For a further discussion of this issue, please refer to the Interested Party Comments section of this notice).

Analysis of Programs

Based upon our analysis of the petition, the responses to our questionnaires, verification and comments made by interested parties, we determine the following:

A. Programs Determined To Be Countervailable

1. Preferential Pre-Shipment Financing

Pre-shipment financing is extended to exporters prior to shipment as working capital for purchasing raw materials, processing, packing, warehousing, transporting and shipping. Any exporter showing a confirmed export order or a letter of credit is eligible for this program. Generally, the loans are extended for 180 days. We verified that both Karmen and Sivanandha had loans on which interest was paid during the POI under this program.

Because only exporters are eligible for loans under this program, we determine that they are countervailable to the extent they are provided at a preferential interest rate. *See, e.g.,* Redraw Rod. As our commercial benchmark interest rate, we used 16.50 percent, which is the rate reported by the GOI as the annual average commercial interest rate on short-term financing during the POI. We compared this benchmark rate to the interest rate charged on pre-shipment loans and found that the interest rate charged was lower than the benchmark rate. Therefore, we determine that loans provided under this program are countervailable.

To calculate the benefit, we followed the short-term loan methodology which has been applied consistently in our past determinations and is described in more detail in the Subsidies Appendix accompanying Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 49 FR 18006 (April 26, 1984); see also, *Alhambra Foundry v. United States,* 626 F. Supp. 402 (CIT 1985).

We compared the amount of interest paid during the POI to the amount of interest that would have been paid at the benchmark rate. The difference between these two amounts is the benefit. We then divided the benefit by total exports. On this basis, we determine the estimated net subsidy from this program to be 0.47 percent *ad valorem* for Karmen, 0.44 percent *ad valorem* for Sivanandha and 5.27 percent *ad valorem* for Tata.

2. Income Tax Deductions Under Section 80HHC

Income tax benefits are available to exporters in India under Section 80HHC of the Income Tax Act of 1961. This program allows exporters to reduce their taxable income by the profits or export subsidies earned on exports. Both Karmen and Sivanandha claimed deductions under this program on their income tax returns filed in the POI.

Since tax deductions under Section 80HHC are available only to exporters, we determine that this program is countervailable. To calculate the benefit, we multiplied the amount of the deduction claimed by each company by the corporate income tax rate and divided the result by total exports. On this basis, we determine the estimated net subsidy from this program to be 2.10 percent *ad valorem* for Karmen, 2.73 percent *ad valorem* Sivanandha and 15.82 percent *ad valorem* for Tata.

3. International Price Reimbursement Scheme

The International Price Reimbursement Scheme (''IPRS'') was established to compensate Indian exporters for the difference between the domestic price of inputs and their world market price. We verified that, as of April 1, 1993, the input product used in the production of pipe fittings (seamless carbon steel pipe), was no longer eligible for IPRS benefits. However, residual benefits could be received after that date and, in fact, Karmen received residual benefits under this program during the POI for exports of pipe fittings shipped prior to the POI.

Respondents maintain that the IPRS program is permissible within the framework of Item (d) of the Illustrative List of Export Subsidies annexed to the Agreement on the Interpretation and Application of Article VI, XVI and XXIII of the General Agreement on Tariffs and Trade (Subsidies Code), (1979). Pursuant to the remand determination in *Final Results of Redetermination Pursuant to Court Remand, Creswell Trading Company, Inc., et al. v. United*

States, Slip. Op. 94–65 (Creswell Trading), the IPRS program must be examined in light of Item (d).

To conduct the analysis with respect to Item (d) of the Illustrative List, we examined whether the IPRS program involves a consistently applied calculation methodology for determining the difference between the higher domestic and lower international price of a product available to exporters and whether the pricing and other data used in this methodology are regularly updated to reflect accurately the price differential at the time of the purchase of the product.

We verified that India's IPRS program utilizes a clearly defined and consistently applied methodology for calculating the difference between the higher domestic and lower international price of seamless carbon steel pipe available to their exporters. We also verified that the price schedules for both domestic and international prices are updated periodically. Therefore, we determine that the basic terms and conditions of the provision of carbon steel pipe under the IPRS program are not ''more favourable than those commercially available on world markets'' to Indian exporters. However, we have also determined that the IPRS rebate is ''excessive,'' because the government failed to include ocean freight in its calculation of the world market price.

Item (d) is concerned with the government's provision of goods to exporters on terms more favorable than those ''commercially available on world markets to their exporters.'' Indian exporters who purchase seamless carbon steel pipe on the world market would necessarily also incur the cost of delivering the pipe to India. Therefore, the commercially available alternative is the price of seamless carbon steel pipe itself, from sources outside of India, plus a delivery charge to India.

The international prices used by the GOI in its calculations of IPRS rebates are stated in F.O.B. (port of origination) terms and, thus, do not reflect the delivery of foreign seamless carbon steel pipe to India. Consequently, we added delivery costs to the price of foreign-sourced seamless carbon steel pipe and compared the delivered domestic price to a delivered world market price. On this basis, we determine that the IPRS rebates received by the Indian pipe fittings producers are excessive in the amount of the delivery charges necessary to transport carbon steel pipe to India. The excess amount is a countervailable subsidy because the rebate enabled the pipe fittings exporters to pay a lower price for carbon steel pipe than that commercially available on world markets.

To calculate Karmen's benefit, we divided the amount of ocean freight necessary to ship seamless carbon steel pipe to India by Karmen's total exports of pipe fittings. We did not include in the denominator the fees Karmen receives for refurbishing Singaporean pipe because refurbished pipe fittings are not eligible for the IPRS. On this basis, we determine the estimated net subsidy from this program to be 7.05 percent *ad valorem* for Karmen, 0.00 percent *ad valorem* for Sivanandha and 32.66 percent *ad valorem* for Tata.

B. Programs Determined not to Provide Benefits During the POI Advance Licenses and Advance Customs Clearance Permits (''ACCP's'')

Under the GOI's Duty Exemption Scheme, inputs used in the production of exports may enter the country duty-free. Two mechanisms under the Duty Exemption Scheme are Advance Licenses and Advance Custom Clearance Permits (''ACCPs''). Sivanandha used Advance Licenses to import seamless carbon steel pipes in the POI. Advance Licenses permit the importation of goods duty free provided that the imports are used in the production of merchandise subsequently exported.

Karmen used ACCPs during the POI. ACCPs allow exporters to import merchandise duty free for the purpose of jobbing, restoration, reconditioning and other servicing, provided that such merchandise is re-exported. Karmen used its ACCPs to import the aforementioned pipe fittings from Singapore.

We consider the use of Advance Licenses and ACCP's to be the equivalent of a duty-drawback program (see Final Affirmative Countervailing Duty Determination: Steel Wire Rope from India, 56 FR 46292 (September 11, 1991)). Under § 355.44(i)(4)(1) of the Department's proposed regulations (see Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989), the non-excessive drawback of import duties is not countervailable if the imported products are physically incorporated into exported products. According to the questionnaire responses and verification, the products imported under Advance Licenses are physically incorporated into pipe fittings which are subsequently re-exported. The products imported under the ACCP's were refurbished and also re-exported. Therefore, we determine that Advance Licenses and ACCP's did not provide a countervailable benefit in the POI.

C. Programs Determined To Be Not Used

We established at verification that the following programs were not used during the POI.

A. Preferential Post-Shipment Financing
B. Additional and Replenishment Licenses
C. Market Development Assistance
D. Export Promotion, Capital Goods Scheme
E. Benefits for 100 Percent Export-Oriented Units
F. Benefits Provided to Export Processing Zones

Interested Party Comments

Comment 1: Karmen argues that it would be inappropriate to subtract the fees received for its refurbishing operations from the denominator but to leave the subsidies resulting from the refurbishing in the numerator. Karmen argues that the job-working fees received for the Singaporean transactions must be included in the denominator to calculate its subsidy rate. Karmen contends that the benefits from the two subsidies we preliminarily found countervailable, the 80HHC tax program and the pre-shipment export financing, resulted significantly from the transactions involving Singaporean pipe.

Petitioner argues that the transactions involving the refurbished pipe fittings do not constitute a sale for the purposes of this investigation. Furthermore, petitioner disagrees that the refurbished pipe fittings contributed to Karmen's benefits under either of the above-mentioned programs.

DOC's Position: As noted above, we have determined that the benefits from the pre-shipment export financing and 80HHC programs cannot be tied solely to Karmen's export sales, exclusive of the income received for refurbishing Singaporean pipe. During verification, we were told by Karmen officials that they did not use pre-shipment export financing for shipments of refurbished pipe fittings, but based on our analysis of the information submitted regarding this program, there is no reason to believe that Karmen could not have used the financing for these shipments. We do not typically narrow our export subsidy denominator to less than total exports unless the benefits provided can be exclusively linked to a smaller subset of export sales. Therefore, consistent with our past practice, we divided the benefit amount by the value of Karmen's total exports, including the fees it received for refurbishing.

With respect to the 80HHC program, our past practice has been to divide the value of the benefits by total exports in the POI. Pursuant to our general tax methodology, we consider tax benefits to be ''received'' when a company files the return. Consequently, the benefit used in our calculation usually relates to sales activity in the year prior to the POI. As a result, the sales denominator we use in our subsidy calculation is rarely, if ever, the sales from the same fiscal year covered by the tax return. The only basis to exclude sales from the denominator is to determine that they are incapable of generating the tax benefit in question. The only issue then, in this investigation, is whether the fees Karmen receives for its refurbishing operations can generate 80HHC benefits.

The 80HHC benefits Karmen claimed on the tax return filed during the POI (covering a pre-POI period) were not generated by Karmen's refurbishing operations because Karmen did not refurbish any Singaporean pipe during the fiscal year covered by the tax return. However, we verified that the fees received by Karmen for its refurbishing operations during the POI did generate 80HHC benefits on the tax return which covers the POI. It is clear that the refurbishing fees received by Karmen qualify for 80HHC benefits. The only reason 80HHC benefits generated by the refurbishing operations are not in the 80HHC subsidy calculation in this investigation is the Department's tax methodology which mandates the use of the tax return filed during the POI.

Comment 2: Respondents argue that the benchmark interest rate of 16.5 percent used in the Department's preliminary determination is the appropriate benchmark rate and should also be used in the Department's final determination. They state that this interest rate is the national average commercial rate for comparable loans. They contend that the 18.75 percent interest rate listed in the Department's verification reports is a company-specific rate and therefore should not be used. They further state that the 18.75 percent interest rate is for a loan that has a one year term while pre-shipment financing has a much shorter term. Finally, they argue that pre-shipment export financing is a low risk form of credit because the exporter has to show a purchase order prior to receiving financing.

DOC's Position: We agree that the 18.75 percent interest rate is a company-specific rate. When selecting a short-term interest rate benchmark the Department's first choice is a national average rate rather than a company-specific rate. *See,* Subsidies Appendix. The questionnaire response of the GOI stated that the annual average interest rate on short-term financing in India during the POI was 16.5 percent. According to the Reserve Bank of India, the minimum commercial short-term rate on loans above 200,000 rupees in India during the POI was 15.00 percent. Information from the May 1994 edition of International Financial Statistics indicates that the average short- and medium-term interest rate in India during the POI was approximately 15.59 percent. Given the information on the record, we used as our benchmark the rate provided by the GOI.

Comment 3: Respondents argue that the Department should uphold its preliminary finding that the IPRS program is non-countervailable.

DOC's Position: Based on verification and the recent remand determination in Creswell Trading, we have determined that the IPRS program provided a countervailable benefit during the POI.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–99 of the Main Commerce Building).

Suspension of Liquidation

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of butt-weld pipe fittings from India, which were entered or withdrawn from warehouse for consumption, on or after June 1, 1994, the date our preliminary determination was published in the Federal Register.

After the preliminary determination, this final countervailing duty determination was aligned with the final antidumping duty determination on certain carbon steel butt-weld pipe fittings from India, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the *Subsidies Code*, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise on or after September 30, 1994, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between June 1, 1994, and September 29, 1994. We will reinstate the suspension of liquidation, under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties in the amounts indicated below:

Karmen Steels of India: 9.62 percent *ad valorem*

Sivanandha Pipe Fittings Ltd.: 3.16 percent *ad valorem*

Tata Iron & Steel Limited: 61.56 percent *ad valorem*

All-Others: 29.40 percent *ad valorem*

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, pursuant to section 705(c) we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order directing Customs officers to assess countervailing duties on butt-weld pipe fittings from India.

Return of Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act and 19 CFR 355.20(a)(4).

Dated: February 16, 1995.

Barbara S. Stafford,

Acting Assistant Secretary for Import Administration.

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[C–508–808]

Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings From Israel

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Jennifer Yeske, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2239 or 482–0189, respectively.

Final Determination

The Department of Commerce (''the Department'') determines that benefits which constitute subsidies within the meaning of Section 701 of the Tariff Act of 1930, as amended (''the Act''), are being provided to manufacturers, producers, or exporters in Israel of certain carbon steel butt-weld pipe fittings (''pipe fittings''). For information on the estimated net subsidy, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the notice of the preliminary determination in the Federal Register (59 FR 28340, June 1, 1994), the following events have occurred.

On June 1, 1994, petitioner requested that the final determination in this investigation be postponed and aligned with the date for the final determination in the companion antidumping investigation of the same subject merchandise from Israel. On June 27, 1994, the Department published in the Federal Register a notice postponing and aligning the publication of the final determination in this investigation (59 FR 32955).

On October 5, 1994, Pipe Fittings Carmiel, Ltd. (''Carmiel''), the sole company respondent, requested that the Department postpone the final antidumping and countervailing duty determinations. Therefore, on November 14, 1994, the Department published in the Federal Register a notice postponing the final antidumping and countervailing duty determinations until no later than February 16, 1995 (59 FR 56461).

We conducted verification of the responses submitted by the Government of Israel (''GOI'') and Carmiel from November 27 through December 4, 1994. Both respondents and petitioner submitted case and rebuttal briefs on January 24 and January 31, 1995, respectively.

Scope of Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include ''elbows,'' ''tees,''''caps,'' and ''reducers.'' The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the ''bead'' of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. References to the *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's CVD practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. See 60 FR 80 (January 3, 1995).

Injury Test

Because Israel is a ''country under the Agreement'' within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (''ITC'') must determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry. On April 20, 1994, the ITC published its preliminarily determination that there is a reasonable indication that industries in the United States are being materially injured or threatened with material injury by reasons of imports from Israel of the subject merchandise (59 FR 18825).

Period of Investigation

For purposes of this final determination, the period for which we are measuring subsidies (the period of investigation (the ''POI'')) is calendar year 1993.

Analysis of Programs

Based upon our analysis of the petition, responses to our questionnaires, verifications and comments made by interested parties, we determine the following:

I. Programs Determined To Be Countervailable

A. Grants under the Encouragement of Capital Investments Law of 1959 (''ECIL'')

The ECIL program was established to develop the production capacity of the Israeli economy by providing investment grants for industrial projects. In order to be eligible to receive benefits under the ECIL, an applicant first must obtain ''Approved Enterprise'' status, which is granted by the Investment Center of the Israeli Ministry of Industry and Trade.

Among the benefits provided under ECIL are investment grants. The amount of an investment grant is calculated as a percentage of the total approved investment in fixed assets, and this percentage depends on the geographic location of the enterprise. For purposes of the ECIL program, Israel is divided into three zones—the Central Zone, Development Zone A and Development Zone B. The Central Zone comprises the geographic center of Israel, including its largest and most developed population centers. Companies in the Central Zone could not receive grants under this program at all in 1988, and only at a much lower rate than companies in Development Zones A and B in 1983, with Development Zone A companies receiving a higher level of funding than those in Development Zone B.

In the *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel (''IPA'')* (52 FR 25447; July 7, 1987), the Department found the investment grants program under the ECIL to be *de jure* specific and, therefore, countervailable because the grants are limited to enterprises located in specific regions (*i.e.*, Development Zones A and B). In the course of this proceeding, the GOI provided no new information indicating that the grants are not limited to particular regions. Therefore, we are continuing to find ECIL grants to be *de jure* specific.

Carmiel's production facility is located in Development Zone A. According to the responses and verification, the company received approval, in 1983 and 1988, for grants for two projects related to the production of subject merchandise. These grants were disbursed over the period 1983–1993.

At verification, we noted that for certain of the grant disbursements, the Israeli Ministry of Finance subtracted a small ''computer commission.'' Consistent with section 771(6) of the Act and section 355.46 of *Countervailing Duties; Notice of Proposed Regulations and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (''Proposed Regulations''), we have determined that this commission constitutes an allowable offset. Therefore, we have subtracted the commission in those instances in which Carmiel was able to document that a commission was subtracted from a grant amount.

It is our policy to allocate non-recurring grants over a period equal to the average useful life of assets in the industry, unless the sum of grants provided under a program in a particular year is less than 0.50 percent of a firm's total sales in that year. See Section 355.49(a) of the Department's Proposed Regulations and the General Issues Appendix to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products From Austria*, 58 FR 37217, July 9, 1993. In this instance, Carmiel has not provided sales information for years prior to 1989. Therefore, we have no reason to believe that grants made before 1989 were less than 0.50 percent of sales in the year of receipt for these years and, therefore, have determined that the yearly disbursements should be allocated over time. In 1990, the sum of grants disbursed under the ECIL program accounted for less than 0.5 percent of Carmiel's total sales in that year. Therefore, benefits for 1990 were allocated to that year and are not included in our calculations. For all other years after 1989, the sum of the grants disbursed under the ECIL program accounted for more than 0.5 percent of Carmiel's total sales each year. Therefore, these benefits were allocated over time.

For ECIL grants allocated over time, we used a twelve year allocation period (the average useful life of assets with respect to the manufacture of fabricated metal products, as determined by the U.S. Internal Revenue Service Asset Depreciation Range System). The formula described in Section 355.49(b)(3) of the Proposed Regulations for allocating grants relies on a fixed discount rate, which is based on the cost of long-term, fixed-rate debt of the firm or generally in the country under investigation. However, we confirmed at verification that no long-term loans with fixed interest rates (or other long-term fixed-rate debt) were available in Israel during the years 1983–1993. Instead, the only long-term loans (or other long-term debt) available to companies in Israel utilized variable interest rates, *i.e.*, a fixed real interest rate added to the Consumer Price Index (CPI) or the dollar/shekel exchange rate.

Therefore, we have determined to adapt the grant allocation method described in our proposed regulations to use variable rather than fixed interest rates as the discount rate, given the absence of long-term fixed interest rates in the years these grants were disbursed. This methodology reflects the actual long-term options open to Israeli firms (*i.e.*, that long-term financing was only available through variable rate loans) and also ensures that the net present value of amounts countervailed in the year of receipt does not exceed the face value of the grant.

In this determination, we have used as the discount rate the rate of return on CPI-indexed commercial bonds (the real rate of return, as published in the Bank of Israel Annual Reports, plus the CPI), as no actual borrowing rates for Carmiel were available.

We divided the benefit allocated to 1993 by Carmiel's 1993 total sales. On this basis, we determine the estimated net subsidy for this program to be 2.31 percent *ad valorem* for the POI.

B. Long-Term Industrial Development Loans

Prior to July 1985, companies in Israel were eligible to receive long-term industrial development loans funded by the GOI. This program was used in conjunction with ECIL; however, a company was not required to be an Approved Enterprise in order to receive a development loan.

We confirmed, as the GOI reported, that loans under this program were provided to a number of different industries in Israel. However, we also confirmed that the interest rates on these loans varied depending on the location of the borrower. The interest rates on loans to borrowers in Development Zone A were lowest, while those on loans to borrowers in the Central Zone were highest. In previous cases, the Department has found long-term industrial development loans in Israel to be regional subsidies and countervailable to the extent that the applicable interest rates are less than those on loans to companies in the Central Zone (see *IPA*). The GOI has provided no new information to warrant reconsideration of this finding.

Carmiel received loans for a project located in Zone A. These loans were received between the year 1983–1989. Under the terms of the program, the interest rates on these loans have two components—a fixed real interest rate and a variable interest rate, the latter of which is based on either the CPI or the dollar/shekel exchange rate. We confirmed at verification that Carmiel received some loans that were linked to the CPI and others linked to the dollar-shekel exchange rate.

Because the CPI and dollar-shekel exchange rate vary from year-to-year, we cannot calculate *a priori* the payments that will be made over the life of these loans and, hence, we cannot calculate the ''grant equivalent'' of the loans. Accordingly, we have compared the interest that would have been paid by a company in the Central Zone, as a benchmark, to the amount actually paid by Carmiel during the POI (see Section 355.49(d)(1) of the Proposed Regulations). We divided the interest savings by Carmiel's total sales in 1993.

On this basis, we determine the net subsidy from this program to be 0.36 percent *ad valorem* during the POI.

C. Exchange Rate Risk Insurance Scheme

Introduced in 1981, the Exchange Rate Risk Insurance Scheme (EIS), operated by the Israel Foreign Trade Insurance Corporation Inc. (IFTRIC), was designed to allow exporters to insure themselves against the risk of losses which might occur when the rate of devaluation of the Israeli shekel lagged behind the rate of inflation. The EIS was optional and open to exporters willing to pay a premium to IFTRIC.

Under this program, if the rate of inflation was greater than the rate of devaluation, the exporter was compensated by an amount equal to the difference between these two rates

multiplied by the value-added of the exports. If the rate of devaluation was higher than the change in the domestic price index, however, the exporter was required to compensate IFTRIC. Companies using EIS paid a premium, calculated for each exporter as a percentage of the insured value of exports.

In determining whether an export insurance program provides a countervailable benefit, we examine whether the premiums and other charges are adequate to cover the program's long-term operating costs and losses. See Section 355.44(d) of the Proposed Regulations and *IPA*. We have reviewed EIS data in this investigation which showed that EIS operated at a loss from 1981 through 1991. We believe that this 11 year history is more than adequate to establish that the premiums and other charges are ''manifestly inadequate'' to cover the long-term operating costs and losses of the program. The Department's determination that this program is countervailable is consistent with our determination in *IPA*.

We confirmed at verification that this program was terminated during our POI by the GOI. However, we also found at verification that the GOI will continue to honor outstanding claims for exports made prior to the date of termination, August 31, 1993, as long as the claims are made within three years of the date of export. Because of the possibility of residual benefits, we have not adjusted the cash deposit rate to reflect the termination of this program.

We have calculated the benefit during the POI as the net amount of compensation (compensation received less compensation and fees paid) Carmiel received during that period expressly for pipe fittings exported to the United States. We confirmed by reviewing company records that a certain portion of the total benefit reported by Carmiel as having been received during the POI was actually received by the company in 1992. Therefore, we have not included this amount in our calculations for purposes of this determination.

We divided the resulting net compensation amount by the value of the company's exports of pipe fittings to the United States during the POI. On this basis, we determine the estimated net subsidy from this program to be 0.19 percent *ad valorem* during the POI.

D. Exemption From Wharfage Fee

The Ports and Trains Authority administers all import/export operations and the train system in Israel. Wharfage fees represent 45–50 percent of the revenues of the Authority to cover its infrastructure and overhead costs.

We confirmed at verification that during the POI, importers were obligated to pay wharfage fees equal to 1.5 percent *ad valorem* of import value and exporters 0.2 percent *ad valorem* of export value. However, we also found that, during the POI, exporters were exempted by a Ports and Trains Authority decision from paying the wharfage fee altogether. The exemption of this fee does not relate to the imported input (see the *Rebate of Wharfage Fees* section below), but rather to the finished product. Government officials explained that an exemption for exporters was made possible by the Authority's sound financial position.

We determine that the exemption from the wharfage fee provides an export subsidy insofar as export are allowed an exemption (unlike the other users of the port, *i.e.*, importers) solely due to their status as exporters. *Cf. Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish From Canada*, 51 FR 10041 (Mar. 24, 1986).

In order to calculate the benefit resulting from this program, which provides recurring benefits, we multiplied the total value of the company's exports during the POI by the 1.5 percent *ad valorem* coefficient and divided this amount by the total value of the company's exports.

On this basis, we determined the estimated net subsidy from this program to be 1.50 percent *ad valorem* during the POI.

E. Rebate of Wharfage Fees

We confirmed at verification that an additional program allows exporters, upon export of the finished product, rebates of the wharfage fees paid on imports of physically incorporated inputs. We were informed at verification that since the Israeli Customs Service administers the drawback system, the GOI asked it to take responsibility for rebating wharfage fee under this program. Under the rebate program, a company can receive a rebate for up to 80 percent of the wharfage fees paid on imported inputs that are physically incorporated into exported products.

This program provides preferential treatment for exporters and does not qualify for non-countervailable treatment under section 355.44(i) of the *Proposed Regulations*, as wharfage fees do not constitute indirect taxes or import charges. (*See DOC Position* to *Comment 3* below.)

To calculate the benefit provided by this program, which provides recurring benefits, we divided the total amount of rebate received during the POI by the total value of the company's exports during the same period.

On this basis, we determine the estimated net subsidy from this program to be 0.34 percent *ad valorem*.

F. Fund for the Promotion of Marketing Abroad

During verification we learned that Carmiel received benefits in 1992 under the Fund for the Promotion of Marketing Abroad. GOI officials explained that under the Fund, companies apply for three-year financing for overseas market research projects. The company is obligated to repay the financing (in part) based on export earnings. We also learned that Carmiel has been informed that the funds approved in 1992 have been cancelled because the company did not timely submit its implementation report. Consequently, the Fund Director has asked the company to repay the previously received amount. As of the time of verification, Carmiel had not yet made any repayments.

Given the information we have received, we determine that this program provides benefits solely to exporters. Consequently, we determine that the assistance provided to Carmiel constitutes an export subsidy. Moreover, although Carmiel has been asked to repay the funds, the company has yet to repay anything. Consequently, we are treating the amount as a short-term, interest-free loan still outstanding as of the end of our POI.

In order to calculate the benefit received by Carmiel, we have used the 1992 rate for short-term financing as outlined in a Bank of Israel Annual Report on the record of this proceeding. We have divided the interest savings by Carmiel's total export sales in 1993.

On this basis, we determine the net subsidy from this program to be 0.23 percent *ad valorem* during the POI.

II. Programs Determined Not To Be Countervailable

A. Rebate of Peace of Galilee Levy

We confirmed that the Peace of Galilee (Shlom-Hagalil) Levy was instituted on imports to help the balance of payments problem in Israel caused by incessant war with its neighbors. We confirmed that since at least 1986 the GOI has allowed rebates on this levy in a manner similar to that on the Rebate of Wharfage Fee program. Under the rebate program, a company can receive a rebate for 100 percent of the levies paid on imported inputs that are physically incorporated into exported products.

We confirmed that the company is tasked to provide information to the GOI regarding which inputs are physically incorporated into its exported products, and this information does not give rise to an excessive rebate. We also found that the Customs Authority is tasked with verifying the claims made by companies such as Carmiel. Consequently, we find this program to provide a nonexcessive rebate of the levies. See *Proposed Regulations* at Section 355.44(i). Therefore, we have found this program to be not countervailable.

III. Programs Determined Not To Be Used

We determine that Carmiel did not receive benefits during the POI for exports of the subject merchandise to the United States under the following programs:

A. *Additional Incentives under the ECIL*
  1. *Preferential Accelerated Depreciation*
  2. *Tax Benefits*
  3. *Preferential Loans*
  4. *Industry Subsidy Payments*
B. *Labor Training Grants*
C. *Encouragement of Industrial Research and Development (EIRD) Grants*
D. Special Export Financing Loans
E. *Provision of Funds for Transportation to Eilat Harbor*

Interested Party Comments

Comment 1: With respect to the Exchange Rate Risk Insurance Scheme, petitioner argues that Carmiel originally reported that it received a certain amount during the POI based on IFTRIC records. At verification, however Carmiel claimed that the original figure incorrectly included a payment received in 1992. Petitioner argues that according to IFTRIC records verified by the Department, the disputed payment was received by Carmiel during the POI. Therefore, the Department should use the figure originally reported by Carmiel.

Carmiel notes that the disputed amount was actually received by the company in 1992. According to Carmiel, it is the date of receipt by the *company* that is controlling; hence, the benefit from the EIS should be adjusted to reflect only the amount received during the POI.

DOC Position

We agree with Carmiel. We confirmed at the verification of Carmiel that the company actually received the disputed amount in 1992, not during the POI. It is unclear why IFTRIC recorded a later date of payment. Nevertheless, we have countervailed only the amount received by the company under this program during the POI.

Comment 2: Carmiel argues that since the Department verified that the Exchange Rate Risk Insurance Scheme was terminated during the POI, the deposit rate should be set at zero.

Petitioner argues that the Department should reject Carmiel's claim. Petitioner notes that the Department found that, although this program was terminated during the POI, the GOI will continue to honor outstanding claims as long as they are made within three years of the date of export. Therefore, residual benefits from the program will continue to be available after the POI.

DOC Position

We agree with petitioner. The Department's practice, as outlined in Section 355.50(d)(1)(2) of the Proposed Regulations, is not to adjust the cash deposit rate when it determines that residual benefits may continue to be bestowed under a terminated program. As we verified that residual benefits are possible under this program, we have not made an adjustment to the cash deposit rate.

Comment 3: According to petitioner, the Department verified that wharfage fees, assessed in order to finance the Ports and Trains Authority, differ for importers and exporters, even though the costs associated with both activities do not differ. Moreover, for the last ten years, exporters have been exempt from paying a fee altogether. Since the Department was unable to verify the value of the wharfage fee exemption to Carmiel, it should as best information available (''BIA'') establish a 1.5 percent *ad valorem* countervailing duty for this program. Petitioner further argues that the record does not indicate that these fees cover costs that have nothing to do with the services suggested by the term ''wharfage,'' and, therefore, do not operate as a tax.

Respondent counters that the wharfage fee is, in fact, a general levy intended to cover myriad government activities that have nothing to do with the services suggested by the term ''wharfage.'' The fee is paid to a government agency and is not tied to any specific cost or service. It is a tax, and more particularly an indirect tax on exports. Therefore, it should not be considered a countervailable subsidy.

DOC Position

We agree with petitioner that wharfage fees represent fees rather than indirect taxes. Consistent with the concept of a fee, the wharfage fees here are paid only by users of the port facilities, and the funds raised are used to pay for the costs incurred by the Port Authority and the maintenance of those facilities.

We note that we have not used BIA, as petitioner suggests, to calculate the countervailable benefit provided by this program. Rather, as noted above, for the exemption of the fee, we have determined that the correct method by which to calculate the benefit received by Carmiel is to multiply the 1.5 percent exemption by total export sales during the POI, and divide the resulting amount by the same total export sales value.

Comment 4: Petitioner notes that, with respect to the Rebate of the Peace of Galilee Levy Program, the record does not provide enough information to determine the extent to which the rebate provided to Carmiel is excessive. Although remission of import duties for imports consumed as ''normal waste'' may not be excessive, the Israeli Customs has made no effort to identify ''normal waste'' in the production of butt-weld pipe fittings. Therefore, petitioner submits that, as BIA, the entire amount rebated under this program should be treated as a countervailable subsidy. Petitioner notes that in *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Israel* (52 FR 1649; January 15, 1987) *(''OCTG'')*, the Department found that this program did not provide an excessive rebate of duties paid on imported inputs physically incorporated into the exported product. However, in this investigation, unlike *OCTG*, Customs indicated that it makes no attempt to determine a value for the carbon steel pipe wasted in producing subject merchandise.

Respondent argues that this program does not provide a countervailable subsidy in that it is an indirect tax on items physically incorporated into the final exported product. In fact, in *OCTG*, the Department found this program to be not countervailable. Respondent also argues that there is absolutely nothing in the record of this case to suggest that, while the rebate was ''nonexcessive'' in *OCTG*, the rebate to Carmiel is excessive. Petitioner's attempt to make the rebate appear excessive by focusing on the Custom's official's statement about wastage is misplaced. Such percentages are not determined as they are not relevant to the payments. The rebate is based on the proportion of export sales to home market sales. No calculation for wastage is necessary; Customs simply compares the tonnage of finished product exported to the tonnage sold in the Israeli market.

DOC Position

We agree with respondent that this program is not countervailable because it provides a non-excessive rebate of the levies on imported inputs that are used in the production of subsequently exported finished products. We confirmed at the Israeli Customs Department that its personnel monitor company reports regarding which imports are physically incorporated into the end product and the total amount of levies paid on such inputs. We also note that a rebate is only given on physically incorporated inputs. Consequently, waste is not an issue here. For this reason, we do not find anything in the remarks of the Customs official at verification that is inconsistent with our finding here, or in *OCTG*.

Comment 5: With respect to the Fund for the Promotion of Marketing Abroad, Carmiel states that the record is clear that it received funds for this program in 1992 (which is outside the POI), and that the company must refund the money to the government since it did not fulfill its obligations under the program. Accordingly, Carmiel maintains the money it received does not constitute a countervailable subsidy during the POI.

DOC Position

We confirmed at verification that the company is obligated to repay the benefit, has not yet done so. Therefore, during the POI, Carmiel had use of money to which it would not have otherwise had access. Consequently, we have found that this amount constituted a countervailable interest-free loan during the POI.

Comment 6: Petitioner notes that according to the verification report, Carmiel receives ''certain advantages'' if 90 percent of its sales represent its own production. The exact nature of these advantages is not, unfortunately, further explained in the verification report. However, the fact that these otherwise undefined advantages are only available to a specific class of sellers in Israel demonstrates that the ''advantages'' are not generally available within the country.

Respondent argues that, as outlined in the verification report, producing companies in Israel are eligible for certain benefits while trading companies are not. Hence, in order to preserve its status as a producing company, Carmiel formed a trading company. There are, however, no additional subsidies available to production companies other than the ones already investigated in this case.

DOC Position

We agree with respondent. We found no evidence at verification to suggest that Carmiel received any additional benefits than those already noted above. The company explained that it formed a trading company in order to preserve its ''producing company status.'' Consequently, we find no reason to pursue this issue any further.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examination of relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of carbon steel butt-weld pipe fittings from Israel, which were entered or withdrawn from warehouse for consumption, on or after June 1, 1994, the date our preliminary determination was published in the Federal Register. This final countervailing duty determination was aligned with the final antidumping duty determination of certain carbon steel butt-weld pipe fittings from Israel, pursuant to section 705(a)(1) of the Act.

Under Article 5, paragraph 3 of the GATT Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue suspension of liquidation on the subject merchandise beginning September 30, 1994, but to continue suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered from June 1 through September 29, 1994. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amount indicated below.

Certain Carbon Steel Butt-Weld Pipe Fittings

Country-Wide *Ad Valorem* Rate: 4.93 percent

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order directing Customs officers to assess countervailing duties on carbon steel butt-weld pipe fittings from Israel.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act and 19 CFR 355.20(a)(4).

Dated: February 16, 1995.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–4718 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–DS–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Decision of Panel

AGENCY: North American Free-Trade Agreement (NAFTA) Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Binational Panel.

SUMMARY: By a decision dated February 13, 1995, the Binational Panel reviewing the final affirmative injury determination made by the Canadian

International Trade Tribunal (CITT) respecting Certain Solder Joint Pressure Pipe Fittings and Solder Joint Drainage, Waste and Vent Pipe Fittings, made of Cast Copper Alloy, Wrought Copper Alloy or Wrought Copper, Originating in or Exported from the United States of America (Secretariat File No. CDA–93–1904–11) affirmed the determination of the CITT. A copy of the complete panel decision is available from the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews (''Rules''). The Rules were published in the Federal Register on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedures for Article 1904 Binational Panel Reviews, published in the Federal Register on December 27, 1989 (54 FR 53165). A consolidated version of the amended Rules was published in the Federal Register on June 15, 1992 (57 FR 26698). The Rules were further amended and published in the Federal Register on February 8, 1994 (59 FR 5892). The panel review in this matter was conducted in accordance with the Rules, as amended.

PANEL DECISION: In the February 13, 1995 decision, the Binational Panel affirmed the investigating authority's determination respecting Certain Solder Joint Pressure Pipe Fittings and Solder Joint Drainage, Waste and Vent Pipe Fittings, made of Cast Copper Alloy, Wrought Copper Alloy or Wrought Copper, Originating in or Exported from the United States of America made by the Canadian International Trade Tribunal.

A Notice of Final Panel Action will be issued on the eleventh (11) day following the issuance of the decision (February 24, 1995).

Dated: February 21, 1995.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 95–4751 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–GT–M

Minority Business Development Agency

Business Development Center Applications: Alaska

AGENCY: Minority Business Development Agency.

ACTION: Correction.

SUMMARY: On page 8636 in the issue dated Wednesday, February 15, 1995, third column, first paragraph, the award number is corrected to read, ''10–10–95005–01''.

FOR FURTHER INFORMATION, CONTACT: Steven Saho at (415) 744–3001.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: February 22, 1995

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–4729 Filed 2–4–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Portland, Oregon

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Correction.

SUMMARY: On page 8633 in the issue dated Wednesday, February 15, 1995, third column, second paragraph, the award number is corrected to read, ''10–10–95013–01''.

FOR FURTHER INFORMATION, CONTACT: Steven Saho at (415) 744–3001.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: February 22, 1995.

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–4833 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Seattle, WA

AGENCY: Minority Business Development Agency.

ACTION: Correction.

SUMMARY: On page 8641 in the issue dated Wednesday, February 15, 1995, second column, second paragraph, the award number is corrected to read, ''10–10–95014–01''.

FOR FURTHER INFORMATION, CONTACT: Steven Saho at (415) 744–3001.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: February 22, 1995

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–4832 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–21–P

National Oceanic and Atmospheric Administration

[Docket No. 950210047–5047–01; I.D. 011195B]

RIN 0648–XX08

Atlantic Monkfish Fishery; Control Date

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

ACTION: Notice of control date for entry into the Atlantic monkfish fishery.

SUMMARY: This notice announces that anyone entering the Atlantic monkfish fishery after February 27, 1995 (control date), will not be assured of future access to the Atlantic monkfish resource in Federal waters if a management regime is developed and implemented under the Magnuson Fishery Conservation and Management Act (Magnuson Act) that limits the number of participants in the fishery. This announcement is intended to promote awareness of potential eligibility criteria for future access to the Atlantic monkfish resource and to discourage new entries into this fishery based on economic speculation, while the New England and Mid-Atlantic Fishery Management Councils (Councils) contemplate whether and how access to the Atlantic monkfish fishery should be controlled. The potential eligibility criteria may be based on historical participation, defined as any number of trips having any documented amount of monkfish landings. This announcement, therefore, gives the public notice that they should locate and preserve records that substantiate and verify their participation in the monkfish fishery.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 617–231–0422, David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 302–674–2331 or Paul H. Jones, Fishery Policy Analyst, NMFS Northeast Regional Office, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

Monkfish (*Lophius americanus*, also known as goosefish or anglerfish) are widely distributed in the northwest Atlantic Ocean from the northern Gulf of St. Lawrence to Cape Hatteras, NC. This species is found from the tideline to depths as great as 840 m (2,756 ft). They reach 48 cm (19 in) in length by age 4, when most monkfish are mature. The maximum observed age has been 9 and 11 years for males and females, respectively.

Landings of monkfish tails have increased markedly since the mid-1970's, from 600 metric tons (mt) in 1975 to 2,300 mt in 1980 and then to 4,300 mt in 1989. Landings for 1993 (tails) totalled 6,600 mt; total live weight landed including tails, livers, and other body parts and monkfish landed round totalled 18,600 mt. This continued increase reflects both increased effort in other fisheries (primarily for groundfish and sea scallops) in which monkfish are taken as bycatch and increasing levels of directed effort towards this species. Since 1990, increased directed effort has occurred from vessels employing trawls, scallop dredges and sink gillnets, generally in deeper waters, and this component of the fishery now accounts for nearly 30 percent of the total landings. Interest in fishing for monkfish is being fueled by increasing value of monkfish livers and increasing market acceptance of small tails. This trend is likely to continue as fishermen seek alternatives to the traditional scallop and groundfish fisheries, which are severely depleted and intensively regulated.

Developing markets for monkfish tails and livers allowed fishermen to fish more profitably and land increasingly smaller monkfish over the past several years. Because of this trend, several Atlanic coast states recently implemented minimum fish size requirements for monkfish. Monkfish liver prices are now at or near all-time highs, and some dealers have reportedly been unable to fill market demand for small tails, since many coastal states have imposed minimum size limits. Landings of excessively small monkfish with tails as small as 9 inches (22.9 cm), and occasionally as small as 5 inches (12.7 cm), are of major concern.

Abundance, as measured by research vessel surveys, has declined to near record lows, and average sizes of monkfish in commercial landings and in research vessel surveys have declined to record lows in recent years. A steady decline in proportion of mature fish in the population has also been noted (to 25% or less in the Gulf of Maine, the lowest observed percentage in the time series) with potential adverse effects on future recruitment.

Recent increases in landings of monkfish to record high levels, declines in abundance and biomass to at or near record lows, and the declining proportion of mature individuals in the population all indicate that this resource is overfished and in a deteriorating condition; and if current fishery trends continue, recovery of this resource will become increasingly problematical. Guidelines Relating to Intent of the Councils in Establishing a Control Date for the Management of Monkfish

1. The Councils are currently considering that, in the event that a system of assigning fishing rights is developed as part of an FMP for monkfish, such assignments shall be based upon historical levels of participation in the fishery prior to February 27, 1995, with the following considerations for recent investment.

2. The current intent of the Councils is that newly constructed vessels will be given consideration in the assignment of fishing rights if they were under construction as of February 27, 1995, as evidenced by written construction contracts.

3. The public is further notified that it is the current intent of the Councils that historical participation will transfer with a vessel, for transfers made after February 27, 1995, unless such transfers are accompanied by a written document indicating the agreement of both buyer and seller that any future fishing rights applicable to that vessel are not being transferred via sale, lease, or any other means of conveyance. Any such transfers or explicit retention of fishing rights may only be executed with any and all fishing rights presently assigned to said vessel or which may be assigned based on that vessel's prior participation in any other fishery. This potential restriction may mean, for example, that no transfers or explicit retention of monkfish fishing rights may be made without also transferring or retaining the vessel's or the former owner's right to fish for groundfish, scallops, or another regulated species.

If a vessel's fishing rights were transferred to a new owner prior to February 27, 1995, the new owner may have the option of excluding the previous owner's history of participation when qualifying for a limited access fishery. If a vessel is transferred with its fishing rights to a new owner after February 27, 1995, the entire history of fishing for monkfish may be required when determining eligibility.

4. The Councils' current intent is that if fishing rights are explicitly retained by a previous owner as described above, or a qualifying vessel is lost or destroyed, the owner of said vessel or its rights may qualify for a limited access fishery for monkfish without having title to a replacement vessel. Upgrades or replacements of vessels after February 27, 1995 that are inconsistent with the Multispecies, Scallop, or Summer Flounder Fishery Management Plans may disqualify the vessel from the limited access monkfish fishery.

5. Further, the Councils currently intend that any system of assigning fishing rights may consider the following concerns relative to individuals or corporations that have sold a vessel within the time that may be chosen to determine historical fishing rights:

a. Extent of past participation in the Atlantic monkfish fishery;

b. Demonstration of intent prior to February 27, 1995 to re-enter the Atlantic monkfish fishery with a different vessel.

c. Requirement that a vessel's history may be applied such that no more than one vessel may rely on that history to qualify for the limited access fishery.

The Councils intend to address whether and how to limit entry of commercial vessels into this fishery in a Monkfish FMP. The Councils' intent in making this announcement is to discourage speculative entry into the commercial monkfish fishery while potential management regimes to control access into the fishery are discussed and possibly developed by the Council. The control date will help to distinguish bona fide established fishermen from speculative entrants to the fishery. Although fishermen are notified that entering the fishery after the control date will not assure them of future access to the monkfish resource on the grounds of previous participation, additional and/or other qualifying criteria also may be applied.

The Councils may choose different and variably weighted methods to qualify fishermen based on the type and length of participation in the fishery or on the quantity of landings. The

qualification criteria may be structured such that vessels fishing for other species and having incidental catches of monkfish would be able to continue to do so without qualifying for a limited access permit.

This notice hereby establishes February 27, 1995 for potential use in determining historical or traditional participation in a monkfish fishery. This action does not commit the Councils to develop any particular management regime or to use any specific criteria for determining entry to the fishery. The Councils may choose a different control date, or may choose a management program that does not make use of such a date. The Councils may choose also to take no further action to control entry or access to the fishery. Any action by the Councils will be taken pursuant to the requirement for FMP development established under the Magnuson Act.

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

Dated: February 17, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–4652 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting; Amendment.

SUMMARY: This notice amends the notice that was published in the Federal Register issue of Thursday, February 9, 1995, 60 FR 7759. This amended notice sets forth the schedule and proposed agenda of a forthcoming partially closed meeting of the Advisory Committee on Student Financial Assistance.

DATES AND TIMES: February 27, 1995, beginning at 9:00 a.m. and ending at 5:00 p.m.; and February 28, 1995, beginning at 8:30 a.m. and ending at 12:00 noon, but closed from 8:30 a.m. to 9:30 a.m.

ADDRESSES: Dupont Plaza Hotel, 1500 New Hampshire Avenue, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, S.W., Suite 601, Washington, D.C. 20202–7582, (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee will meet in Washington, D.C. on February 27, 1995, from 9:00 a.m. to 5:00 p.m., and on February 28, from 8:30 a.m. to 12:00 noon. The meeting will be closed to the public on February 28, from 8:30 a.m. to 9:30 a.m. to discuss personnel matters. The ensuing discussions will relate to internal personnel rules and practices of an agency and will disclose information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552(b)(c) of Title 5 U.S.C.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552(b) will be available to the public within fourteen days of the meeting.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, S.W., Suite 601, Washington, D.C. from the hours of 9:00 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: February 17, 1995.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 95–4636 Filed 2–24–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Hydrogen Technical Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, as amended), notice is hereby given of the following advisory committee meeting:

Name: Hydrogen Technical Advisory Panel.

Date and Time: Monday, March 6, 1995, 9:00 a.m.–5:30 p.m., Tuesday, March 7, 1995, 9:00 a.m.–12:00 p.m.

Place: Mark Center Raddison Hotel, 5000 Seminary Road, Alexandria, Virginia, Telephone: 703–845–1010.

FOR FURTHER INFROMATION CONTACT: Russell Eaton, Designated Federal Official, 1000 Independence Avenue SW, Washington, DC 20585, Telephone: (202) 586–1506.

SUPPLEMENTARY INFORMATION:

Purpose: The Hydrogen Technical Advisory Panel (HTAP) will advise the Secretary of Energy who has the overall management responsibility for carrying out the programs under the Matsunaga Hydrogen Research, Development, and Demonstration Program Act of 1990, Public Law 101–566. The Panel will review and make any necessary recommendations to the Secretary on the following items: (1) the implementation and conduct of programs required by the Act, (2) the economic, technological, and environmental consequences of the deployment of hydrogen production and use systems, and (3) the contents of the comprehensive 5-year program required by the Act.

Tentative Agenda

Monday 6, 1995

9:00 a.m.—Introductions and Opening Comments: P. Takahashi
9:10 a.m.—Hydrogen Programs within OUT: K. Rabago
9:30 a.m.—Hydrogen Programs within OTT: T. Gross
9:50 a.m.—Report from the U.S. DOE: R. Eaton
10:10 a.m.—Report on Hydrogen Program: N. Rossmeissl
10:30 a.m.—Report on NREL Program: C. Gregoire
10:45 a.m.—Break
11:00 a.m.—International Activities: R. Eaton
11:15 a.m.—Report on Congressional Activities: Rep. R. Walker M. Wiggins
12:00 p.m.—Lunch
1:00 p.m.—Industry/Public Outreach: D. Nahmias
1:30 p.m.—Status Reports from HTAP Committees
5:30 p.m.—Wrap-up: P. Takahashi

Tuesday, March 7, 1995

9:00 a.m.—Future Plans of HTAP: Committee Chairmen
10:00 a.m.—Roundtable Discussion: Panel
11:00 a.m.—Public Comments: All

Public Participation

The meeting is open to the public. The Chairman of the HTAP is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Official at the address or telephone number listed above. Requests must be received before 5 p.m. (E.S.T.) Monday, March 6, 1995, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide

15 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication. Written comments can be sent to the address above on or before March 14, 1995.

Minutes

A transcript of the open, public meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued at Washington, DC, on February 22, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–4763 Filed 2–24–95; 8:45 am]

BILLING CODE 6450–01–P

National Electric and Magnetic Fields Advisory Committee Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), notice is hereby given of a meeting of the National Electric and Magnetic Fields Advisory Committee.

DATES: Tuesday, March 14, 1995: 9:00 a.m.–4:00 p.m., Wednesday, March 15, 1995: 9:00 a.m.–12:00 p.m.

ADDRESSES: Holiday Inn Georgetown, 2101 Wisconsin Avenue, Washington, D.C. 20007, (202) 338–4600.

FOR FURTHER INFORMATION CONTACT: Roland George, Program Manager, Utility Systems Division, EE–141, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9398.

SUPPLEMENTARY INFORMATION: The National Electric and Magnetic Fields Advisory Committee advises the Department of Energy and the National Institute of Environmental Health Sciences on the design and implementation of a five-year, national electric and magnetic fields research and public information dissemination program. The Secretary of Energy, pursuant to Section 2118 of the Energy Policy Act of 1992, P.L. 102–486, has overall responsibility for establishing the national program which includes health effects research, development of technologies to mitigate any adverse human health effects, and dissemination of information.

Tentative Agenda

Tuesday, March 14, 1995

9:00 a.m.—Welcome and Review of minutes
9:30 a.m.—FY 95 funding status/options
10:00 a.m.—FY 96 funding
10:45 a.m.—Break
11:15 a.m.—FY 96 funding priorities and options
12:00 noon—Lunch
1:00 p.m.—Annual Report for FY 94
1:15 p.m.—Report on FY 95 activities (National Institute of Environmental Health Sciences (NIEHS), DOE)
2:30 p.m.—Response to recent solicitations for proposals
2:50 p.m.—Break
3:15 p.m.—Review of proposed work, FY 95, FY 96
3:45 p.m.—Administrative issues
4:00 p.m.—Adjourn

Wednesday, March 15, 1995

9:00 a.m.—Report from Interagency Working Group
9:30 a.m.—Interagency Committee Progress Report to Congress
10:30 a.m.—Break
11:00 a.m.—Public comments
12:00 noon—Adjourn

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Roland George at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. Depending on the number of requests, comments may be limited to five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

A transcript and minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday expect Federal holidays. Copies of the minutes will also be available by request.

Issued at Washington, D.C. on February 22, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–4762 Filed 2–24–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP93–728–001, et al.]

Northwest Pipeline Corporation, et al.; Natural Gas Certificate Filings

February 17, 1995.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP93–728–001]

Take notice that on February 9, 1995, Northwest Pipeline Corporation (Applicant), P.O. Box 58900, Salt Lake City, Utah 84108–0900, filed in Docket No. CP93–728–001 a request pursuant to § 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for approval to change the design of authorized facilities, located at the new Maple Heights Meter Station in King County, Washington, [1] to reflect the elimination of one of the originally authorized meters from the design of the facilities actually installed, under blanket certificate issued in Docket No. CP82–433–000, [2] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Applicant states that it was authorized to construct and operate the Maple Heights Meter Station consisting of two 3-inch taps, one 2-inch rotary meter, one 4-inch turbine meter, two 1-inch Mooney regulators and appurtenances, with a maximum design delivery capacity of approximately 5,250 Dth per day at 200 psig to provide service to Washington Natural Gas Company (Washington Natural). Applicant states that prior to construction Washington Natural determined that a capacity of 750 Dth per day would be sufficient to meet its requirements at this delivery point and requested that the authorized meter station be downsized. Accordingly, Applicant modified the Maple Heights Meter Station design by eliminating the authorized 4-inch turbine meter thus reducing the design capacity to

[1] *See*, Prior Notice in Docket No. CP93–728–000 (dated September 21, 1993), effective November 6, 1993.

[2] *See*, 20 FERC ¶ 62,412 (1982).

approximately 750 Dth per day. Applicant states that the revised cost of the downsized meter station was $396,239 which was reimbursed by Washington Natural.

Applicant holds a blanket transportation certificate pursuant to Part 284 of the Commission's Regulations issued in Docket No. CP86–578–000.[3] Applicant states that there is no significant impact on Applicant's system peak day deliveries resulted from the redesigned facilities since Applicant's total firm obligation for deliveries to Washington Natural remains unchanged. Applicant states that construction of the proposed delivery point is not prohibited by its existing tariff, and that the requirements to be served via this meter station will result in no significant increase in annual throughput on Applicant's system.

Comment date: April 3, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Questar Pipeline Company

Docket No. CP95–201–000

Take notice that on February 13, 1995, Questar Pipeline Company (Questar Pipeline), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP95–201–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to convert existing exempt facilities, installed and operated under 18 CFR 157.53 to Natural Gas Act § 7(c) delivery point facilities and operate same as fully certificated transmission facilities under Questar Pipeline's blanket certificate issued in Docket No. CP82–491–000 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.

Questar Pipeline proposes to convert facilities in Uinta County, Wyoming. These facilities consist of one four-inch tap, one two-inch Daniel Senior meter run, approximately 400 feet of four-inch buried pipeline, electronic flow-measurement and telemetry equipment, and minor yard and station piping.

Comment date: April 3, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. K N Interstate Gas Transmission Company

[Docket No. CP95–203–000]

Take notice that on February 14, 1995, K N Interstate Gas Transmission Company (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed in Docket No. CP95–203–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to establish three new delivery taps for its affiliate, K N Energy, Inc., (K N), a local distribution company, for ultimate sale to various retail customers, under K N Interstate's blanket certificate issued in Docket Nos. CP83–140–000 and CP83–140–001 and Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N Interstate proposes new delivery taps to be located in Phelps, Fillmore, and Howard Counties, Nebraska. K N Interstate states that the proposed taps will deliver twenty-two, eighteen, and thirty-six Mcf on a peak day, respectively, and 710, 590, and 360 Mcf annually, respectively. K N Interstate estimates that the Phelps County tap and the Fillmore County tap will both cost $850 to construct. K N Interstate further estimates that the Howard County tap will cost $1,150 to construct. K N Interstate indicates that the proposed facilities will not have an adverse impact on its existing customers.

K N Interstate advises that the volumes of gas which will be delivered at each of these proposed delivery taps will be within the current maximum daily transportation quantity set forth in K N Interstate's transportation service agreement with K N. K N Interstate further advises that the addition of the delivery taps is not prohibited by its existing tariff.

Comment date: April 3, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

G. 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 § 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. 95–4674 Filed 2–24–95; 8:45 am]

BILLING CODE 6717–01–P

[3] *See*, 42 FERC ¶ 61,019 (1988).

[Docket No. EG95–31–000 et al.]

CNG Power Services Corporation, et al. Electric Rate and Corporate Regulation Filings

February 17, 1995.

Take notice that the following filings have been made with the Commission:

1. CNG Power Services Corporation

[Docket No. EG95–31–000]

On February 10, 1995, CNG Power Services Corporation (CNGPS), One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15222, filed with the Federal Energy Regulatory Commission (Commission) an application for a new determination of exempt wholesale generator status, due to changed circumstances resulting from certain proposed transactions, pursuant to part 365 of the Commission's regulations. The application states that the Commission previously determined that CNGPS is an exempt wholesale generator. *See* CNG Power Services Corporation, 69 FERC ¶ 61,002 (1994).

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Catex Vitol Electric Inc.

[Docket No. ER94–155–005]

Take notice that on February 3, 1995, Catex Vitol Electric Inc. (Catex) filed information as required by the Commission's January 14, 1994 order in Docket No. ER94–155–000. Copies of Catex's filing are on file with the Commission and are available for public inspection.

3. PSI Energy, Inc.

[Docket No. ER95–323–000]

Take notice that on February 8, 1995, PSI Energy, Inc. (PSI), tendered for filing an amendment to filing it made in this docket on December 22, 1994. The amendment consists of two parts. First, PSI has filed Exhibits AEE and G of the Transmission and Local Facilities Ownership, Operation and Maintenance Agreement (T&LF Agreement) among PSI, Wabash Valley Power Association (WVPA) and the Indiana Municipal Power Agency (IMPA). Second, PSI has

provided further explanation regarding section 7.4.3 of the T&LP Agreement.

Copies of this filing have been served on the Indiana Utility Regulatory Commission, WVPA, IMPA, the Public Utility Commission of Ohio and the Public Service Commission of the State of Kentucky.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Company

[Docket No. ER95–556–000]

Take notice that on February 6, 1995, Southern California Edison Company (Edison), tendered for filing Firm Transmission Service Agreement (FTS Agreement):

Firm Transmission Service Agreement (Victorville-Lugo/Midway) Between Southern California Edison Company And M–S–R Public Power Agency

The FTS Agreement sets forth the terms and conditions under which Edison has agreed to provide M–S–R with 150 megawatts (MW) of firm transmission service from the midpoint of the Victorville-Lugo transmission line (Victorville-Lugo Midpoint) to the Midway Substation and 150 MW of interruptible transmission service from Midway Substation to the Victorville-Lugo Midpoint. Edison requests the Commission to assign to the FTS Agreement an effective date of May 1, 1995.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Jersey Central Power & Light Company Metropolitan Edison Company Pennsylvania Electric Company

[Docket No. ER95–557–000]

Take notice that on February 6, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an amendment to the Purchase and Sale Agreement between GPU and Niagara Mohawk Power Corporation, dated as of July 1, 1969, as amended. The purpose of this abbreviated filing is to provide an explanation of the treatment of the cost of emission allowances.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Jersey Central Power & Light Company Metropolitan Edison Company Pennsylvania Electric Company

[Docket No. ER95–558–000]

Take notice that on February 6, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an amendment to the GPU Power Pooling Agreement. The purpose of this abbreviated filing is to provide an explanation of the treatment of the cost of emission allowances.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Electric Power Company

[Docket No. ER95–559–000]

Take notice that on February 6, 1995, Wisconsin Electric Power Company (Wisconsin Electric or the Company), tendered for filing revisions to its coordination rate schedules between itself and a number of present and prospective wholesale energy purchasers. The revisions would allow Wisconsin Electric to recoup the cost of sulphur dioxide emission allowances associated with the production of energy under these agreements and rate schedules. Under the federal Clean Air Act (42 U.S.C. Section 7401 *et seq.*), Wisconsin Electric would assume liability for the costs of procurement of these emission allowances. The rate revisions would allow reimbursement, in cash or in kind, up to 100% of the replacement cost in all service schedules using incremental costs. Energy purchasers would be allowed to defer reimbursement of emission allowances until such time as the Company must surrender emission allowances to the federal Environmental Protection Agency.

The filing designates the Cantor Fitzgerald Environmental Brokerage Service as the Company's monthly market index to be used in instances where the energy purchaser decides to reimburse Wisconsin Electric in cash. The submittal also explains Wisconsin Electric's least cost plan that incorporates the Clean Air Act's reduced utilization provisions for Phase 1 affected units may cause the Company's cost recovery to be less than total replacement cost.

Wisconsin Electric respectfully requests an effective date of April 1, 1995.

Copies of the filing have been served on all affected wholesale purchasers, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER95–560–000]

Take notice that on February 7, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Amendatory Agreement No. 2 to the PNW AC Intertie Capacity Ownership Agreement between PacifiCorp and Bonneville Power Administration (Bonneville) which was previously filed in this Docket.

PacifiCorp requests a waiver of prior notice and that an effective date of January 1, 1995 be assigned to Amendatory Agreement No. 2.

Copies of this filing were supplied to Bonneville, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp

[Docket No. ER95–561–000]

Take notice that on February 7, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a supplemental filing to PacifiCorp's Rate Schedule FERC No. 164.

Copies of this filing were supplied to the City of Redding, California, the Washington Utilities and Transportation Commission, the Public Utility Commission of Oregon and the Public Utilities Commission of the State of California.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER95–562–000]

Take notice that on February 7, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Amendatory Agreement No. 1 to the South Idaho Exchange Agreement, Contract No. DE–MS79–89BP92524, between PacifiCorp and Bonneville Power Administration (Bonneville), PacifiCorp Rate Schedule FERC No. 256.

Copies of this filing were supplied to Bonneville, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER95–563–000]

Take notice that on February 7, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Revision No. 1 to Exhibit C of the AC Intertie Transmission Agreement, Contract No. DE–MS79–94BP94285, (Agreement) between PacifiCorp and Bonneville Power Administration (Bonneville), PacifiCorp Rate Schedule FERC No. 370.

PacifiCorp requests a waiver of prior notice and that an effective date of January 1, 1995 be assigned to Revision No. 1 to Exhibit C of the Agreement.

Copies of this filing were supplied to Bonneville, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Interconnection Agreement Between CEI and the PJM Group

[Docket No. ER95–564–000]

Take notice that on February 7, 1995, the Pennsylvania-New Jersey-Maryland (PJM) Interconnection Association filed, on behalf of the signatories to the PJM Interconnection Agreement Exhibit A of Schedule 6.02 of the Interconnection Agreement Between CEI and the PJM Group. The purpose of this abbreviated filing is to provide an explanation of the PJM Group's treatment of the cost of emission allowances.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Interconnection Agreement Between The NYPP Group and the PJM Group

[Docket No. ER95–565–000]

Take notice that on February 7, 1995, the Pennsylvania-New Jersey-Maryland (PJM) Interconnection Association filed, on behalf of the signatories to the PJM Interconnection Agreement Exhibit A of Schedule 5.02 of the Interconnection Agreement Between the NYPP Group and the PJM Group. The purpose of this abbreviated filing is to provide an explanation of the PJM Group's treatment of the cost of emission allowances.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Interconnection Agreement Between The APS Group and the PJM Group

[Docket No. ER95–566–000]

Take notice that on February 7, 1995, the Pennsylvania-New Jersey-Maryland (PJM) Interconnection Association filed, on behalf of the signatories to the PJM Interconnection Agreement Exhibit A of Schedule 6.02 of the Interconnection Agreement Between the APS Group and the PJM Group. The purpose of this abbreviated filing is to provide an explanation of the PJM Group's treatment of the cost of emission allowances.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Interconnection Agreement Between Virginia Power and the PJM Group

[Docket No. ER95–567–000]

Take notice that on February 7, 1995, the Pennsylvania-New Jersey-Maryland (PJM) Interconnection Association filed, on behalf of the signatories to the PJM Interconnection Agreement Exhibit A of Schedule 6.02 of the Interconnection Agreement Between Virginia Power and the PJM Group. The purpose of this abbreviated filing is to provide an explanation of the PJM Group's treatment of the cost of emission allowances.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Pennsylvania-New Jersey-Maryland Interconnection (PJM) Agreement

[Docket No. ER95–568–000]

Take notice that on February 7, 1995, the Pennsylvania-New Jersey-Maryland (PJM) Interconnection Association filed, on behalf of the signatories to the PJM Agreement Exhibit A of Schedule 6.01 of the PJM Interconnection Agreement. The purpose of this abbreviated filing is to provide an explanation of the treatment of the cost of emission allowances.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Montana Power Company

[Docket No. ER95–569–000]

Take notice that on February 7, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a ''Unit Contingent Capacity and Associated Energy Sales Agreement Between The Montana Power Company and Associated Power Services, Inc.''; Montana requests that the Commission: (i) Accept the Agreement for filing, to be effective on February 8, 1995; and (ii) grant waiver of notice to allow filing of the Agreement less than 60 days prior to commencement of service.

A copy of the filing was served upon Associated Power Services, Inc.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Tampa Electric Company

[Docket No. ER95–575–000]

Take notice that on February 9, 1995, Tampa Electric Company (Tampa Electric) tendered for filing a Service Schedule J (Negotiated Interchange Service) and a Letter of Commitment with the City of Gainesville, Florida. The Service Schedule J and Letter of Commitment supplement the existing agreement for interchange service between Tampa Electric and Gainesville.

Tampa Electric proposes an effective date of April 30, 1995, for the Service Schedule J and Letter of Commitment.

Copies of the filing have been served on Gainesville and the Florida Public Service Commission.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Public Service Corporation

[Docket No. ER95–576–000]

Take notice that Wisconsin Public Service Corporation (WPSC) of Green Bay, Wisconsin on February 8, 1995, tendered for filing revisions to its coordination rate schedules to provide for the recovery of the costs of SO_2 emission allowances. WPSC has asked the Commission to permit a January 1, 1995 effective date for these revisions.

WPSC states that the filing has been served on the affected parties and posted as required by the Commission's regulations.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Tampa Electric Company

[Docket No. ER95–577–000]

Take notice that on February 9, 1995, Tampa Electric Company (Tampa Electric) tendered for filing new and revised tariff sheets for inclusion in its FERC Electric Tariff, First Revised Volume No. 1 (AR–1 Tariff) and a request for waiver of the Commission's fuel adjustment clause regulations.

Tampa Electric proposes to modify the fuel adjustment clause in the AR–1 Tariff to allow for the recovery of a share of the buy-out costs that it incurred to terminate a long-term coal

supply agreement. Tampa Electric states that its purchase of replacement coal at more favorable prices will provide cumulative savings to its customers in excess of the cumulative buy-out costs that Tampa Electric proposes to recover through its fuel adjustment clause.

Tampa Electric proposes an effective date of April 1, 1995 for the tendered tariff sheets, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on each of Tampa Electric's AR–1 Tariff customers and the Florida Public Service Commission.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Madison Gas and Electric Company

[Docket No. ER95–578–000]

Take notice that on February 9, 1995, Madison Gas and Electric Company (MGE) tendered for filing a service agreement with Heartland Energy Services, Inc., under MGE's Power Sales Tariff. In addition, MGE and Heartland request cancellation of previous agreements between the parties since the new service agreement replaces the need for the earlier agreements. MGE requests a cancellation date of February 1, 1995.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Arizona Public Service Company

[Docket No. ER95–579–000]

Take notice that on February 8, 1995, Arizona Public Service Company (APS) tendered for filing revised estimated load Exhibits applicable under the following rate schedules:

APS–FPC/FERC No.	Customer name	Exhibit
141	Aguila Irrigation District	Exhibit "II".
126	Electrical District No. 6	Exhibit "II".
158	Roosevelt Irrigation District	Exhibit "II".
168	Maricopa Water District	Exhibit "II".
155	Buckeye Water Conservation and Drainage District	Exhibit "II".
142	McMullen Valley Water Conservation and Drainage District	Exhibit "II".
140	Electrical District No. 8	Exhibit "II".
153	Harquahala Valley Power District	Exhibit "II".

Current Rate levels are unaffected, revenue levels are unchanged from those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

A copy of this filing has been served on the above customers and the Arizona Corporation Commission.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Kentucky Utilities Company

[Docket No. ER95–580–000]

Take notice that on February 10, 1995, Kentucky Utilities Company (KU) tendered for filing a Transmission Agreement between KU and East Kentucky Power Cooperative, Inc.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. York County Energy Partners, L.P.

[Docket No. QF95–229–000]

On January 31, 1995, York County Energy Partners, L.P., (applicant), c/o York County Energy Partners (I), 7201 Hamilton Boulevard, Allentown, Pennsylvania 18195–1501, submitted for filing an application for certification of a facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located in York County, Pennsylvania and will consist of a single circulating fluidized boiler and an extraction/condensing steam turbine generator. Steam recovered from the facility will be used by the P.H. Glatefelter Company, which manufactures high quality specialty papers, such as books, postage stamps, maps, and disposable surgical gowns. The primary energy source will be bituminous coal. The maximum net electric power production capacity will be 227 MW. The facility is expected to begin commercial operation in January 1998.

Comment date: Thirty days after the date of publication of this notice in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

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. 95–4673 Filed 2–24–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. QF95–220–000]

Central Wayne Energy Recovery, Limited Partnership; Notice of Supplement to Filing

February 21, 1995.

On February 14, 1995, Central Wayne Energy Recovery, Limited Partnership (Applicant) tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining primarily to the technical data and the ownership structure of the small power production facility.

Any person desiring to be heard or objecting to the granting of qualifying status 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. All such motions or protests must be filed by March 14, 1995, and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4671 Filed 2–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–219–000]

Columbia Gulf Transmission Co.; Notice of Informal Settlement Conference

February 21, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on February 28, 1995, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Edith A. Gilmore at (202) 208–2158 or Hollis J. Alpert at (202) 208–0783.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4672 Filed 2–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–205–000]

Natural Gas Pipeline Company of America; Notice of Request Under Blanket Authorization

February 21, 1995.

Take notice that on February 14, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 61048, filed a request with the Commission in Docket No. CP95–205–000 pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for permission to abandon a delivery tap, authorized in blanket certificate issued in Docket No. CP82–402–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural proposes to abandon a 2-inch sidetap, located on Natural's 24-inch Calumet No. 2 pipeline in Will County, Illinois. Natural states that Northern Illinois Gas Company, the only customer to receive gas through delivery tap proposed to be abandoned, has consented to its abandonment by Natural. Natural further states that no deliveries have been made through the subject facility since 1975.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, 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 § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, 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 NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4670 Filed 2–24–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 95–08–NG]

BC Gas Utility Ltd.; Order Granting Authorization to Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting BC Gas Utility Ltd. (BC Gas) five-year authorization to import near Sumas, Washington, up to 12.6 Bcf of Canadian gas for injection into storage in Dagget County, Utah, and later to export up to 12.0 Bcf of this gas back to Canada after withdrawal from storage. The term of this authorization is from May 1, 1995, through April 30, 2000. In addition, BC Gas is authorized to sell some of the stored gas in the Untied States under spot and short-term arrangements.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., February 14, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–4771 Filed 2–24–95; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 95–08–NG]

Wickford Energy Marketing, L.C.; Order Granting Blanket Authorization to Import and Export Natural Gas From and To Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Wickford Energy Marketing, L.C. (WEM, L.C.) blanket authorization to import up to 73 Bcf of natural gas from Canada and up to 73 Bcf of natural gas from Mexico. In addition, WEM, L.C. is authorized to export up to 73 Bcf of natural gas to Canada and up to 73 Bcf of natural gas to Mexico. This import and export authorization is for a period of two years beginning on the date of the initial import or export delivery, whichever occurs first.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., February 10, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–4770 Filed 2–24–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5157–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget

(OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 29, 1995.

FOR FURTHER INFORMATION CONTACT: For further information, or a copy of this ICR, contact Sandy Farmer at (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS for Storage Vessels for Petroleum Liquids (Subpart Ka), EPA ICR #1050.05; OMB #2060–0121). This ICR requests renewal of the existing clearance.

Abstract: This New Source Performance Standard (NSPS) regulates volatile emissions from petroleum liquid storage vessels. EPA will use the information to direct monitoring, inspection, and compliance efforts, thereby ensuring compliance with the NSPS. Owners and operators of all affected facilities must report to EPA any physical or operational change to their facility which may result in an increase in the regulated pollutant emission rate. All facilities must also maintain records on the facility operation that document: (1) The occurrence and duration of any start-ups, shutdowns, and malfunctions; (2) measurements of maximum true vapor pressure for each storage vessel; (3) period of storage for the petroleum liquid; (4) emissions data; (5) design specifications; and (6) an operation and maintenance plan for any vapor recovery and return or disposal system. In addition, owners and operators of facilities that use a floating roof must report any excessive gaps in tank seals, and notify the EPA when the seal gaps will be measured. These facilities must maintain records related to compliance for 2 years.

Burden Statement: Public reporting burden for this collection of information is estimated to average 5 hours per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing the collection of information. Public recordkeeping burden for this collection of information is estimated to average 113 hours per respondent.

Respondents: Owners or operators of petroleum storage vessels with a storage capacity exceeding 40,000 gallons and which commenced construction, reconstruction, or modification after May 18, 1978 and prior to July 23,1984.

Estimated Number of Respondents: 180.

Estimated Total Annual Burden on Respondents: 21,500 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: February 17, 1995.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 95–4754 Filed 2–24–95; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–00166; FRL–4934–4]

Grants to Develop and Carry Out Authorized State Accreditation and Certification Programs for Lead-Based Paint Professionals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of funds availability; solicitation of applications for financial assistance.

SUMMARY: This notice announces EPA's intent to enter into cooperative agreements with states and territories and federally recognized Indian governing bodies which provide financial assistance for purposes of developing and carrying out authorized accreditation and certification programs for professionals engaged in lead-based paint activities pursuant to the Toxic Substances Control Act (TSCA), as amended by section 404(g) of the Residential Lead-Based Paint Hazard Reduction Act of 1992. The notice describes eligible activities, application procedures and requirements, and funding criteria. EPA anticipates that $12,500,000 will be available during federal fiscal year 1995 (FY95) for awards to eligible recipients. There are no matching share requirements for this assistance and this is the second year funding is being made available for these grants. Subject to future budget limitations, EPA plans to provide this support on a continuing multi-year or program basis. All cooperative agreements will be administered by the appropriate EPA regional office.

DATES: In order to be considered for funding during the FY95 award cycle, all applications must be received by the appropriate EPA regional office on or before March 31, 1995. EPA will make its award decisions and execute its FY95 cooperative agreements by September 30, 1995.

FOR FURTHER INFORMATION CONTACT: For general information, contact: James Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551. For technical information, contact the appropriate Regional Primary Lead Contact person listed in Unit VI of this notice.

SUPPLEMENTARY INFORMATION: TSCA section 404(g) authorizes EPA to award non-matching grants to states, territories, and federally-recognized Indian governing bodies to develop and carry out authorized programs for the training of individuals engaged in lead-based paint activities, the accreditation of training programs for these individuals, and the certification of contractors engaged in lead-based paint activities. To achieve authorization under Title IV of TSCA, programs must: (1) Be as protective of human health and the environment as the federal program established under TSCA section 402 or 406, or both, and (2) provide adequate enforcement. For states and territories that fail to obtain authorization within 2 years following promulgation of TSCA section 402 or 406 regulations, EPA must, by such date, administer and enforce a program for TSCA section 402 or 406.

Pursuant to Title IV of TSCA, EPA encourages states, territories, and federally-recognized Indian governing bodies to seek authorization of their own training, accreditation, and certification programs for lead-based paint activities. EPA therefore recommends that eligible parties seek funding through the TSCA section 404(g) assistance program, which is now being implemented to help achieve these ends. EPA further recommends that eligible parties plan to utilize this grant support in a way that complements any related financial assistance they may receive from other federal sources. EPA will, however, seek to ensure that all federally-funded lead activities are undertaken in a coordinated fashion.

EPA will work with prospective applicants to develop cooperative agreements which promote a variety of objectives deemed critical to the success of its national lead program. These include: (1) Permitting flexible

approaches to reducing lead hazards, (2) developing a nationwide pool of qualified lead abatement professionals, (3) encouraging pollution prevention in lead-based paint activities, (4) promoting environmental justice in the reduction of lead exposures and the prevention of lead poisoning, (5) fostering the establishment of comprehensive and integrated lead management programs by states, territories and Indian governing bodies, and (6) promoting reciprocity among authorized programs in the training and certification of lead abatement professionals.

I. Eligibility

All states are eligible to apply for and receive assistance under section 404(g) of TSCA. The term ''state,'' for purposes of eligibility, refers broadly to any state of the United States, the District of Columbia, any federally-recognized Indian governing body, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

II. Authority

The ''TSCA Title IV State Lead Grants Program'' is a financial assistance program administered by EPA under authority of TSCA section 404(g). Each of EPA's 10 regional administrators will be delegated the authority to enter into cooperative agreements with eligible ''states.'' However, because EPA's authority to award 404(g) funding to Indian governing bodies is contingent upon final promulgation of the forthcoming regulations mandated under sections 402 and 404 of TSCA, EPA plans to award all funds to Indian governing bodies under authority of TSCA section 10(a) during this award cycle (FY95). Further, all references in this notice to Indian governing bodies being treated as states is contingent upon EPA's final promulgation of the regulations mandated under TSCA sections 402 and 404.

EPA recognizes that when TSCA Title IV was enacted on October 28, 1992, states had widely varying capabilities for addressing lead hazards. Individual states currently fall within one of three broad categories of program development: (1) States without lead programs, (2) states with programs that qualify for authorization that may need assistance in carrying out these programs, and (3) states with lead programs that will require modification before qualifying for authorization. Each state's need for assistance will vary, in part, according to the level of lead program development the state has attained. The type of program activity a given state seeks to pursue may also vary in a corresponding manner.

Although EPA generally supports all state activities aimed at developing or carrying out authorized state lead programs, the Agency does recognize certain priorities. Because few states presently have adequate lead program capabilities, as measured against TSCA sections 402 and 406, EPA's highest priority will be to support the development of new state programs. A second priority will be to support the continued implementation of authorized state programs. A third priority will be to support the implementation of existing state programs which do not presently qualify for authorization but which are otherwise willing to work toward timely authorization. Although these priorities do not constitute the Agency's criteria for award determinations, EPA will consider these items in its cooperative agreement negotiations with applicants.

EPA has established three general funding categories that reflect the different status, or levels, of state lead program development. They are not mutually exclusive, and it is permissible for a state's work plan to combine elements from two or more categories. Numerous examples of activities considered to be eligible for funding are described in a separate EPA publication entitled ''State and Tribal Cooperative Agreement Guidance for FY 1995 (January 1995). Copies of the grant guidance may be obtained through any of EPA's ten regional offices at the addresses listed under unit VI. of this notice. It is important to note, however, that the examples presented in the guidance are not exhaustive, and applicants are not limited in their proposals to the listed tasks. Individual state program innovations are eligible and encouraged, so long as the proposed tasks relate to the purposes set forth in TSCA section 404(g) and fit within one or more of the three general funding categories.

III. Selection Criteria

During the FY95 award cycle, EPA expects a total of $12,500,000 to be available for distribution to eligible applicants. The Agency will use a two-tiered system to allocate these funds. This system is aimed at achieving the broadest possible state participation, while at the same time, targeting areas with the greatest potential lead hazard and risk. It accomplishes this by providing for a tier-one distribution of ''base funding,'' followed by a tier-two distribution of ''formula funding,'' where additional funds are distributed based upon the relative lead burden estimated to exist within a state.

Each state and the District of Columbia (excluding territories and federally-recognized Indian governing bodies) that submits a qualifying proposal will be entitled to a base funding allotment of $100,000. In addition, base funding of up to $50,000 will be reserved for each of the four ''territories'' (used generically in this context) that have been administratively assigned to an EPA regional office and that have historically participated in EPA toxics cooperative agreement programs. These ''base'' territories include the U.S. Virgin Islands (Region 2), the Commonwealth of Puerto Rico (Region 2), Guam (Region 9), and American Samoa (Region 9). The two remaining ''non-base'' territories, the Canal Zone and the Northern Mariana Islands, are also eligible to apply for funding up to $50,000 apiece, but are not considered in determining the base funding allotments. Base allotments are primarily intended to ensure that those states and base territories wishing to pursue authorization under TSCA section 404 will be guaranteed a minimum level of funding for this purpose. Any unsubscribed base funding will be added to the formula funds pool.

Once base funding allotments have been reserved for all eligible applicants, remaining funds will be treated as ''formula funds.'' Before applying the lead burden formula, however, EPA will set-aside an amount not to exceed $1,500,000 for Federally recognized Indian governing bodies. Indian governing body will be given funding based upon tribal population and if an Indian governing body received funding in the FY 1994 grant process, they will be supported to the same extent in FY95 process. EPA cannot reliably predict the level of participation from Indian governing bodies and non-base territories; therefore, where these eligible parties do apply for funds, they will be assigned to an appropriate regional office for administrative oversight, and that regional office will become responsible for determining the appropriate level of funding. These parties, however, will not receive a formula ranking, and will not be eligible to compete for additional formula allocations based upon lead burden calculations.

As a third step, states and base territories with funding requirements exceeding their base allotments will then be apportioned additional sums based upon their relative lead burden. In calculating lead burden for the

formula rankings, EPA used readily available data derived from the 1990 Census of Population and Housing, together with other data from the U.S. Department of Housing and Urban Development (HUD). The formula uses four factors to generate an estimate of the potential lead problem, or ''lead burden,'' in each state. Two of these factors, the number of housing units with lead-based paint and the number of children under age 7, express the potential magnitude of the lead problem. The remaining two factors, the fraction of young children in poverty and the fraction of low-income housing units with lead-based paint, express the potential severity of the problem.

In determining formula rankings, each state and base territory is scored independently for each factor, and the four individual factor scores for the state or base territory are then summed to obtain an overall score for that state or base territory (a combined factor score). The combined factor scores of all states and base territories applying for formula funds (or amounts in excess of their base allotment) are then summed, and the percentage of the total sum represented by the individual state's or base territory's score is then identified. When the total formula funding available is then multiplied by the percentage score of an individual state or territory, the state's or base territory's ceiling formula allotment can be obtained. For example, assume that: (1) All 50 states but none of the base territories apply for formula allotments, (2) state X has a percentage score of 2 percent, and (3) a total of $4,000,000 in formula funding is available. In determining how much money to allot to state X, EPA would multiply $4,000,000 by .02. The product, $80,000, represents the maximum additional funding that could be awarded to state X to supplement its base allocation. State X would then qualify for up to $180,000 in total funding for the fiscal year ($100,000 in base funding + $80,000 in formula funding).

In general, the maximum, or ceiling, formula allotments will fluctuate inversely with the number of applicants. The greater the number of applicants, the lower the ceiling will tend to be, and vice versa. Formula allotments will be determined only after the annual application deadline has passed and EPA has full knowledge of the total amount of funds requested. If one or more states or base territories request formula fund amounts below their ceiling allotments, residual formula funds will be available. Where this situation develops, if there are still other states or base territories with unfunded needs, the formula will be run again. This procedure can be repeated until all formula funds have been fully allotted.

IV. Submission Requirements

To be considered for funding, each application must include, at a minimum, the following forms and certifications which are contained in EPA's ''Application Kit for Assistance'': (1) Standard Form 424 (Application for Federal Assistance), (2) EPA Form 5700–48 (Procurement Certification), (3) Drug-Free Workplace Certification, (4) Debarment and Suspension Certification, (5) Disclosure of Lobbying Activities, and (6) a return mailing address. In addition to these standard forms, each application must also include a work program, a detailed line-item budget with sufficient information to clearly justify costs, a list of work products or deliverables, and a schedule for their completion. Work programs are to be negotiated between applicants and their EPA regional offices to ensure that both EPA and state priorities can be addressed. In addition, any application from a state, territory or Indian governing body without an authorized program must demonstrate how the proposed activities will lead to that state's pursuit of authorization. Finally, any applicant proposing the collection of environmentally related measurements or data generation must adequately address the requirements of 40 CFR 31.45 relating to quality assurance/quality control. These requirements are more specifically outlined in the ''Guidance Document for the Preparation of Quality Assurance Project Plans'' (May 1993) published by EPA's Office of Pollution Prevention and Toxics. This document, as well as the application kits referred to above, may be obtained from EPA's regional offices.

V. Application Procedures and Schedule

Applications must be submitted to the appropriate EPA regional office in duplicate; one copy to the regional lead program branch and the other to the regional grants management branch. Early consultations are recommended between prospective applicants and their EPA regional offices. Because TSCA Title IV cooperative agreements will be administered at the regional level, these consultations can be critical to the ultimate success of a state's project or program.

For more information about this financial assistance program, or for technical assistance in preparing an application for funding, interested parties should contact the Regional Primary Lead Contact person in the appropriate EPA regional office. The mailing addresses and contact telephone numbers for these offices are listed below.

Region I: (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont), JFK Federal Building, One Congress St., Boston, MA 02203. Telephone: (617) 565–3836 (Jim Bryson)
Region II: (New York, New Jersey, Puerto Rico, Virgin Islands), Building 5, SDPTSB, 2890 Woodbridge Ave., Edison, NJ 08837–3679. Telephone: (908) 321–6671 (Lou Bevilacqua)
Region III: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia), 841 Chestnut Bldg., Philadelphia, PA 19107. Telephone: (215) 597–2450 (Gerallyn Valls)
Region IV: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), 345 Courtland St., NE, Atlanta, GA 30365. Telephone: (404) 347–3555, ext. 6927 (Connie Landers-Roberts)
Region V: (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), SP–14J, 77 W. Jackson St., Chicago, IL 60604. Telephone: (312) 886–7836 (David Turpin)
Region VI: (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), 12th Floor, Suite 2000, 1445 Ross Ave., Dallas, TX 75202. Telephone: (214) 655–7577 (Jeff Robinson)
Region VII: (Iowa, Kansas, Missouri, Nebraska), TOPE/TSC, 726 Minnesota Ave., Kansas City, KS 66101. Telephone: (913) 551–7518 (Mazzie Talley)
Region VIII: (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 999 18th St., Suite 500, Denver, CO 80202. Telephone: (303) 293–1442 (David Combs)
Region IX: (Arizona, California, Hawaii, Nevada, American Samoa, Guam), 75 Hawthorne St., San Francisco, CA 94105. Telephone: (415) 744–1121 (Larry Biland)
Region X: (Alaska, Idaho, Oregon, Washington), Toxics Section, 1200 Sixth Ave., Seattle, WA 98101. Telephone: (206) 553–1985 (Barbara Ross)

The deadline for EPA's receipt of final FY95 applications is March 31, 1995. Once the application deadline has passed, EPA will process the formula funding calculations and determine the initial formula ceiling allocations. Final negotiations for the award of cooperative agreements can then proceed, but all FY95 agreements must be executed no later than September 30, 1995.

List of Subjects

Environmental protection, Grants, Lead, Training and accreditation.

Dated: February 16, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 95–4756 Filed 2–24–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5159–2]

Common Sense Initiative Council, Petroleum Refining Sector Subcommittee; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Common Sense Initiative Council, Petroleum Refining Sector Subcommittee; notice of meeting.

SUMMARY: The Environmental Protection Agency established the Common Sense Initiative Council (CSIC) on October 17, 1994 to provide independent advice and counsel to EPA on environmental issues associated with the petroleum refining industry and other industrial sectors. The charter for the CSIC was authorized through October 17, 1996, under regulations established by the Federal Advisory Committee Act (FACA). The Petroleum Refining Sector (PRS) Subcommittee operates as a subcommittee of the CSIC.

OPEN MEETING NOTICE: Notice is hereby given that the CSIC–PRS Subcommittee will hold an open meeting on Friday March 10, 1995, from 8 a.m to 3 p.m. at the Radisson Inn Hotel, 2150 Veterans Blvd., Kenner, LA 70062, [1–800–333–3333 or 504–467–3111]. The purpose of the meeting is to further define areas on which the CSIC–PRS will focus. The Subcommittee will also convene in working groups to begin identifying specific issues. Seating will be available on a first come, first served basis.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the topics above will be publicly available at the meeting. Thereafter, these documents, together with the CSIC-PRS meeting minutes, will be available for public inspection in room 2417M of EPA Headquarters, 401 M Street SW., Washington, DC.

FOR FURTHER INFORMATION: Anyone who would like further information should contact the Common Sense Initiative Program Staff office by phone on (202) 260–417, or by FAX on (202) 260–766. Members of the public may submit written comments of any length prior to the meeting. One hour of meeting time will be set aside for oral presentations. Each individual or group making an oral presentation will be limited to a total of five minutes. Attendees should provide their names and telephone numbers to the Common Sense Initiative Program Staff so that the Agency can advise them of any schedule changes.

Date: February 16, 1995.

Prudence Goforth,

CSIC/Designated Federal Officer.

[FR Doc. 95–4752 Filed 2–24–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5162–2]

Science Advisory Board Environmental Engineering Committee and Subcommittee; Open Meetings

March 8–10, 1995.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the OSWER Exposure Model Subcommittee of the Science Advisory Board's (SAB's) Environmental Engineering Committee (EEC), will meet Wednesday March 8 and that the full Committee (EEC) will meet Thursday and Friday March 9–10, 1995. The meetings will begin each day at 8:30 a.m. The meetings will be held at the One Washington Circle Hotel, Washington Circle, NW., Washington, DC (Hotel telephone is 202/872–1680 or 800/424–9671). The meetings are open to the public and seating will be on a first come basis.

OSWER Exposure Model Subcommittee Meeting

On March 8 the Subcommittee will review the EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) and the Finite Source Methodology. Copies of the documents to be reviewed are *not* available from the SAB; they can be obtained from Dr. Zubair Saleem, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202/260–4767). The tentative charge to this subcommittee is as follows:

(a) EPACMTP is the latest and most advanced of the OSW subsurface fate and transport models designed to be computationally efficient for usage in monte carlo analysis for national rulemaking. The question of interest to EPA is the mathematical formulation in EPACMTP of the subsurface fate and transport of daughter products from degrading organic chemical constituents, and the appropriateness for EPA's use of this approach in establishing nation-wide exit levels for hazardous waste in future regulations.

(b) The Office of Solid Waste (OSW) has been using a national monte carlo procedure in which national distributions of parameters are used as input to the model. OSW has developed a regional site-based approach in which hydrogeologic parameters are selected from hydrogeologic regions and in general have cross-correlations. They are used as input to the model. Is this site-based approach better or should OSW continue to use the approach based on national distributions of input parameters?

(c) The OSW's most recently-used approach is based on an infinite source steady-state model. EPA has developed a finite-source approach for use with EPACMTP. OSW would like SAB comments on the adequacy of the approach for regulatory purposes.

(d) MINTEQ (metal speciation model) was developed by EPA. EPA has recently developed the linkage of the output of the model with EPACMTP to assess the subsurface fate and transport of metals. EPA would like SAB comments on the appropriateness of the use of this linkage for metals in EPA's national rulemaking efforts.

Environmental Engineering Committee Meeting

On March 9–10, the EEC will discuss its final draft report on the review of the Use Cluster Scoring System (UCSS) of the Office of Pollution Prevention and Toxics; receive briefings from the Agency on various programs; and plan the remainder of its FY95 activities. Copies of the EEC's draft UCSS report are available from Mrs. Dorothy Clark, address below.

Any member of the public wishing further information, such as a proposed agenda on either meeting should contact Mrs. Dorothy Clark, Secretary, Science Advisory Board (1400F), U.S. EPA, Washington, DC 20460, at 202/260–6552 or 202/260–7118 (fax). Written comments of any length may be provided up until the meetings, but 35 copies must be supplied. Members of the public who wish to make a brief oral presentation should contact Mrs. Kathleen Conway by phone 202/260–2558, or internet CONWAY.KATHLEEN@epamail.epa.gov no later than noon (eastern time) Wednesday March 1 in order to have time reserved on the agenda.

Dated: February 10, 1995.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 95–4755 Filed 2–24–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5161–2]

The Chemical Manufacturing Association/Environmental Protection Agency (CMA/EPA) Boilers & Industrial Furnaces (BIF) Workshop Edited Transcript

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of the CMA/EPA BIF Workshop Transcript.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of an edited transcript of the Boiler & Industrial Furnace Rule and Compliance Workshop presented by EPA for members of the Chemical Manufacturing Association (CMA) in March 1994. This workshop was held in Washington D.C. on March 29–30, 1994, and approximately 145 CMA members attended the workshop. The workshop was requested by CMA members for EPA to address their specific questions regarding the BIF regulations. The BIF rule was promulgated in the Federal Register on February 21, 1991. This rule expanded the regulated universe of the Resource Conservation and Recovery Act (RCRA) by regulating boilers and industrial furnaces that burn hazardous wastes as fuel. Since some of these BIF facilities are regulated by RCRA for the first time, they needed special assistance from EPA to comply with the BIF regulations. This edited transcript contains clarification of and guidance on the existing BIF regulations. This transcript captures the presentations and discussions on all but two introductory sessions. The transcript was then edited for clarification and readability.

DATES: This transcript will be available to the public on or after March 1995.

ADDRESSES: Copies of the CMA/EPA BIF workshop Edited Transcript EPA/530/R–94/046 may be obtained free of charge by calling the RCRA Hotline. The phone numbers for the RCRA Hotline are (800) 424–9346 toll-free or (703) 920–9810 locally.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline. For information on specific aspects of the edited transcript, contact Emily Chow at (202) 564–7071, Chemical, Commercial Services and Municipal Division (2224–A), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Dated: February 10, 1995.

Elaine G. Stanley,

Director.

[FR Doc. 95–4753 Filed 2–24–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted toOffice of Management and Budget for Review

February 17, 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 Judy Boley, Federal Communications Commission, (202) 418–0214 or via internet at JBoley@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: N/A.

Title: Amateur Station Vanity Call Sign Request.

Action: New information collection.

Respondents: Individuals or households.

Frequency of Response: On occasion.

Estimated Annual Burden: 150,00 responses; 20 minutes burden per response; 49,500 hours total annual burden.

Needs and Uses: FCC rules require that applicants file FCC Form 610–v to apply for a vanity (special) call sign in lieu of a systematically issued call sign. Commission personnel use the data to determine eligibility for the radio station authorization and issue a radio station/operator license. Data is used by Compliance personnel in conjunction with the field engineers for enforcement and interference purposes.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–4693 Filed 2–24–95; 8:45 am]

BILLING CODE 6712–0I–F

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Background

Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 C.F.R. 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-7340).

Proposal to approve under OMB delegated authority the implementation of the following report:

1. Report title: 1995 Survey of Consumer Finances.

Agency form number: FR 3059.

OMB Docket number: 7100-0276.

Frequency: One time survey.

Reporters: U.S. Families.

Annual reporting hours: 6,133.

Estimated average hours per response: 1.3 hours.

Number of respondents: 4,600.

Small businesses are not affected.

General description of report: This information collection is voluntary and authorized by law [12 U.S.C. 225a, 1828(c), 1842, 1843].

Abstract: The survey, to be conducted between March and November 1995, will collect data on the assets, debts, income, work history, pension rights, use of financial services, and attitudes of a sample of U.S. families. The survey is the only source of representative information on the structure of finances of U.S. families.

Board of Governors of the Federal Reserve System, February 21, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–4708 Filed 2–24–95; 8:45AM]

Billing Code 6210–01–F

FBD Holding Company, 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 23, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. FBD Holding Company, Dalton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Dalton (in organization), Dalton, Georgia.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Commerce Bancshares, Inc., and its wholly owned subsidiary, CBI-Illinois, both of Kansas City, Missouri; to acquire 100 percent of the voting shares of Chillicothe State Bancorp, Inc., Chillicothe, Illinois, and thereby indirectly acquire Chillicothe State Bank, Chillicothe, Illinois.

Board of Governors of the Federal Reserve System, February 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–4709 Filed 2–24–95; 8:45 am]

BILLING CODE 6210–01–F

Phillip Ray Key, 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 March 13, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Phillip Ray and Connie Lea Key, both of Sulphur, Oklahoma; to acquire an additional 58.55 percent, for a total of 80.85 percent, of the voting shares of Sulphur Community Bancshares, Inc., Sulphur, Oklahoma, and thereby indirectly acquire Sulphur Community Bank, Sulphur, Oklahoma.

Board of Governors of the Federal Reserve System, February 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–4710 Filed 2–24–95; 8:45 am]

BILLING CODE 6210–01–F

Union Bank of Switzerland; 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 March 13, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Union Bank of Switzerland, Zurich, Switzerland; to acquire Government Pricing Information System, Inc., New York, New York, and thereby engage in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–4711 Filed 2–24–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Vivian N. Tanner, Cleveland Clinic Foundation: The Division of Research Investigations of the Office of Research Integrity (ORI) conducted an investigation into possible scientific misconduct on the part of Vivian N. Tanner while she was a clinic coordinator for the Collaborative Ocular Melanoma Study (COMS) at the Cleveland Clinic Foundation (CCF). ORI concluded that Ms. Tanner committed scientific misconduct by falsifying and fabricating clinical trial data on research data forms related to a multicenter study on the treatment of choroidal melanoma, a rare form of eye cancer. Due to these falsifications and fabrications, inaccurate clinical data were entered into the clinical trial database. These acts were committed over a period of several years, were material, and, therefore, were

potentially detrimental to the study. The CCF COMS project has received U.S. Public Health Service support from 1985 to the present through subcontract funds from a National Eye Institute cooperative agreement award to the COMS Coordinating Center, The Wilmer Ophthalmological Institute, The Johns Hopkins Medical Institutions, Baltimore, Maryland. Because the COMS is an ongoing study, no publications were affected by the falsfified or fabricated data, and no clinical treatment has been based on the results of the study.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 301–443–5330.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–4765 Filed 2–24–5; 8:45 am]

BILLING CODE 4160–17–P

Centers for Disease Control and Prevention

[Announcement Number 524]

Injury Control Research Program Project Grants

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for Injury Control Research Program Project Grants (RPPGs). The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Violent and Abusive Behavior and Unintentional Injuries. For ordering a copy of ''Healthy People 2000,'' see the Section Where to Obtain Additional Information.

Authority

This program is authorized under Sections 301 and 391–394 of the Public Health Service Act (42 U.S.C. 241 and 280b-280b-3). Program regulations are set forth in 42 CFR part 52.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants include all nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments, and small, minority and/or women-owned businesses are eligible for these grants. Applicants from non-academic institutions should provide evidence of a collaborative relationship with an academic institution. Special consideration may be given to applicants that emphasize the training of women and minorities. Current recipients of CDC injury control research program project grants are eligible to apply.

Availability of Funds

Approximately $1,000,000 is available in FY 1995 to fund one new and two recompeting RPPG awards. At least one of these three awards will be for a successfully competing RPPG focusing on youth violence. New and recompeting awards will be made for a 12-month budget period within a project period of up to three years. The amount of funding available may vary and is subject to change. Beginning award dates for each submission are shown in the ''Receipt and Review Schedule'' section of this announcement. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

RPPG awards will not exceed $400,000 per year (total direct and indirect costs) with a project period not to exceed three years. Subject to program needs and the availability of funds, supplemental awards to expand/enhance existing projects may be made. Supplemental awards may range from up to $100,000 to up to $200,000 per year (total direct and indirect costs). The range of supplemental funds is dependent upon the degree of comprehensiveness of the RPPG in addressing: research and training or research, training, and demonstration as determined by the Injury Research Grants Review Committee (IRGRC).

Incremental levels for supplemental awards (subject to program needs and the availability of funds) for successfully competing or recompeting RPPGs will be determined as follows:

RPPG addresses research and training—Up to $100,000

RPPG addresses research, training, and demonstration—Up to $200,000

Purpose

The purposes of this program are:

A. To support injury prevention and control research on priority issues as delineated in: ''Healthy People 2000,'' ''Injury Control in the 1990's: A National Plan for Action,'' ''Injury in America,'' ''Injury Prevention: Meeting the Challenge,'' and ''Cost of Injury: A Report to the Congress.'' Information on these reports may be obtained from the individuals listed in the section.

Where to Obtain Additional Information

B. To support RPPGs as part of CDC's national extramural investment in injury control research and training, intervention development, and evaluation;

C. To integrate collectively, in the context of a national program, the disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, and behavioral and social sciences in order to prevent and control injuries more effectively;

D. To identify and evaluate current and new interventions for the prevention and control of injuries;

E. To bring the knowledge and expertise of RPPGs to bear on the development and improvement of effective public- and private-sector programs for injury prevention and control; and

F. To facilitate injury control efforts supported by various governmental agencies within a geographic region.

Program Requirements

Essential Requirements for RPPGs:

A. Applicants must demonstrate and apply expertise (defined as: conducting ongoing high quality injury research and publication in peer reviewed scientific and technical journals(s) in the phases (prevention, acute care, or rehabilitation) or disciplines (e.g., biomechanics and epidemiology) of injury control which the research program addresses.

B. Applicants must document ongoing injury-related research projects or control activities currently supported by other sources of funding.

C. Applicants must provide a director (Principal Investigator) who has specific authority and responsibility to carry out the project. The director should report to an appropriate institutional official (e.g., dean of a school, vice president of a university, or commissioner of health). The director must have no less than 30% effort devoted solely to this project with an anticipated range of 30% to 50%.

D. Applicants must demonstrate experience in: conducting, evaluating, and publishing injury control research; developing, conducting, and evaluating injury control training curricula (researcher and/or practitioner) ; and/or designing, implementing, and evaluating injury control demonstration programs.

E. Applicants must provide evidence of working relationships with outside agencies and other entities which will allow for implementation of any proposed intervention activities.

F. Applicants must provide evidence of involvement of specialists or experts in medicine, engineering, epidemiology, law and criminal justice, behavioral and social sciences, biostatistics, and/or public health as needed to complete the plans of the RPPG. These are considered the disciplines and fields for RPPGs.

G. Applicants must specify mechanisms for linking the injury control research findings with public health (i.e. State and local organizations) and other intervention efforts to facilitate rapid translation, dissemination, and application of research findings preferably within three years of inception.

H. Applicants should clearly describe and be able to demonstrate how several proposed multiple research projects interrelate and complement each other. Outcome objectives of the research should be stated such that accomplishments clearly reflect elements of each individual project within the RPPG.

I. Applicants must have the ability to disseminate injury control research findings, translate them into interventions, and evaluate their effectiveness.

J. Applicants involved in training activities must be able to accomplish A-I above and have an established curricula and graduate training programs (researcher and/or practitioner) in disciplines relevant to injury control (e.g., epidemiology, biomechanics, safety engineering, traffic safety, behavioral sciences, or economics).

K. Applicants involved in training and demonstration activities must be able to accomplish A-J above and conduct demonstration projects (including description of statistical/ epidemiologic methodology and data sources to be used) aimed at determining the effectiveness of interventions, in terms of impact and cost, as part of a national injury prevention and control effort.

For the youth violence RPPG, in addition to research, training, and demonstration activities described in the Essential Requirements for RPPGs, of particular interest are projects designed to: a) develop further understanding of the relationship between social and economic influences (e.g., poverty, joblessness, concentration of poverty) and violent behavior, b) evaluate policies, programs, or interventions for reducing the impact of social and economic factors on violent behavior among youth and c) provide training for youth violence prevention researchers and practitioners.

Grant funds will not be made available to support the provision of direct care. Studies may be supported which evaluate methods of care and rehabilitation for potential reductions in injury effects and costs. Studies can be supported which identify the effect on injury outcomes and cost of systems for pre-hospital, hospital, and rehabilitative care and independent living.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated October 1, 1990, as amended), as necessary to meet the requirements of the program and strengthen the overall application.

Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the previous heading Program Requirements, (A listing of where these requirements are described and/or documented in the application will facilitate the review process.). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

Applications which are complete and responsive may be subjected to a preliminary evaluation by reviewers from the Injury Research Grants Review Committee (IRGRC) to determine if the application is of sufficient technical and scientific merit to warrant further review. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization.

Those applications judged to be competitive will be further evaluated by a dual review process. The primary review will be a peer evaluation (IRGRC) of the scientific and technical merit of the application. The final review will be conducted by the CDC Advisory Committee for Injury Prevention and Control (ACIPC), which will consider the results of the peer review together with program need and relevance. Funding decisions will be made by the Director, National Center for Injury Prevention and Control (NCIPC), based on merit and priority score ranking by the IRGRC, program review by the ACIPC, and the availability of funds.

A. Review by the Injury Research Grants Review Committee (IRGRC)

Peer review of RPPG grant applications will be conducted by the IRGRC, which may recommend the application for further consideration or not for further consideration. Site visits will be a part of this process for recompeting RPPGs. Site visits may be a part of this process for new applicants.

Factors to be considered by IRGRC include:

1. The specific aims of the application, e.g., the long-term objectives and intended accomplishments.

2. The scientific and technical merit of the overall application, including the significance and originality (e.g., new topic, new method, new approach in a new population, or advancing understanding of the problem) of the proposed research.

3. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of stated objectives.

4. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

5. The soundness of the proposed budget in terms of adequacy of resources and their allocation.

6. The appropriateness (e.g., responsiveness, quality, and quantity) of consultation, technical assistance, and training in identifying, implementing, and/or evaluating intervention/control measures that will be provided to public and private agencies and institutions, with emphasis on state and local health departments, as evidenced by letters detailing the nature and extent of this commitment and collaboration. Specific letters of support or understanding from appropriate governmental bodies must be provided.

7. Evidence of other public and private financial support.

8. Progress thus far made as detailed in the application if the applicant is submitting a competitive renewal application. Documented success examples include: development of pilot projects; completion of high quality research projects; publication of findings in peer reviewed scientific and technical journals; number of professionals trained; integration of disciplines; translation of research into implementation; impact on injury

control outcomes including legislation/regulation, treatment, or behavior modification interventions.

B. Review by CDC Advisory Committee for Injury Prevention and Control (ACIPC)

Factors to be considered by ACIPC include:

1. The results of the peer review.
2. The significance of the proposed activities as they relate to national program priorities and the achievement of national objectives.
3. National and programmatic needs and geographic balance.
4. Overall distribution of the thematic focus of competing applications; the nationally comprehensive balance of the program in addressing: the three phases of injury control (prevention, acute care, and rehabilitation); the control of injury among populations who are at increased risk, including minority groups, the elderly and children; the major causes of intentional and unintentional injury; and the major disciplines of injury control (e.g., biomechanics and epidemiology).
5. Within budgetary considerations the ACIPC will establish annual funding levels as detailed under the heading, Availability of Funds.

C. Applications for Supplemental Funding

Supplemental grant awards may be made when funds are available, to support research work or activities. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the ACIPC.

D. Continued Funding

Continuation awards within the project period will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments of the current budget period show that the applicant's objectives as prescribed in the yearly workplans are being met;
2. The objectives for the new budget period are realistic, specific, and measurable;
3. The methods described will clearly lead to achievement of these objectives;
4. The evaluation plan allows management to monitor whether the methods are effective by having clearly defined process, impact, and outcome objectives, and the applicant demonstrates progress in implementing the evaluation plan; and
5. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of grant funds.

Award Priorities

Special consideration will be given to recompeting Injury Control Research Program Projects Grants.

E.O. 12372 Review

Applications are not subject to the review requirements of Executive Order 12372, entitled Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirement.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.136.

Other Requirements

A. Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

B. Animal Subjects

If the proposed project involves research on animal subjects, the applicant must comply with the ''PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions.'' An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for Protection from Research Risks at the National Institutes of Health.

Application Submission and Deadlines

A. Preapplication Letter of Intent

In order to schedule and conduct site visits as part of the formal review process, potential applicants are encouraged to submit a nonbinding letter of intent to apply to the Grants Management Officer (whose address is given in this section Item B). It should be postmarked no later than one month prior to the submission deadline (April 1, 1995, for May 1, 1995, submission deadline). The letter should identify the relevant announcement number for the response, indicate the submission deadline which will be met, name the principal investigator, and specify the injury control theme or emphasis of the proposed RPPG (e.g., acute care, biomechanics, epidemiology, prevention, or rehabilitation). The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently.

B. Applications

Applicants should use Form PHS–398 (Rev. 9/91, OMB Number 0925–0001) and adhere to the ERRATA Instruction Sheet for PHS–398 contained in the Grant Application Kit. The narrative section for each project within an RPPG should not exceed 25 typewritten pages. Refer to section 4, page 10, of PHS–98 instructions for font type and size. Applications not adhering to these specifications may be returned to applicant. Applicants should submit an original and five copies to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, in accordance with the submission date shown in the ''Receipt and Review Schedule'' listed below.

C. Deadlines

Applications shall be considered as meeting the deadline above if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the peer review committee. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications which do not meet the criteria in C.1. or C.2. above are considered late applications and will be returned to the applicant. Supplemental materials received later than thirty days after the application receipt date are considered late and will be returned to the applicant.

D. Receipt and Review Schedule

This is a continuous announcement. Consequently, these receipt dates will be ongoing until further notice. The proposed timetables for receiving applications and awarding grants are as follows:

Receipt of new/revised/ supplementary/ competitive renewal applications	Initial review	Secondary review	Earliest award date
May 1, 1995 ...	June ..	July ...	Aug. 1, 1995.

FUTURE RECEIPT DATES ARE AS FOLLOWS:

Receipt of new/revised/ supplementary/ competitive renewal applications	Initial review	Secondary review	Earliest award date
April	June ..	July ...	Aug.

Where to Obtain Additional Information

All application procedures and guidelines are contained within this program announcement. Business management technical assistance may be obtained from Maggie Slay, Grants Management Specialist, Centers for Disease Control and Prevention (CDC), 255 East Paces, Ferry Road, NE., Mailstop E13, Atlanta, GA 30305, telephone (404) 842–6797. Programmatic technical assistance may be obtained from Tom Voglesonger, Program Manager, Injury Control Research Centers, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, Mailstop K58, Atlanta, GA 30341–3724, telephone (404) 488–4265.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: February 21, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–4684 Filed 2–24–95; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 94D–0386]

Revised FDA Form 3210 Application for Establishment License for Manufacture of Biological Products (4/94); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the revised FDA Form 3210 Application for Establishment License for Manufacture of Biological Products (4/94). This form replaces the previous edition of FDA Form 3210 (12/88). FDA Form 3210 is used by manufacturers to apply for licensure of a facility for the manufacture of biological products regulated under the Public Health Service Act. The form has been revised because of inadequacies in the previous form that resulted in requests by the agency for supplemental information. The revised form is intended to shorten review time and decrease expenditure of resources for both the agency and industry.

DATES: FDA will continue to accept submissions using the previous Form 3210 (12/88) until August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Timothy W. Beth, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

ADDRESSES: Submit written requests for single copies of the revised FDA Form 3210 Application for Establishment License for Manufacture of Biological Products (4/94) to Division of Congressional and Public Affairs (HFM–11), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–1800. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. The form may also be obtained by calling the CBER FAX Information System at 301–594–1939 from a FAX machine with a touch tone phone attached or built in. FDA Form 3210 Application for Establishment License for Manufacture of Biological Products (4/94) is available for public examination in the Dockets Managements Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: FDA is making available revised FDA Form 3210 Application for Establishment License for Manufacture of Biological Products (4/94). The form was revised due to inadequacies in the old form which made the application review process cumbersome and difficult for both the agency and industry. In the past, the review process was often significantly lengthened because of requests by the agency for supplemental information from the manufacturer in order to ensure the safety, purity, potency, and efficacy of manufactured biological products. The revised form details more specifically the information that is required for establishment licensure. FDA believes that the revised form will expedite the review process by reducing the need for supplemental information requests and responses.

The revised form solicits information from the manufacturer in the following areas: (1) General information (names and addresses); (2) water systems; (3) heating ventilation and air conditioning systems; (4) raw materials and ancillary facilities; (5) source materials; (6) propagation of host systems; (7) intermediate processing; (8) formulation and final product preparation; (9) computer systems; (10) support areas; (11) quality control areas; (12) animal facilities for testing; (13) animal facilities for production; (14) calibration and validation; and (15) records.

In addition, the revised form also requires the following information to be submitted: A description of the lot numbering system, an organizational chart, an environmental assessment report, written agreements, curriculum vitae for key manufacturing and responsible personnel, and an overview of the current good manufacturing practices (CGMP) training program. A comments section is provided on the revised form for additional information that the manufacturer deems to be appropriate but may not be covered under other sections.

Manufacturers preparing to submit applications for establishment licensure should now utilize the revised (4/94) form. FDA will continue to accept submissions using the previous (12/88) form until August 28, 1995. Because the old form does not address specific questions and issues that are present on the revised form, additional review cycles should be anticipated when using the previous form.

Under the Paperwork Reduction Act of 1980 (Pub. L. 96–511) all forms requesting a collection of information

on identical items from 10 or more public respondents must be approved by the Office of Management and Budget (OMB) and must display a valid OMB control number and expiration date.

In accordance with the Paperwork Reduction Act, in the Federal Register of February 4, 1994 (59 FR 5436), a notice announced the proposed revision of FDA Form 3210 Application For Establishment License for Manufacture of Biological Products. OMB approval for the revised FDA Form 3210 was obtained on April 30, 1994, and given OMB approval number 0910–0124; expiration date April 30, 1997.

Dated: February 17, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–4766 Filed 2–24–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0042]

Drug Export; OGEN (Piperazine Oestrone Sulfate) 0.625 Milligram (mg), 1.25 mg, and 2.5 mg Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Abbott Laboratories has filed an application requesting approval for the export of the human drug OGEN (piperazine oestrone sulfate) 0.625 milligram (mg), 1.25 mg, and 2.5 mg Tablets to Australia.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Abbott Laboratories, One Abbott Park Rd., Abbott Park, IL 60064–3500, has filed an application requesting approval for the export of the human drug OGEN (piperazine oestrone sulfate) 0.625 mg, 1.25 mg, and 2.5 mg Tablets to Australia. This product is indicated for replacement therapy of oestrogen deficiency in female hypogonadism, amenorrhoea, female castration, primary ovarian failure, and in the management of menopausal syndrome, senile vaginitis, kraurosis vulvae with or without pruritus, and abnormal uterine bleeding due to hormonal imbalance in the absence of organic pathology. The firm has new drug application approval for OGEN (piperazine oestrone sulfate) in the above dosage strengths using a different manufacturing process. The application was received and filed in the Center for Drug Evaluation and Research on October 31, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 9, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: February 9, 1995.

Edward Miracco,

Acting Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–4768 Filed 2–24–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94D–0422]

Draft Guideline on the Manufacture of Positron Emission Tomography Radiopharmaceutical Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guideline entitled ''Draft Guideline on the Manufacture of Positron Emission Tomographic (PET) Drug Products'' prepared by FDA's Center for Drug Evaluation and Research (CDER). The draft guideline is intended to assist persons in determining whether certain manufacturing practices, procedures, and facilities used in the small-scale production of liquid injectable radiopharmaceutical drug products used for positron emission tomography (PET radiopharmaceuticals) are in compliance with FDA's current good manufacturing practice (CGMP) regulations for finished pharmaceuticals.

DATES: Written comments by May 30, 1995.

ADDRESSES: Submit written requests for single copies of the draft guideline entitled ''Draft Guideline on the Manufacture of Positron Emission Tomographic (PET) Drug Products'' to the CDER Executive Secretariat Staff (HFD–8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John W. Levchuk, Center for Drug Evaluation and Research (HFD–322), Food and

Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0095.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guideline entitled ''Draft Guideline on the Manufacture of Positron Emission Tomographic (PET) Drug Products.'' PET is a diagnostic imaging modality consisting of onsite production of radionuclides that are intravenously injected into patients for diagnostic purposes. The potential usefulness of a PET radiopharmaceutical is based upon the product's interaction with a biochemical process in the body. For example, the product may be substituted for glucose in anaerobic glycolysis, theoretically localizing in ischemic tissues where glucose metabolism is the predominant energy source (epileptic foci, acute vascular insufficiency states).

The manufacture of PET radiopharmaceuticals consists of a process that takes place within a few hours. A target material is irradiated by a cyclotron; chemical synthesis takes place in a programmed, automated apparatus; and the final solution is compounded and filled. The biological distribution of a PET radiopharmaceutical in the body is monitored by a positron tomograph, or PET scanner, which detects the photons emitted as a result of the radioactive decay of the PET radiopharmaceutical. Because of their short half-lives, PET radiopharmaceuticals are characteristically manufactured in PET centers in response to daily demand for relatively few patients. PET centers are usually located in medical centers.

PET manufacturing procedures differ in a number of important ways from those associated with the manufacture of conventional drug products, mainly due to the short half-lives involved:

1. A maximum of only a few lots are manufactured per day, with one lot equaling one multiple-dose vial. This is administered to the patient usually within a matter of hours. Prolonged manufacturing time significantly erodes the useful clinical life of PET radiopharmaceuticals.

2. The quantities of radioactive active ingredients contained in each lot of a PET radiopharmaceutical generally vary from nanogram to milligram amounts, depending upon various product parameters.

3. Because one lot equals one multiple-dose vial containing a homogeneous solution of a PET product (e.g., 2-deoxy-2 [^{18}F]fluoro-D-glucose), results from end-product testing of samples drawn from the single vial have the maximum possible probability of being representative of all the doses administered to patients from that vial, barring sampling or testing error.

4. An entire lot may be administered to one or several patients, depending upon the activity remaining in the container at the time of administration. Consequently, the administration of the entire quantity of a lot to a single patient should be anticipated for every lot manufactured. This is an important consideration when establishing the testing limits for certain attributes such as endotoxins and impurities.

5. PET radiopharmaceuticals usually do not enter a general drug distribution chain. Rather, the entire lot (one vial) is usually distributed directly from the PET center either to a single medical department or physician for administration to patients or to a radiopharmacy for dispensing. Distribution may occur to other centers when the geographic proximity will allow for distribution and use within the drug product's half-life parameters.

Conventional compliance with CGMP regulations would be expected where special characteristics such as those listed above do not exist; for example, in large-scale PET operations. Elsewhere in this issue of the Federal Register, FDA is publishing (1) A proposed rule that would authorize the Director, CDER, or the Director, Office of Compliance, CDER, to approve exceptions or alternatives to the application of the provisions of 21 CFR part 211 to the manufacture of PET radiopharmaceuticals, and (2) a notice of a public workshop and FDA guidance on the regulation of PET radiopharmaceuticals.

The guideline entitled ''Draft Guideline on the Manufacture of Positron Emission Tomographic (PET) Drug Products'' discusses, generally, quality control units, personnel qualifications, staffing, buildings and facilities, equipment, components, containers, closures, production and process controls, packaging and labeling control, holding and distribution, testing and release for distribution, stability testing and expiration dating, reserve samples, yields, second-person checks, and reports and records.

FDA is making this draft guideline available for public comment before issuing a final guideline. If, following the receipt of comments, the agency concludes that the draft guideline will assist persons in determining whether manufacturing practices used in the small-scale production of liquid injectable PET radiopharmaceuticals are in compliance with FDA's CGMP regulations for finished pharmaceuticals, then the agency will prepare a final guideline and will announce its availability in the Federal Register.

Guidelines are generally issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, if the agency makes the guideline final, the guideline would not be issued under the authority of current § 10.90(b), and would not create or confer any rights, privileges, or benefits for or on any person, nor would it operate to bind FDA in any way.

Interested persons may, on or before May 30, 1995, submit to the Dockets Management Branch (address above) written comments on the draft guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 17, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–4689 Filed 2–24–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0005]

Regulation of Positron Emission TomographyRadiopharmaceutical Drug Products; Guidance; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing guidance on the regulation of positron emission tomography (PET) radiopharmaceutical drug products. FDA has developed this guidance to make clear the regulatory approach designed to help ensure the safe and effective use of these products. The agency is also announcing a public workshop to facilitate an understanding of regulatory requirements regarding these products.

DATES: The public workshop will be held on March 21, 1995, 8:30 a.m. to 4 p.m. Registration will be between 8 a.m. and 8:30 a.m. Due to limited space, interested persons must preregister before March 7, 1995, by telephoning

the contact person listed below. Interested persons may submit data, information, or views on this subject to the Dockets Management Branch (address below).

ADDRESSES: The public workshop will be held at the Parklawn Bldg., conference rooms G and H, 5600 Fishers Lane, Rockville, MD 20857. Written data, information, or views regarding the workshop may be submitted 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 W. Levchuk, Center for Drug Evaluation and Research (HFD–322), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0095.

SUPPLEMENTARY INFORMATION:

I. Background

PET is a diagnostic imaging modality consisting of onsite production of radionuclides that are usually intravenously injected into patients for diagnostic purposes. The potential usefulness of a PET radiopharmaceutical is based upon the product's interaction with a biochemical process in the body. For example, the product may be substituted for glucose in anaerobic glycolysis, theoretically localizing in ischemic tissues (epileptic foci, acute vascular insufficiency states) where glucose metabolism is the predominant energy source.

The manufacture of PET radiopharmaceuticals consists of a process that takes place within a few hours. A target material is irradiated in a cyclotron; chemical synthesis takes place in a programmed, automated apparatus; and the final solution is prepared. The biological distribution of a PET radiopharmaceutical in the body is monitored by a positron tomograph, or PET scanner, which detects the photons emitted as a result of the radioactive decay of the PET radiopharmaceutical.

Currently, there are two FDA approved PET radiopharmaceuticals: Rubidium-82 (rubidium chloride ([^{82}Rb]RbCl)) and fludeoxyglucose (^{18}-F-FDG). At present, most investigational PET radionuclides are manufactured by cyclotrons at PET facilities, which generally are located at major teaching hospitals or their adjacent universities. Because PET radiopharmaceuticals contain positron emitting isotopes that have relatively short half-lives (minutes to hours), they are manufactured near the site of administration to patients. Products may be distributed t o other institutions when the geographic proximity of these locations will allow for distribution and use within the product's half-life parameters.

The development of PET radiopharmaceuticals has increased considerably over the past several years. As this technology has advanced, questions have been raised about the most appropriate approach to regulation of PET radiopharmaceuticals. FDA held a public hearing on March 5, 1993, to receive information and views on this issue from interested groups and individuals. The docket established for the receipt of comments (Docket No. 93N–0005) remained open for an additional 2 weeks after the hearing.Additionally, FDA has received several citizen petitions on PET radiopharmaceuticals to which it will be directly responding.

Having considered the available information, including that presented to the agency at the hearing and in written materials, FDA has concluded that radiopharmaceuticals should be regulated under the drug provisions of the Federal Food, Drug, and Cosmetic Act (the act). Under section 501(a)(2)(B) of the act (21 U.S.C. 351(a)(2)(B)), drugs are considered adulterated unless manufactured in conformity with current good manufacturing practice (CGMP). Because of unique features of PET radiopharmaceuticals, the applicability of certain requirements in the CGMP regulations for finished pharmaceuticals (part 211 (21 CFR part 211)) to PET radiopharmaceuticals may differ from the applicability of these requirements to drugs produced through traditional manufacturing methods. Consequently, elsewhere in this issue of the Federal Register, FDA is publishing a proposed rule that would authorize the Director of the Center for Drug Evaluation and Research (CDER) or the Director of the Office of Compliance, CDER, to approve exceptions or alternatives to the application of the provisions of part 211 to the manufacture of PET radiopharmaceuticals.

In order to assist manufacturers in complying withapplicable CGMP requirements, FDA has also developed a ''Draft Guideline on the Manufacture of Positron Emission Tomographic (PET) Drug Products.'' A notice of availability of this draft guideline, on which the agency is inviting comments, is also published elsewhere in this issue of the Federal Register.

Under section 505 of the act (21 U.S.C. 355), ''new drugs,'' such as radiopharmaceuticals, must be the subjects of approved new drug applications (NDA's) or abbreviated new drug applications (ANDA's) before marketing. In order to be approved, the products must be shown to be safe and effective for their intended uses through adequate and well-controlled studies (21 U.S.C. 355(d)). Investigational use of drug products is governed, in general, by the requirements in part 312 (21 CFR part 312). Special provisions concerning radioactive drugs for certain research uses are contained in FDA regulations at 21 CFR 361.1. Under these special provisions, use of radioactive drug products in human subjects during the course of limited kinds of research projects may occur if the use is approved by a properly constituted Radioactive Drug Research Committee and if other conditions are met.

Section 502 of the act (21 U.S.C. 352) sets forth misbranding provisions applicable to drug products. Among other circumstances, a drug is considered misbranded if the product labeling is false or misleading or if the drug is dangerous to health when used as suggested in the labeling (21 U.S.C. 352(a) and (j)). For prescription drugs, section 502(n) of the act describes certain information that must be included in all advertisements or other printed materials. FDA's regulations also establish labeling and advertising requirements in more detail (21 CFR parts 201 and 202).

Section 510 of the act (21 U.S.C. 360) requires persons who own or operate establishments for the manufacture, preparation, propagation, compounding, or processing of drugs (with certain exceptions) to register the establishments with FDA. Individuals who must register their establishments under section 510 of the act must also file a list of all the drugs being made or processed at the establishment. Drug registration and listing regulations are codified at part 207 (21 CFR part 207).

II. Guidance: Regulation of PET Radiopharmaceuticals

FDA regulates PET radiopharmaceutical drug products used in purely physiologic research, where the results of such research are not used to guide patient management or treatment decisions, as well as in investigational clinical trials and clinical practice. All facilities that manufacture PET radiopharmaceuticals must be registered with FDA in accordance with FDA regulations on the registration and listing of producers of drugs (part 207). Facilities that manufacture PET radiopharmaceuticals are not exempt from registration under §1A207.10 because their activities do not fall within the scope of the regular course of the practice of the profession of pharmacy. This policy statement

supersedes the ''Nuclear Pharmacy Guideline; Criteria for Determining When to Register as a Drug Establishment'' issued by FDA in May 1984.

A. Physiological Research

Facilities using PET radiopharmaceuticals for purely physiological research, where the results of such research are not used to guide patient management or treatment decisions, should establish a PET Regulatory Committee (PRC) in accordance with §1A361.1 *Radioactive drugs for certain research uses* (21 CFR 361.1). The PRC will monitor all physiological research of the PET facility. Facilities using PET radiopharmaceuticals for purely physiological research are not required to submit an investigational new drug application (IND) or NDA as long as this research is intended to obtain basic information regarding metabolism or physiology and is not intended to guide or be part of therapeutic, diagnostic, or clinical management plans.

FDA will approve and monitor the PRC, which should consist of at least five individuals. In accordance with §1A361.1(c), each PRC should include: (1) A physician recognized as a specialist in nuclear medicine; (2) a person qualified by training and experience to manufacture PET radiopharmaceuticals; and (3) a person with special competence in radiation safety and radiation dosimetry. The remaining PRC members should include individuals qualified in various disciplines pertaining to the field of nuclear medicine, and should be sufficiently diverse to permit expert review of the technical and scientific aspects of proposals submitted to the committee. In addition to the requirements in §1A361.1(c) and with the exception of the member qualified by training and experience to manufacture PET radiopharmaceuticals, PRC membership should include a representative of a consumer group, and the members should not have scientific, clinical, financial, or administrative conflicts of interest.

The PRC should have three main responsibilities: (1) To approve research protocols; (2) to prepare annual reports; and (3) to determine when purely physiological research has ended.

In approving protocols, the PRC should: (1) Determine if the investigator meets the qualifications specified in the protocol; (2) review the research protocol design; (3) review and monitor the selection of research subjects; (4) ensure that the research subjects have signed informed consent documents; (5) review and monitor the quality of the PET radiopharmaceuticals administered; (6) evaluate all reports of adverse events; and (7) confirm concurrence of Institutional Review Board approval.

The annual report should follow the format and contents prescribed in §1A361.1(c)(3), summarizing the conditions of use, doses, route of administration, protocols, adverse events reported in the safety information, and the chemistry, manufacturing, and control data. The PRC should submit the completed annual report to FDA.

The PRC is also responsible for determining when purely physiological research becomes investigational clinical use. This determination should be based on whether the data obtained will be used in the diagnostic, therapeutic, or clinical management of patients. Once trials are proposed for investigational clinical use, the facility must submit an IND before starting to conduct the trials.

B. Investigational Use

Manufacturers of PET radiopharmaceuticals intended to be used in investigational clinical trials must submit an IND to FDA in accordance with the regulations in part 312. Institutions or investigators working together with the same PET radiopharmaceutical may submit one IND for that drug product, covering studies conducted at more than one site or institution.

C. NDA Approval

Submission of an NDA, in accordance with FDA regulations in part 314 (21 CFR part 314), is required for PET radiopharmaceuticals used in clinical practice. Institutions or investigators working together with the same PET radiopharmaceutical may submit one NDA for that drug product. All sites that produce the same drug product would be covered by the submitted NDA. Once an NDA is approved, other PET facilities with a radiopharmaceutical that is an equivalent finished product, but which did not participate in the NDA or did not submit manufacturing data, could submit an abbreviated new drug application (ANDA) demonstrating that their drug is bioequivalent to the innovator drug, in accordance with FDA regulations in part 314. Alternatively, the NDA holder could submit a supplement to add these other facilities as new manufacturing sites.

PET radiopharmaceuticals are also subject to the adulteration and misbranding provisions of the act. Facilities where PET radiopharmaceuticals are manufactured are subject to inspection by FDA for compliance with CGMP requirements and other drug-related requirements.

Dated: February 17, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–4691 Filed 2–24–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–55–3710; FR–3636–-03]

Announcement of Funding Awards Public Housing Drug Elimination Technical Assistance Program, FY 1994

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for Public Housing Drug Elimination-Technical Assistance Program. This announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Elizabeth Cocke, Drug Free Neighborhoods Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4116, Washington, DC 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Public Housing Drug Elimination-Technical Assistance Program is authorized by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (approved October 28, 1993, Pub. L. 103–124).

The NOFA published in the Federal Register on March 10, 1994 (59 FR 11418) announced the FY 1994 availability of $1,255,175 to fund qualified applicants selected under the FY 1993 NOFA and invited additional applicants for FY 1994. The purpose of

the program is to provide short-term technical assistance to public housing agencies, Indian housing authorities, resident management corporations, and incorporated resident councils that are combating abuse of controlled substances in public and Indian housing communities. These funds reimburse consultants who provide expert advice and work with housing authorities or resident councils to assist them in gaining skills and training to eliminate drug abuse and related problems from public housing communities. Applications were scored and selected for funding for the third and fourth quarter based on criteria contained in the Notice.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names and addresses of the recipients which received funding under this NOFA, and the amount of funds awarded to each. This information is provided in Appendix A to this document.

Dated: February 21, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING RECIPIENTS OF THIRD AND FOURTH QUARTER FUNDING DECISIONS

Name and address	Amount awarded
PROGRAM NAME: Public Housing Drug Elimination Technical Assistance Program **STATUTE:** Public Law 103–124, October 28, 1993.	
MIDTOWN TERRACE RESIDENT COUNCIL, WV, LILLIAN YOUNG, 1447 Peachtree Street, #522, Atlanta, GA 30309	$8,937.00
COLLEGE PARK HOUSING AUTHORITY, GA, ANTHONY RANDOLPH, 1050 Topeka Street Pasadena, CA 91104	9,807.00
MONTICELLO HOUSING AUTHORITY, NY, ROBERT BORGHESE, 21 S. 12th St. Suite 902, Philadelphia, PA 19107	8,686.00
APACHE MANOR RESIDENT COUNCIL, OK, IAN HORNCASTLE, 830 South Woodlawn Ave., Okmulgee, OK 74447	10,000.00
SANDY PARK RESIDENT ASSOCIATION, OK, GLENN MCCURDY, 7942 Park Avenue, Elkins Park, PA 19117	5,741.00
MAKAH INDIAN HOUSING AUTHORITY, WA, GARY LIMING, 19707–44th Ave., W. Suite 212, Lynwood, WA 98036	6,654.00
PONTIAC HOUSING COMMISSION, MI, RONALD SIMPKINS, Commitment To Character, P.O. BOX 157151, Cincinnati, OH 45215	5,444.00
CRESTVIEW HOUSING AUTHORITY, FL, PAUL TANNER, 5618 Shorewood Road, Jacksonville, FL 32210	8,776.00
HOUSING AUTHORITY OF TOWN, OF SOUTH KINGSTOWN, RI, SUSAN BARRY, SYMPATICO INC., 57 Columbia Street, Wakefield, RI 02879	8,425.00
HOUSING AUTHORITY OF THE CITY OF ASHEVILLE, NC, RICHARD MARTIN, P.O. Box 12311, Raleigh, NC 27605	8,737.00
NORTH WILKESBORO DEPT. OF HOUSING, NC, JOHN T. PHILLIPS, 302 North Lee Street, Ayden, NC 28513	5,840.00
TACOMA HOUSING AUTHORITY, WA, EDWIN C. GOODWIN, National Facility Consultants, 1579–F Monroe Dr., NE, Suite 168, Atlanta, GA 30324	9,682.00
MESCALERO APACHE INDIAN HOUSING, AUTHORITY, NM, SUSAN GUYETTE, 97 Moya Rd., Santa Fe, NM 87505	8,618.00
GREENSBORO HOUSING AUTHORITY, AL, JOSEPH ALEX, P.O. BOX 210546, 4604 Virginia Loop Road, Montgomery, AL, 36121	8,510.00
STAMFORD HOUSING AUTHORITY, CT, SEVERIN SORENSEN, PO Box 34469, Bethesda, MD 20813–1072	9,930.00
ERNIE CRAGIN TERRACE RESIDENT COUNCIL, NV, PAUL TURNER, 410 Castello Road, Lafayette, CA 94549	9,915.00
NAVAJO HOUSING AUTHORITY, AZ, THOMAS WICKENDEN AND LAURENCE GISHEY, BOX 4132 Northern Arizona University, Flagstaff, AZ 86011–4132	7,424.00
OPELIKA HOUSING AUTHORITY, AL, JOSEPH ALEX, P.O. BOX 210546, 4604 Virginia Loop Road, Montgomery, AL 36121	9,116.00
HOUSING AUTHORITY OF THE TOWN OF LAURINBURG, NC, SEVERIN SORENSEN, PO Box 34469, Bethesda, MD 20813–1072	7,407.00
KEY WEST HOUSING AUTHORITY, FL, JOHN DOYLE BANYAN PRODUCTIONS, 3134 Northside Drive, Key West, FL 33040	9,955.00
LITTLE ROCK HOUSING AUTHORITY, AR, SEVERIN SORENSEN, PO Box 34469, Bethesda, MD 20813–1072	9,758.00
SPOKANE HOUSING AUTHORITY, WA, JEFFREY OSHINS, 271 Rosario Park Road, Santa Barbara, CA 93105	9,143.00
LUMBERTON HOUSING AUTHORITY, MS, ROBERT TAYLOR, 425 Beasley Road, #B7, Jackson, MS 39286	8,073.00
UNIONTOWN HOUSING AUTHORITY, AL, JOSEPH ALEX, P.O. BOX 210546, 4604 Virginia Loop Road, Montgomery, AL 36121	5,864.00
CUMBERLAND PLATEAU REGIONAL HOUSING AUTHORITY, VA, GENEVA O'QUINN, Route 1, Box 601–A, Clintwood, VA 24228	4,725.00
CANTON HOUSING AUTHORITY, MS, ROBERT TAYLOR, 425 Beasley Road, #B7 Jackson, MS 39286	5,967.00
HOUSING AUTHORITY OF BAYTOWN, TX, ROBIN MITCHELL, FREEDOM COMMUNICATIONS, 512 East 11th, Suite 206, Austin, TX 78702	9,545.00
MANAHAN VILLAGE RESIDENT COUNCIL, NJ, WANDA W. STANSBURY, 206 Renfrew Ave., Trenton, NJ 08618	9,981.00
SMITHFIELD HOUSING AUTHORITY, NC, SEVERIN SORENSEN, PO Box 34469, Bethesda, MD 20813–1072	7,063.00
MASSENA HOUSING AUTHORITY, NY, ROBERT BORGHESE, 21 S. 12th St., Suite 902, Philadelphia, PA 19107	9,155.00
MONTGOMERY COUNTY HOUSING AUTHORITY, PA, WANDA W. STANSBURY, 206 Renfrew Ave., Trenton, NJ 08618	9,960.00
SOUTH HILLS TERRACE TENANTS ORGANIZATION, PA, DAVID BUCHES, RD 1 Box 735A, Dover, DE 19901	6,306.00
HOUSING AUTHORITY OF LAUREL, MS, ROBERT TAYLOR, 425 Beasley Road, #B7, Jackson, MS 39286	6,525.00
FORT WALTON BEACH HOUSING AUTHORITY, FL, JIM L. MUNRO, 7335 No. Shores Dr., Navarre, FL 32566	5,129.00
INKSTER HOUSING COMMISSION, MI, CURTIS JONES, 6 Lindsey Street, Dorchester, MA 02124	9,307.00
BLACKFEET INDIAN HOUSING AUTHORITY, MT, JEFFREY OSHINS, 271 Rosario Park Road, Santa Barbars, CA 93105	8,502.00
TURTLE MOUNTAIN INDIAN HOUSING AUTHORITY, SD, ANNE FALLIS, Rural Route 1, BOX 1845, Rapid City, SD 57702	8,324.00
CHOCTAW NATION INDIAN HOUSING AUTHORITY, OK, RICARDO JASSO, P.O. Box 11615, Casa Grande, AZ 85230	8,624.00
HALL COUNTY HOUSING AUTHORITY, NE, GARY DAVIS, 620 Alum Creek Drive, Columbus, OH 43205	5,629.00
HOUSING AUTHORITY OF THE CITY OF PASCO AND FRANKLIN COUNTY, GWENDOLYN SHEPHERD, GMSS LEARNING SERVICES, 7060 McCormick Woods Dr. SW, Port Orchard, WA 98366–7645	8,900.00
TEMPLE HOUSING AUTHORITY, TX, KAI MARTENSEN, 706 Bridgeman Terrace, Towson, MD 21204	9,786.00
NORTHERN CHEYENNE INDIAN HOUSING AUTHORITY, MT, DEBRA WILLIAMS-HOUSE, Stone Mountain, GA	9,985.00
HOUSING AUTHORITY OF RICHMOND, CA, ROBERT REYNOLDS, 2131–2nd Ave., Los Angeles, CA 90018	9,436.00

APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING RECIPIENTS OF THIRD AND FOURTH QUARTER FUNDING DECISIONS—Continued

Name and address	Amount awarded
DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC AND ASSISTED HOUSING, DC, ROBERT BORGHESE, 21 S. 12th St., Suite 902, Philadelphia, PA 19107	7,805.00
DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC AND ASSISTED HOUSING, DC, SEVERIN SORENSEN, PO Box 34469, Bethesda, MD 20813–1072	10,000.00
MUCKLESHOOT INDIAN HOUSING AUTHORITY, WA, SEVERIN SORENSEN, PO Box 34469, Bethesda, MD 20813–1072	10,000.00
HOUSING AUTHORITY OF BALTIMORE CITY, MD, DAVID ROUEN, TSAILE, INC. (PATH) Box 1827, Carolina Beach, NC 28428	5,496.00
DANBURY HOUSING AUTHORITY, CT, PATRICIA SURPRENANT, 418 Robin Ct., Cheshire, CT 06410	4,836.00
HOUSING AUTHORITY OF WINONA, MS, PAUL TANNER, 5618 Shorewood Rd., Jacksonville, FL 32210	9,018.00
FORT BERTHOLD INDIAN HOUSING AUTHORITY, ND, ANNE FALLIS, Rural Route 1, Box 1845, Rapid City, SD 57702	9,204.00
HATTIESBURG HOUSING AUTHORITY, MS, C. JEAN BENNETT, 207 Valley North Blvd., Jackson, MS 39206	8,084.00
FOREST HOUSING AUTHORITY, MS, C. JEAN BENNETT, 207 Valley North Blvd., Jackson, MS 39206	8,718.00
HOUSING AUTHORITY OF THE CITY OF NEW BERN, NC, LEXIE WILLIAMS, 1177 Dominion Court, Port Orange, FL 32119	7,240.00
HOUSING AUTHORITY OF GRANT COUNTY, WA, ROXANNA NANTO, CC CONSULTING ASSOCIATES, 704 NE Larch Court, Wenatchee, WA 98802	6,613.00
TAYLOR HOUSING AUTHORITY, TX, JAMES GODFREY, GODFREY & ASSOCIATES, P.O. Box 2470, Hot Springs, AR 71914	9,512.00
COLORADO RIVER INDIAN HOUSING AUTHORITY, AZ, SUSAN GUYETTE, 97 Moya Rd., Santa Fe, NM 87505	8,953.00
HOUSING AUTHORITY OF WOONSOCKET, RI, ROBERT BORGHESE, 21 S. 12th St., Suite 902, Philadelphia, PA 19107	9,132.00
ROME HOUSING AUTHORITY, GA, JAMES GODFREY, GODFREY & ASSOCIATES, P.O. Box 2470, Hot Springs, AR 71914	9,787.00
PROVIDENCE HOUSING AUTHORITY, RI, SEVERIN SORENSEN, PO Box 34469, Bethesda, MD 20813–1072	10,000.00
CANTON HOUSING AUTHORITY, NY, LYNN BORRELL, Lynne Borrell & Associates, Suite 402, 1165 North Clarke, Chicago, IL 60610	10,000.00
THE HOUSING AUTHORITIES OF FAIRBURN/UNION CITY, GA, SAUNDRA D. WILLIAMS, D & J CONSULTANTS, 4300 Flat Shoals Road #2606, Union City, GA 30291	9,440.00
MARIANNA HOUSING AUTHORITY, FL, PAUL TANNER, 5618 Shorewood Road, Jacksonville, FL 32210	8,858.00
SCHWARTZ-ROBESON TENANTS ASSOCIATION, NJ, ALEXANDER SUTTON, 1133 Kensington Ave., Plainfield, NJ 07060	10,000.00
HOUSING AUTHORITY OF GALLATIN, TN, KARRIEM SHABAZZ, 3150 Borge Street, Oakton, VA 22124	6,630.00
TRIANA HOUSING AUTHORITY, AL, JOSEPH ALEX, P.O. BOX 210546, 4604 Virginia Loop Road, Montgomery, AL 36121	8,355.00
PENNINGTON COURT TENANTS ASSOCIATION, NJ, GERARD LEE, 810 Belvidere Ave., Plainfield, NJ 07060	10,000.00
HOUSING AUTHORITY OF MERCED, CA, JEFFREY OSHINS, 271 Rosario Park Road, Santa Barbara, CA 93105	7,504.00
WILMINGTON HOUSING AUTHORITY, DE, NANCY LOWE-CONNO, 3406 Wild Cherry Road, Baltimore, MD 21207	9,959.00
SOUTHERN PUGET SOUND INDIAN HOUSING AUTHORITY, WALINDA RINALDI, Seattle, WA	9,786.00
HOUSING AUTHORITY OF JACKSON COUNTY OR ROXANNA NANTO, CC CONSULTING ASSOCIATES, 704 NE Larch Court, Wenatchee, WA 98802	9,441.00
OLNEY HOUSING AUTHORITY, TX, JEFFREY OSHINS, 271 Rosario Park Road, Santa Barbara, CA 93105	7,911.00
Total	595,673.00

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BILLING CODE 4210–33–P

Office of the Secretary

[Docket No. N–95–3892; FR–3864–N–01]

Notice of Regulatory Waiver Requests Granted

AGENCY: Office of the Secretary, HUD.

ACTION: Public notice of the granting of regulatory waivers. Request: July 1, 1994 through September 30, 1994.

SUMMARY: Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), the Department (HUD) is required to make public all approval actions taken on waivers of regulations. This notice is the fifteenth in a series, being published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this notice is to comply with the requirements of section 106 of the Reform Act.

FOR FURTHER INFORMATION CONTACT: For general information about this Notice, contact Camille E. Acevedo, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; (telephone 202–708–3055); TDD: (202) 708–3259. These are not toll-free numbers.) For information concerning a particular waiver action, about which public notice is provided in this document, contact the person whose name and address is set out, for the particular item, in the accompanying list of waiver-grant action.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by the Department. Section 106 of the Act (Section 7(q)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535 (q)(3), provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to *issue* the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that the Department has approved, by publishing a Notice in the Federal Register. These Notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purposes of today's document.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives Issued by HUD (56 FR 16337, April 22, 1991). This is the twelfth Notice of its kind to be published under Section 106. It updates HUD's waiver-grant activity from July 1, 1994 through September 30, 1994. In approximately three months, the Department will publish a similar Notice, providing information about waiver-grant activity for the period from October 1, 1994 through December 31, 1994.

For ease of reference, waiver requests grant by departmental officials authorized to grant waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver action. For example, a waiver-grant action involving exercise of authority under 24 CFR 24.200 (involving the waiver of a provision in part 24) would come early in the sequence, while waivers in the Section 8 and Section 202 programs (24 CFR Chapter VIII) would be among the last matters listed. Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in Title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 811.105(b) and § 811.107(a) would appear sequentially in the listing under § 811.105(b).) Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should the Department receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occur between October 1, 1994 and December 31, 1994.

Accordingly, information about approved waiver requests pertaining to regulations of the Department is provided in the Appendix that follows this Notice.

Dated: February 14, 1995.

Henry G. Cisneros,

Secretary.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development, July 1, 1994 through September 30, 1994.

Note to Reader: The person to be contacted for additional information about these waiver-grant items in this listing is: James B. Mitchell, Director, Financial Services Division, Office of Housing, Department of Housing and Urban Development, 470 L'Enfant Plaza East, Room 3119, Washington, DC 20024, Phone: (202) 755–7450.

Regulation: 24 CFR Sections 811.106(d) and 811.107(d) of 1977 Regulations.

Project/Activity: Gloucester County (New Jersey) HA refunding of bonds which financed an uninsured Section 8 assisted project, Colonial Park, HUD Project Number NJ16–0029–002.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicholas P. Retsinas, Assistant Secretary for Housing—FHA Commissioner.

Dated Granted: September 16, 1994.

Reasons Waived: The Part 811 regulations cited above prohibited refunding and required that excess reserve balances be used for project purposes. The issuer has requested HUD permission to release excess reserve balances from the 1979 Trust Indenture to help pay transaction costs of a McKinney Act Section 8 bond refunding. Issuance of 1994 refunding bonds of $6,755,000 at a yield of 6.10% under Section 103 of the Tax Code will generate Section 8 savings.

Regulation: 24 CFR Sections 811.106(d) and 811.107(d) of 1977 Regulations.

Project/Activity: Akron (Ohio) Metropolitan HA refunding of bonds which financed an uninsured Section 8 assisted project, Mayflower Manor, HUD Project Number OH12–0003–002.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicholas P. Retsinas, Assistant Secretary for Housing—FHA Commissioner.

Dated Granted: September 30, 1994.

Reasons Waived: The Part 811 regulations cited above prohibited refunding and required that excess reserve balances be used for project purposes. The issuer has requested HUD permission to release excess reserve balances from the 1980 Trust Indenture to help pay transaction costs of a McKinney Act Section 8 bond refunding. Issuance of 1994 refunding bonds of $6,005,000 at a yield of 6.54% under Section 103 of the Tax Code will generate Section 8 savings.

Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811,108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Washoe Housing Finance Corporation refunding of bonds which financed a Section 8 assisted project, the Golden II Apartments (FHA No. 125–135094).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing—Federal Housing Commissioner.

Dated Granted: July 21, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on July 6, 1994. Refunding bonds have been priced to an average yield of 6.8%. The tax-exempt refunding bond issue of $2,355,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.75% at the call date with tax-exempt bonds yielding 6.8%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10% to 7.05%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

Regulation: 24 CFR Sections 811.114(d), 811.115(b), 811.117.

Project/Activity: The Housing Finance Corporation of Irvington, New Jersey refunding of bonds which financed a Section 8 assisted project, Berkeley Terrace Apartments (FHA No. 031–35238).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: August 18, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions under Section 103 of the Tax Code. This refunding proposal was approved by HUD on February 8, 1994. Refunding bonds have been priced to an average yield of 6.38%. The tax-exempt refunding bond issue of $4,570,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax

revenue benefits through replacement of outstanding tax-exempt coupons of 10.5% at the call date in 1994 with tax-exempt bonds at a substantially lower interest rate. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Providence, Rhode Island HA refunding of bonds which financed a Section 8 assisted project, the Maplewood Terrace Apartments (FHA No. 016–35076).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 119(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: August 23, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on June 17, 1994. Refunding bonds have been priced to an average yield of 6.9%. The tax-exempt refunding bond issue of $4,425,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.7%–10.75% at the call date with tax-exempt 6.9% bonds. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.6% to 7.75%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(b)(1), 811.108(b)(3), 811.108(b)(4), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Monroe-McKeen Plaza (Louisiana) HDC refunding of bonds which financed a Section 8 assisted non-insured project, the McKeen Plaza Apartments, (FHA No. LA48–0053–001).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: August 29, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on July 26, 1994. Refunding bonds have been priced to an average yield of 6.80%. The tax-exempt refunding bond issue of $2,660,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.5%–11.25% at the call date in 1994 with tax-exempt bonds yielding 6.8%. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Town of Babylon, New York refunding of bonds which financed a Section 8 assisted project, Andpress Plaza Apartments (FHA No. 012–35582).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 8, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transaction and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on June 2, 1994. Refunding bonds have been priced to an average yield of 6.79%. The tax-exempt refunding bond issue of $2,405,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.9% at the call date with tax-exempt bonds yielding 6.79%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 9.9% to 7.2%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury Tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Providence, Rhode Island HDC refunding of bonds which financed a Section 8 assisted project, the Barbara Jordan Apartments (FHA No. 016–57008).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 15, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transaction and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on June 14, 1994. Refunding bonds have been priced to an average yield of 6.74%. The tax-exempt refunding bond issue of $8,890,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.8% at the call date with tax-exempt bonds yielding 6.74%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12% to 6.9%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury Tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Regional HDC of Kansas City, Missouri refunding of bonds which financed a Section 8 assisted project, the Lawndale Heights Apartments (FHA No. 084–37229).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 30, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on August 30, 1994. Refunding bonds have been priced to an average yield of 6.78%. The tax-exempt refunding bond issue of $4,465,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.25% at the call date with tax-exempt bonds yielding 6.78%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.375% to 6.93%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects

will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

Regulation: 24 CFR Sections 811.114(d), 811.115(b), 811.117.

Project/Activity: The Housing Authority of Seattle, Washington refunding of bonds which financed a Section 8 assisted project, Market House Elderly Project, No. WA19–8023–005.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: July 21, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions under Section 103 of the Tax Code. This refunding proposal was approved by HUD on June 29, 1994. Refunding bonds have been priced to an average yield of 6%. The tax-exempt refunding bond issued of $1,730,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11% at the call date in 1994 with tax-exempt bonds at a substantially lower interest rate. The refunding services the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

Regulation: 24 CFR Section 811.114(d).

Project/Activity: District of Columbia HFA redemption of bonds which financed a Section 8 assisted project in 1979, the Trinity Towers Apartments, FHA No. 000–35240.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: July 27, 1994.

Reasons Waived: The Part 811 regulation cited above requires HUD approval and reduction of Section 8 rents for prepayment of Section 11(b) bonds. The bonds will be redeemed by sale of the FHA mortgage note. Proceeds of the note sale will also finance project repairs. No reduction in project debt service or contract rents will occur. The Treasury also gains long-term tax revenue benefits through prepayment of outstanding tax-exempt bonds. The refunding serves the important public purposes of improving Treasury Tax revenue, (helping reduce the budget deficit), and assuring that the project is maintained in sound physical condition.

Regulation: 24 CFR Sections 811.114(d), 811.115(b), 811.117.

Project/Activity: The Housing Authority of Delaware County, Pennsylvania refunding of bonds which financed a Section 8 assisted project, Kinder Park Apartments, FHA No. PA26–0020–001.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: August 10, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transaction and do not fit the terms of refunding transactions under Section 103 of the Tax Code. This refunding proposal was approved by HUD on March 18, 1994. Refunding bonds have been priced to an average yield of 5.66%. The tax-exempt refunding bond issue of $4,040,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 6.00%–6.40% at the call date in 1994 with tax-exempt bonds at a substantially lower interest rate. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury Tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

Regulation: 24 CFR Section 811.114(d).

Project/Activity: Whiteside County, Illinois HA refunding of bonds which financed a Section 8 assisted project, the Civic Plaza II Apartments, HUD No. IL–06–0038–002).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 26, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding bonds to be issued as taxable obligations. Refunding bonds will be issued in an amount sufficient to provide capitalized distributions to the Project Owner entity which agrees to extend low-income occupancy for ten years after expiration of the Section 8 Housing Assistance Payments Contract. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt bonds of 9.5% coupons of lower yielding debt. The refunding serves the important public purposes of improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing is: Robin Prichard, Drug-Free Neighborhoods Division, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 7th Street, S.W.—Room 4116, Washington, DC 20410–5000, (202) 708–1197.

14. Regulation: 24 CFR 961.

Project/Activity: Maricopa County Housing Authority, Phoenix, AZ.

Nature of Requirement: 24 CFR 961, allows only one six month extension on each grant awarded beyond the grant period.

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P.

Date Granted: September 1994.

Reason Waved: The Resident Services Coordinator for MCHD, along with the leadership of the Housing Director, have the contacts, respect and commitment from reputable agencies to carry out the drug elimination program successfully. It is clear that they have identified the most vulnerable complexes needing the services of a drug elimination initiative, which are generally social and economically stressed. Also, it is very clear, that the need for this drug elimination grant extension to be approved can and will have a tremendous affect on the safety of our resident and will be felt throughout MCHD, therefore, we are asking for your approval to grant this extension request.

MCHD is a Troubled Housing Authority, that is in the process of entering into a Memorandum of Agreement and have the staff, commitment and resources, if approved to implement this initiative. All of the programs requested and planned in the revised budgets not only will help make their living environment safer, the programs proposed include self-help programs for low income residents.

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing is: John Comerford, Director, Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708–1872, TDD: (202) 708–0850 (These are not toll-free numbers).

15. Regulation: 24 CFR 990.104.

Project/Activity: Guntersville, AL, Housing Authority In determining the operating subsidy eligibility, a request was made for funding for two units approved for non-dwelling use to promote economic self-sufficiency programs.

Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: August 4, 1994.

Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services pending publication of a final rule implementing this change to the regulation.

16. Regulation: 24 CFR 990.104.

Project/Activity: Jennings, LA, Housing Authority In determining the operating subsidy eligibility, a request was made for funding for one unit approved for non-dwelling use to promote anti-drug programs.

Nature of Requirement: The operating subsidy calculation excludes funding for

units removed from the dwelling rental inventory.

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: August 30, 1994.

Reason Waived: To allow additional subsidy for one unit approved for non-dwelling use to promote anti-drug programs pending publication of a final rule implementing this change to the regulation.

17. Regulation: 24 CFR 990.104.

Project/Activity: Los Angeles, CA, Housing Authority In determining the operating subsidy eligibility, a request was made for funding for units approved for non-dwelling use to promote economic self-sufficiency and anti-drug programs.

Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: July 25, 1994.

Reason Waived: To allow additional subsidy for 29 units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.

18. Regulation: 24 CFR 990.104.

Project/Activity: Tusla, OK, Housing Authority. In determining the operating subsidy eligibility, a request was made for funding for units approved for non-dwelling use to promote economic self-sufficiency and ant-drug programs.

Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: July 19, 1994.

Reason Waived: To allow additional subsidy for six units approved for non-dwelling use to promote economic self sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.

19. Regulation: 24 CFR 990.109(b)(3)(iv).

Project/Activity: A request was made by the Allentown, PA Housing Authority to use an occupancy rate of 91% in determining its operating subsidy eligibility for its fiscal year 6/30/95.

Nature of Requirement: A Low Occupancy Public Housing Agency (PHA) without an approved Comprehensive Occupancy Plan (COP) must use a projected occupancy rate of 97%.

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: July 11, 1994.

Reason Waived: The vacancy problem being experienced by the Allentown Housing Authority is the result of an accidental gas explosion and fire at an elderly high-rise development which left 147 units uninhabitable. These units are expected to be repaired in approximately nine months. During this period, the elderly residents will be relocated to private-owned housing. Because of the short-term nature of the problem, the Allentown Housing Authority was allowed to use 91% as its occupancy percentage for its fiscal year ending 6/30/95.

20. Regulation: 24 CFR 990.109(b)(3)(iv).

Project/Activity: A request was made by the St. Edward, NE Housing Authority to use its actual occupancy rate of 61% in determining its operating subsidy eligibility for its fiscal year ending (FYE) 12/31/94.

Nature of Requirement: A public housing agency (PHA) that has completed a Comprehensive Occupancy Plan (COP) without achieving a 97% occupancy percentage or having an average of five or fewer vacant units must use a projected occupancy rate of 97%.

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: July 14, 1994.

Reason Waived: The St. Edward Housing Authority is a small PHA of 18 units, primarily elderly. There has been a significant decline in the town's population according to census data, as well as loss of businesses during the past several years. Because the documented lack of demand was basically beyond the control of the Authority, and in order to preclude further depletion of its operating reserves, the PHA was allowed to use 61% as its occupancy percentage for its fiscal year ending 12/31/94.

21. Regulation: 24 CFR 990.110 and 990.107.

Project/Activity: Springfield, MA Housing Authority. In determining the operating subsidy eligibility, a request was made to permit the Springfield Housing Authority to retain a refund in excess billing charges for water consumption.

Nature of Requirement: Public Housing Agencies (PHAs) must pay back any savings that result from utility rate decreases as compared to the budgeted amount for that year.

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: July 14, 1994.

Reason Waived: The Springfield Housing Authority (SHA) realized in early 1989 that water costs had increased significantly and immediately began to investigate the cause. Both its maintenance and finance departments, over a lengthy period of time, spent considerable effort and expense trying to find the reason for the increased costs. In 1992, the SHA's energy auditor found that the problem was the installation, by the water department, of an improper water register on the water meter.

Based on the SHA's extraordinary efforts to determine the cause of the problem and the resulting savings to HUD, a waiver was granted to permit the SHA to retain the refund from excess billing. This waiver was granted on the basis that the refund be used to implement a water conservation program for several federally funded developments.

22. Regulation: 24 CFR 990.118(h).

Project/Activity: A request was made by the Department of Public and Assisted Housing (DPAH), Washington, DC to use an occupancy rate of 83% for its fiscal year ending (FYE) 9/30/94 and to use 85% for its FYE 9/30/95.

Nature of Requirement: A Public Housing Agency (PHA) with an approved COP must use the projected occupancy rates of the COP. The projected occupancy rate for the last year of the COP, FYE 9/30/94, is 97%.

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: July 26, 1994.

Reason Waived: The request for a waiver follows a number of meetings with the staff of DPAH. The exchange of views on the vacancy problems faced by DPAH has been productive and a four-year plan has been developed that is project-specific and will serve as a guide for the commitment of funds and staff. In order to be supportive of the efforts and progress made to date, a waiver was granted to permit the use of the 93% as the occupancy percentage for its FYE 9/30/94, and 85% for its FYE 9/30/95. Of the additional funds received by DPAH as a result of this waiver, at least 60% must be used for specific, identifiable actions to increase occupancy.

23. Regulation: 24 CFR 990.118(h).

Project/Activity: A request was made by the Allegheny County, PA Housing Authority to use an occupancy rate of 93% instead of the 97% goal of its Comprehensive Occupancy Plan (COP) in determining its operating subsidy eligibility for its fiscal year ending (FYE) 9/30/94.

Nature of Requirement: A Public Housing Agency (PHA) with an approved COP must use the projected occupancy rates of the COP.

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: August 19, 1994.

Reason Waived: The Allegheny County Housing Authority requested a 4% adjustment based on vacant units that are part of a funded, on-schedule modernization program. The regulations permit a PHA that completes the COP without achieving its occupancy goal to adjust the 97% rate that it otherwise would have to use in subsequent years by vacancies attributable to funded, on-schedule modernization work. In order to permit the PHA to receive the same benefits for its units undergoing modernization as do other PHAs that have completed their COPS, a waiver was granted to permit the use of the 93% as the occupancy percentage for its FYE 9/30/94.

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing: Gary VanBuskirk, Director, Homeownership Division, Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 4112, Washington, D.C. 20410, Phone: (202) 708–4233 (This is not a toll-free number).

24. Regulation: 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

Project/Activity: Butler Metropolitan Housing Authority (BMHA), Hamilton, Ohio Turnkey III Homeownership Opportunity Program Project OH 15–6 (Concord Green). Conversion to low income rental status.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook define and govern the Turnkey III Homeownership Opportunity Program.

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P.

Date Granted: July 1, 1994.

Reason Waived: The Butler Metropolitan Housing Authority of Hamilton, Ohio

requested the ability to convert certain housing units of the BMHA's project OH 15–6 to low rent public housing status. The Department of Housing and Urban Development has established certain criteria and procedures by which to judge the efficacy of such a conversion on a case by case basis. After investigation of the circumstances, and in an attempt to assist the BMHA to better serve its low income tenants, the Department decided that granting this conversion was in the best interests of all concerned.

The conversion of Turnkey III units to low income rental is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for this conversion.

25. Regulation: 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

Project/Activity: Rockford Housing Authority (RHA), Rockford, Illinois Turnkey III Homeownership Opportunity Program Project IL 06–P022–008. Conversion to low income rental status.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook define and govern the Turnkey III Homeownership Opportunity Program.

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P.

Date Granted: September 23, 1994.

Reason Waived: The Rockford Housing Authority of Rockford, Illinois requested the ability to convert certain housing units of the RHA's project IL 06–P022–008 to low rent public housing status. The Department of Housing and Urban Development has established certain criteria and procedures by which to judge the efficacy of such a conversion on a case by case basis. After investigation of the circumstances, and in an attempt to assist the RHA to better serve its low income tenants, the Department decided that granting this conversion was in the best interests of all concerned.

The conversion of Turnkey III units to low income rental is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for this conversion.

26. Regulation: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

Project/Activity: To permit a HOPE 1 mini-planning grantee, the Knoxville, Tennessee Housing Authority (KHA) a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning under its mini-planning grant (IA05HM1190192).

Nature of Requirement: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P.

Date Granted: July 12, 1994.

Reason Waived: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is ''not otherwise required by law'' may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The KHA was unable to implement the family self sufficiency segment of the grant on schedule due to a change in staff plans and funding problems. Because the KHA is located in a rural area, it has experienced some difficulty in finding individuals and organizations that can assist in the grant. To complete the remaining tasks under the grant, the KHA has recently issued a request for proposal for the self sufficiency and training components and has begun working with an agency to assist them in these efforts. Further action on the grant was contingent upon this extension being granted.

27. Regulation: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

Project/Activity: To permit a HOPE 1 mini-planning grantee, the Meridian, Mississippi Housing Authority (MHA) a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership mini-planning grant (MS26HM10040192).

Nature of Requirement: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P.

Date Granted: July 12, 1994.

Reason Waived: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is ''not otherwise required by law'' may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The management of the MHA has been in transition and the current executive director is acting in an interim capacity. The transition interrupted progress implementing the grant; however the MHA continues to desire to complete the remaining tasks under the grant. The MHA wishes to conduct economic development as well as training and technical assistance activities under the grant which would be of benefit to the low income residents participating in the homeownership grant. Further action on the grant was contingent upon the extension being granted.

28. Regulation: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

Project/Activity: To permit a HOPE 1 mini-planning grantee, the Hall County, Nebraska Housing Authority (HCHA) a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning under its mini-planning grant (NE26HM10030192).

Nature of Requirement: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P.

Date Granted: July 12, 1994.

Reason Waived: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is ''not otherwise required by law'' may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The HCHA noted that it was impeded in carrying out grant activities due to an initial lack of resident interest that has since been rectified. This interrupted early progress made on the grant. The HCHA wished to continue, among other items, resident management council training, development of homeownership plans and financial strategies, production and publication of outreach materials, and training and technical assistance for residents and staff. Further action on this grant was contingent upon the time extension being granted.

29. Regulation: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

Project/Activity: To permit a HOPE 1 mini-planning grantee, the Church Community Housing Corporation (CCHC) of Newport, Rhode Island a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning at its Chapel Terrace development.

Nature of Requirement: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P.

Date Granted: July 22, 1994.

Reason Waived: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is ''not otherwise required by law'' may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The CCHC noted that although it has made substantial progress in carrying out the grant, the Resident Council of the Newport Public Housing Authority has encountered unexpected delays in hiring a coordinator. The coordinator is now in place and has been working to rebuild the resident involvement in the resident council. The lack of a coordinator interrupted early progress made on the grant but the CCHC desired to move forward with the grant activities. As a result

of dialogue with the residents of the Chapel Terrace development and the realization that further HOPE funding is unlikely, the CCHC concluded that it needed to come up with viable alternatives which would foster increased resident control. The extension would allow the Resident Council to complete a move to permanent office space and to begin to explore options to enhance resident control of the development. Action on the grant was contingent upon the extension being granted.

30. Regulation: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

Project/Activity: To permit a HOPE 1 mini-planning grantee, the Housing Authority of the City of Waterbury, Connecticut (HAW) a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning at its Austin Road development.

Nature of Requirement: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P.

Date Granted: July 25, 1994.

Reason Waived: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is ''not otherwise required by law'' may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The HAW noted that although it had made substantial progress in carrying out the grant it encountered unexpected delays in hiring a Resident Initiatives Coordinator. The lack of this coordinator interrupted early progress made on the grant, but the HAW continued to desire to complete the tasks remaining under the grant. As a result of dialogue with the residents of the Austin Road development, the HAW concluded that it needed to focus its efforts under grant in the area of economic development to further prepare residents for homeownership. In working towards that end, the HAW selected a consultant to work on a feasibility study. The successful completion of this grant was contingent upon the extension being granted.

31. Regulation: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

Project/Activity: To permit a HOPE 1 mini-planning grantee, the North Charleston, South Carolina Housing Authority (NCHA) a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning at its North Park Village development.

Nature of Requirement: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P.

Date Granted: July 25, 1994.

Reason Waived: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is ''not otherwise required by law'' may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The NCHA noted that although it had made substantial progress in carrying out the grant, the resignation of two members of the Board of Commissioners as well as the Mayor of North Charleston had resulted in unexpected delays in carrying out activities under the grant. The vacancies were in the process of being filled. Although the vacancies interrupted progress made on the grant, the NCHA continued to desire to move forward with the grant activities. The extension requested would permit the Board of Commissioners to authorize contracts for the feasibility studies necessary to complete the development of a formal homeownership strategy. The extension would also allow the NCHA to conduct training and planning for economic development activities in support of future homeownership. The successful completion of the grant was contingent on the extension being granted.

32. Regulation: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

Project/Activity: To permit a HOPE 1 mini-planning grantee, the Auburn, Alabama Housing Authority (AHA) a time extension to carry out the activities specified in its five grant agreements. The extension would be of benefit to the residents participating in homeownership planning at its East Park, AL–050–1; East Park, AL–050–3; Ridgecrest, AL–50–6; Sparkman Park, AL–50–8; and East Park, AL–50–5A developments.

Nature of Requirement: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P.

Date Granted: August 3, 1994.

Reason Waived: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is ''not otherwise required by law'' may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

AHA noted that although it had made substantial progress in carrying out the grants it had encountered unexpected delays due to personnel changes in the housing authority. The personnel changes interrupted progress made on the grants. The AHA desired to complete the remaining tasks under the grants. After taking into consideration the diminished prospects of obtaining future HOPE 1 funding, the AHA concluded that it needed to alter the emphasis of its efforts under the grants to concentrate more on the development of RMCs/RCs than on conducting feasibility studies. Towards that end the AHA requested that it be allowed to revise its budget allocation to conform to the change in emphasis. Successful completion of the grant was contingent upon the extension being granted.

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing is: Debbie Ann Wills, Field Management Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 451 7th Street, SW., Washington, DC 20410–7000, Telephone: (202) 708–2565.

33. Regulation: 24 CFR 92.150(a) & 24 CFR 576.51(a).

Project/Activity: Hartford, CT, New Britain, CT, Stanford CT. Waiver of the deadline for submission of a HOME Program description and an Emergency Shelter Grants application.

Nature of Requirement: Subpart D, Section 92.150(a) of the HOME Interim Rule requires that each participating jurisdiction submit its Program Description for a fiscal year to HUD within 45 days of HUD's publication of the HOME formula allocations. For fiscal year 1994, the due date for the Emergency Shelter Grants application is 45 days after the jurisdiction's notification of its grant amount.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: June 14, 1994.

Reasons Waived: The Department found that the existing deadlines hinder the effective coordination of these programs. Therefore a waiver granting additional time to accomplish the task of coordination was given for good cause.

34. Regulation: 24 CFR 92.150(a) & 24 CFR 576.51(a).

Project/Activity: City of Fresno, California requested waiver of the deadline for submission of a HOME Program description.

Nature of Requirement: Subpart D, Section 92.150(a) of the HOME Interim Rule requires that each participating jurisdiction submit its Program Description for a fiscal year to HUD within 45 days of HUD's publication of the HOME formula allocations. For fiscal year 1994, the due date for the Emergency Shelter Grants application is 45 days after the jurisdiction's notification of its grant amount.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: June 14, 1994.

Reasons Waived: The Department found that the existing deadlines hinder the effective coordination of these programs. Therefore a waiver granting additional time to accomplish the task of coordination was given for good cause.

35. Regulation: 24 CFR 92.150(a) & 24 CFR 576.51(a).

Project/Activity: City and County of Honolulu. Waiver of the deadline for submission of a HOME Program description and an Emergency Shelter Grants application.

Nature of Requirement: Subpart D, Section 92.150(a) of the HOME Interim Rule requires

that each participating jurisdiction submit its Program Description for a fiscal year to HUD within 45 days of HUD's publication of the HOME formula allocations. For fiscal year 1994, the due date for the Emergency Shelter Grants application is 45 days after the jurisdiction's notification of its grant amount.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: June 14, 1994.

Reasons Waived: The Department found the strike by City employees had caused administrative problems that effected the coordination of these programs. Therefore a waiver granting additional time to accomplish the task of coordination was given for good cause.

36. Regulation: 24 CFR 92.150(a) & 24 CFR 576.51(a).

Project/Activity: Harris County Texas. Waiver of the deadline for submission of a HOME Program description and an Emergency Shelter Grants application.

Nature of Requirement: Subpart D, Section 92.150(a) of the HOME Interim Rule requires that each participating jurisdiction submit its Program Description for a fiscal year to HUD within 45 days of HUD's publication of the HOME formula allocations. For fiscal year 1994, the due date for the Emergency Shelter Grants application is 45 days after the jurisdiction's notification of its grant amount.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: July 11, 1994.

Reasons Waived: The Department found that the existing deadlines hinder the effective coordination of these programs. A waiver granting additional time to accomplish the task of coordination for these two programs was given for cause.

Regulation: 24 CFR 92.214(a)(8).

Project/Activity: The State of West Virginia requested a waiver to allow HOME funds to be used to pay for single owned properties.

Nature of Requirement: The new regulations at 92.214(a)(8) prohibit the use of HOME funds ''to pay for the acquisition of property owned by the participating jurisdiction''.

Granted by: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 17, 1994.

Reasons Waived: The waiver was granted because the State of West Virginia was in a unique situation. When the regulations at 24 CFR 92.214(a)(8) became effective, the State was in the process of negotiating with fourteen applicants to purchase State-owned properties under a HOME-funded project, an eligible activity under the then current regulations. There was not sufficient time to hold the loan closing prior to the effective date of the regulation. Therefore, the Assistant Secretary determined that the implementation of the regulation would unnecessarily have an impact on the State of West Virginia and the 14 applicants and adversely affect the purpose of the Act.

37. Regulation: 24 CFR 92.222(b).

Project/Activity: The city of Kansas Missouri requested that the match reduction made because the area was declared a natural disaster area be extended for Fiscal 1995.

Nature of Requirement: Under the HOME Program, each participating jurisdiction must match its allocation of HOME Program funds. Jurisdictions designated federal ''natural disaster areas'' are given relief from the match requirements for one year.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: June 7, 1994.

Reasons Waived: To relieve the jurisdiction of coming up with matching funds that would delay the use of HOME funds in an emergency situation.

38. Regulation: 24 CFR 92.222(b).

Project/Activity: Johnson County, Kansas requested that the match reduction made because the area was declared a natural disaster area be extended for Fiscal 1995.

Nature of Requirement: Under the HOME Program, each participating jurisdiction must match its allocation of HOME Program funds. Jurisdictions designated federal ''natural disaster areas'' are given relief from the match requirements for one year.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: June 8, 1994.

Reasons Waived: To relieve the jurisdiction of coming up with matching funds that would delay the use of HOME funds in an emergency situation.

39. Regulation: 24 CFR 92.222(b).

Project/Activity: The State of Wisconsin requested that the match reduction made because the area was declared a natural disaster area be extended for Fiscal 1995.

Nature of Requirement: Under the HOME Program, each participating jurisdiction must match its allocation of HOME Program funds. Jurisdictions designated federal ''natural disaster areas'' are given relief from the match requirements for one year.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 11, 1994.

Reasons Waived: To relieve the jurisdiction of coming up with matching funds that would delay the use of HOME funds in an emergency situation.

40. Regulation: 24 CFR 92.222(b).

Project/Activity: The State of Missouri requested that the match reduction made because the area was declared a natural disaster area be extended for Fiscal 1995.

Nature of Requirement: Under the HOME Program, each participating jurisdiction must match its allocation of HOME Program funds. Jurisdictions designated federal ''natural disaster areas'' are given relief from the match requirements for one year.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 12, 1994.

Reasons Waived: To relieve the jurisdiction of coming up with matching funds that would delay the use of HOME funds in an emergency situation.

41. Regulation: 24 CFR 92.222(b).

Project/Activity: The City of Lawrence, Kansas requested that the match reduction made because the area was declared a natural disaster area be extended for Fiscal 1995.

Nature of Requirement: Under the HOME Program, each participating jurisdiction must match its allocation of HOME Program funds. Jurisdictions designated federal ''natural disaster areas'' are given relief from the match requirements for one year.

Granted by: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 17, 1994.

Reasons Waived: To relieve the jurisdiction of coming up with matching funds that would delay the use of HOME funds in an emergency situation.

42. Regulation: 24 CFR 92.251(a).

Project/Activity: American Samoa and the Commonwealth of the Northern Mariana Islands requested a waiver of regulations to permit emergency repairs as an eligible HOME activity.

Nature of Requirement: Section 92.251(a) provides that housing assisted with HOME funds meet, at a minimum, HUD housing quality standards (HQS), and provides other minimum standards for substantial rehabilitation and new construction.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: June 14, 1994.

Reasons Waived: The waiver was granted because American Samoa and CNMI have determined that the need in their localities is to provide citizens with assistance which may alleviate a major health hazard. Examples include the installation of a septic tank which will prevent the contamination of drinking water, and the construction of a safety room to provide the family with shelter during typhoons. The waiver would alleviate hardship for American Samoa and CNMI and permitting them to address health hazards.

43. Regulation: 24 CFR 92.251(a).

Project/Activity: The City of Phoenix Arizona requested a waiver of section 92.251(a) to allow the United Methodist Outreach Ministries to use HOME monies for the rehabilitation of 41 units in a transitional housing project.

Nature of Requirement: The regulations provides that housing assisted with HOME funds meet, at a minimum, HUD housing quality standards (HQS) in Section 882.109, and provides other minimum standards for substantial rehabilitation and new construction.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 25, 1994.

Reasons Waived: The waiver was granted because using HOME monies for a portion of this project would assist the City and the State in meeting the Department's priority of providing additional housing for homeless families. In addition, not granting the waiver would adversely affect the purposes of the HOME Act, which include expanding the supply of decent, safe, sanitary and affordable housing for low and very low income persons.

44. Regulation: 24 CFR 92.254.

Project/Activity: State of California, San Benito County CPD requested a waiver to CFR 92.254 which limits the value of homes purchased using HOME funds.

Nature of Requirement: The HOME regulations at 24 CFR 92.254 state that for housing to qualify as affordable housing for homeownership, its purchase price and/or after rehabilitation value cannot exceed 95 percent of the median purchase price for single family housing for the jurisdiction as determined by HUD. If the jurisdiction believes the limits determined by HUD do not accurately reflect 95 percent of the median purchase price, the regulation provides that it may appeal the limits in accordance with 24 CFR 203.28(b).

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: February 22, 1994.

Reason Waived: The HUD Field Office presented data for single family home sales that was determined by the Assistant Secretary to be a reasonable and accurate representation of local market conditions and, therefore, the HOME purchase price/value limits were revised upward for San Benito County.

45. Regulation: 24 CFR 511.11(a).

Nature of Requirement: The City of Phoenix Arizona is requesting to repay its line of credit less than the amount drawn down for the Willow Ridge Apartments. When the project was 50 percent complete, the owners defaulted on the first mortgage which resulted in foreclosure by the lender. The City had drawn down $70,264 and is requesting that HUD accept $60,281.97, the amount in escrow, as the amount that it reimburses its Rental Rehabilitation line of credit for this project.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: June 17, 1994.

Reason Waived: HUD accepted the amount on the basis that the rehabilitation was substantially complete, low-income residents of the project and the neighborhood benefited with a relatively minimal amount of Rental Rehabilitation funds. Not waiving this requirement would adversely affect the purposes of the Rental Rehabilitation Program and would place hardship on the city.

46. Regulation: 24 CFR 570.466(c)(3)(i).

Project/Activity: An amendment to the UDAG Grant Agreement awarded to the City of Albuquerque.

Nature of Requirement: Jobs must be created if UDAG monies are used to fund a specific project.

Date Granted: July 8, 1994.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Reasons Waived: HUD determined that without the waiver to the regulations, the project developer would lose the business rationale for making a partial repayment of the UDAG loan thus causing and perpetuating undue hardship on the pocket of poverty residents, the beneficiaries of these funds.

[FR Doc. 95–4742 Filed 2–24–95; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P and AA–8096–03]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue a reserved minerals conveyance under the provisions of Sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Chugach Alaska Corporation for 919.79 acres. The lands involved are in the vicinity of Icy Bay, Alaska.

U.S. Survey No. 8967, Alaska;
U.S. Survey No. 8966, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 29, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of Gulf Rim Adjudication.

[FR Doc. 95–4678 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–JA–P

[AK–060–1430–01; FF–84553]

Realty Action: Renewal & Amendment of Airport Lease, Coldfoot, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The State of Alaska Department of Transportation and Public Facilities has requested renewal and amendment of an existing airport lease at Coldfoot, Alaska. The existing lease expires on December 27, 2004. The State has requested renewal for an additional 20 years.

ADDRESSES: Written comments on this notice should be submitted to the District Manager, Bureau of Land Management, Arctic District Office, 1150 University Avenue, Fairbanks, Alaska 99709.

FOR FURTHER INFORMATION CONTACT: Mike Worley, Realty Specialist, at the address given above or at telephone (907) 474–2309 or toll free 800–437–7021.

SUPPLEMENTARY INFORMATION: The following public lands at Coldfoot, Alaska, are being considered for lease to the State of Alaska for airport purposes under the Act of May 24, 1928, as amended (49 U.S.C., Appendix 211–213):

Fairbanks Meridian, Alaska

Township 28 North, Range 12 West, within Tract III, Parcels D, E & F:

Tract III, Parcel D

Commencing at the point of intersection of the westerly boundary of Tract II, Parcel B (left bank of Slate Creek) and the southeastern boundary of Federal Mining Claim ''No. 19 Above'', designated as Corner #1

Thence S 32° 10′ 09″ W a distance of 147.24 feet to Corner #2;

Thence S 42° 37′ 00″ E a distance of 466.77 feet to Corner #3;

Thence N 32° 10′ 09″ E a distance of 120.00 feet to Corner #4;

Thence S 81° 30′ 00″ E a distance of 550.94 feet to Corner #5 on the left bank of said Slate Creek at the ordinary high water line;

Thence continuing along the meanders of Slate Creek at the line of ordinary high water in a westerly direction, said meanders being generally described by the following predominant courses and distances from the last described point;

N 60° 17′ 46″ W a distance of 177.39 feet to Corner #6;

N 38° 50′ 04″ W a distance of 90.82 feet to Corner #7;

N 05° 11′ 52″ E a distance of 140.72 feet to Corner #8;

N 18° 49′ 27″ E a distance of 134.64 feet to Corner #9;

N 39° 02′ 45″ W a distance of 84.64 feet to Corner #10;

N 79° 58′ 58″ W a distance of 242.72 feet to Corner #11;

S 45° 15′ 07″ W a distance of 91.50 feet to Corner #12;

S 81° 38′ 04″ W a distance of 159.52 feet to Corner #13;

S 89° 32′ 18″ W a distance of 176.46 feet to Corner #1;

Said parcel contains 6.526 acres, more or less and is depicted as Tract III, Parcel D.

Tract III, Parcel E

Commencing at the point of intersection of the southwesterly boundary of Tract I, Parcel B and southerly boundary of Federal Mining Claim ''No. 19 Above'', designated as Corner #1

S 32° 10′ 09″ W a distance of 114.64 feet to Corner #2;

N 87° 03′ 07″ E (right bank of Slate Creek) a distance of 195.62 feet to Corner #3;

N 53° 08′ 01″ E (right bank of Slate Creek) a distance of 85.33 feet to Corner #4;

Thence departing said meanders, N 79° 58′ 58″ W along the northerly boundary line of Federal Mining Claim ''No. 19 Above Association'', a distance of 205.72 feet to Corner #1;

Said parcel contains 9.358 acres, more or less, and is depicted as Tract III, Parcel E.

Tract III, Parcel F

Commencing at the point of intersection of the southeast boundary of Tract I, Parcel B and the northeasterly boundary (right bank of meandering Slate Creek at the ordinary high water line) of Tract II, Parcel B, designated as Corner #1

S 00° 54′ 47″ E a distance of 117.41 feet to Corner #2;

S 33° 22′ 53″ W a distance of 63.29 feet to Corner #3;

S 51° 32′ 37″ W a distance of 88.85 feet to Corner #4;

S 12° 14′ 58″ E a distance of 99.92 feet to Corner #5;

S 63° 16′ 24″ E a distance of 159.23 feet to Corner #6;

Thence, departing said meanders, N 32° 10′ 09″ E along the western boundary of Federal Mining Claim ''Discovery Slate Creek'', a distance of 381.99 feet to Corner #7;

Thence N 57° 10′ 13″ W along the southwesterly boundary of Tract I, Parcel B, a distance of 64.49 feet to Corner #8;

Thence N 79° 58′ 58″ W a distance of 209.54 feet to Corner #1;

Said parcel contains 1.807 acres, more or less, and is depicted as Tract III, Parcel F.

Total acreage of Parcels D, E and F, approximately 8.691 acres.

The above described lands have been, and remain, segregated from all appropriation under the public land laws, including the mining laws but not the mineral leasing laws. The lease would be renewed for an additional 20 years.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit written comments to the District Manager at the above address. Any adverse comments will be reviewed by the State Director, who may vacate, sustain, or modify the realty action and issue a final determination. In the absence of any objection, the final determination of the Department of the Interior will be made in accordance with this notice.

Dated: February 14, 1995.

Dee R. Ritchie,

Arctic District Manager.

[FR Doc. 95–4640 Filed 2–24–95; 8:45 am]

BILLING CODE 1430–JA–M

[ID–014–05–1430–01; IDI–20591, IDI–20592, IDI–20593, IDI–28296, IDI–29211, IDI–29212]

Notice of Realty Action, Sale of Public Lands in Boise County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of Public Lands in Boise County.

SUMMARY: The following-described public lands have been examined and through the public-supported land use planning process have been determined to be suitable for disposal by direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 at no less than appraised fair market value. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the Federal Register.

Boise Meridian, Idaho

1. IDI–20591, George Stuchberry

T. 10 N., R. 4 E., B.M., Idaho
Section 13; Lot 3.
Containing 0.78± acre.

2. IDI–20592, Bud St. Joer

T. 10 N., R. 4 E., B.M., Idaho
Section 13; Lot 1.
Containing 0.37± acre.

3. IDI–29211, Robert & Roberta Collins and Richard & Carol Huelskamp

T. 10 N., R. 4 E., B.M., Idaho
Section 13; Lot 2.
Containing 0.08± acre.

4. IDI–29212, Edna Cheny

T. 10 N., R. 4 E., B.M., Idaho
Section 13; Lot 4.
Containing 0.08± acre.

5. IDI–20593, James Hall

T. 10 N., R. 4 E., B.M., Idaho
Section 13; Lot 7.
Containing 0.05± acre.

6. IDI–28296, Robert & Hazel Kite

T. 8 N., R. 3 E., B.M., Idaho
Section 18; Lot 10.
Containing 0.07± acre.

DATES: Upon publication of this notice in the Federal Register, the lands described above will be segregated from appropriation under the public land laws, including the mining laws, excepting the sale provision of the Federal Land Policy and Management Act. The segregative effect will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

ADDRESSES: Boise District Office, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Effie Schultsmeier, Cascade Area Realty Specialist, at the above address or (208) 384–3357.

SUPPLEMENTARY INFORMATION: This land is being offered by direct sale to the adjacent landowners, who through no fault of their own believed the land to be theirs when they purchased the adjoining private land. Selling these parcels will alleviate encroachment problems and resolve title problems for the landowners. These lands have been inspected and found prospectively valuable for geothermal resources. The geothermal resources have been appraised for a fair market value of $1.50 per acre. Acceptance of the sale offer will constitute an application for conveyance of the mineral estate. A separate non-refundable fee of $50.00 will be required from each of the purchasers, plus $1.50 per acre, for conveyance of the mineral interests.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Boise District, at the above address. Any adverse comments will be reviewed by the District Manager, who may vacate or modify this realty action to accommodate the protest. If the protest is not accommodated, the comments are subject to review of the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Excepting and Reserving to the United States

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890 (43 USC 945).

2. A reservation to the Bureau of Land Management for public access to adjacent public lands, IDI–31114, under the Act of October 21, 1976, (43 USC 1767), through Lots 1 and 2, section 13, T. 10 N., R. 4 E.

Subject to

3. Those rights for transmission line purposes granted to Idaho Power Company, its successors or assigns, by right-of-way no. IDI–30923, under the Act of October 21, 1976, (43 USC 1761), through Lots 1, 2, and 3, section 13, T. 10 N., R. 4 E.

Dated: February 17, 1995.

R.E. Schmitt,

Acting District Manager.

[FR Doc. 95–4641 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–GG–M

[ID–030–05–1430–01; ID–28900]

Exchange of Public Lands in Clark County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public lands in Clark County, ID.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Boise Meridian

T. 10 N., R. 33 E.
Sec. 21, S½N½SE¼SW¼, S½SE¼SW¼;
Sec. 28, E½NW¼, SE¼.

The land described contains 270 acres in Clark County.

In exchange for these lands, the United States will acquire the following described lands from Franklin Sullivan:

Boise Meridian

T. 11 N., R. 34 E.
Sec. 9, S½SE¼;
Sec. 15, NW¼NW¼.

The land described contains 120 acres in Clark County.

DATES: The publication of this notice in the Federal Register will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. This segregative effect of this notice will terminate upon issuance of patent or in two years, which ever occurs first.

ADDRESSES: Detailed information concerning the exchange is available for review at the BLM, Idaho Falls District office, 940 Lincoln Road, Idaho Falls, Idaho 83401.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a one half mile segment of a live stream and its associated wildlife and riparian habitat. The public lands to be exchanged are dry grazing lands adjoining private property. The exchange is consistent with the Bureau of Land management's land use plan. The public interest will be well served by making the exchange. The value of the lands to be exchanged is approximately equal.

The federal lands would be exchanged subject to the following exceptions, reservations and conditions:

—A reservation of all minerals.
—A right-of-way reservation for ditches and canals constructed under the Act of August 30, 1890.
—Subject to powerline right-of-way IDI–2414 held by Utah Power & Light Co.

The private lands would be exchange subject to the following:

—Powerline easement for road purposes recorded May 12, 1919 (Book 1 of Deeds, Page 77), records of Clark County.
—Reservation of mineral rights.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Associate District Manager at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: February 15, 1995.

Gary Bliss,

Associate District Manager.

[FR Doc. 95–4642 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–GG–M

[NV–930–4210–05; N–59066]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). Clark County proposes to use the land for a maintenance operations facility.

Mount Diablo Meridian, Nevada

T. 21 S., R. 61 E.
Sec. 31, Lots 21, 26, 27, 28, 30, 35, 36
W½W½NE¼NW¼,
SE¼SW¼NE¼NW¼,
SW¼SE¼NE¼NW¼,
E½SE¼NE¼NW¼.

Containing 38.34 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe. and will be subject to:

1. Easements in favor of Clark County for roads, public utilities, and flood control purposes.

2. Those rights for an access road and public utility purposes which have been granted to Clark County by Permit No. N–54006 under the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for flood control purposes which have been granted to Clark County by Permit No. N–59041 under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a church facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a church facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60

days from the date of publication in the Federal Register. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: February 13, 1995.

Mike Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 95–4643 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–HC–M

[NV–040–1430–02; N–57067]

Realty Action: Recreation and Public Purposes Act, White Pine County, NV

ACTION: Amenmdment to Notice of Realty Action.

SUMMARY: On Monday, August 23, 1993, the BLM Ely District Office issued a Notice of Realty Action to classify as suitable for disposal pursuant to the provision of the Recreation and Public Purposes Act, as amended, 43 U. S. C. 860, et seq., certain public lands in White Pine County, Nevada. The subject land will be used by White Pine County for a non-hazardous solid waste disposal facility.

This segregation was in effect for 18 months. This segregation is hereby extended an additional two years to allow for the completion of the transfer.

Except as amended hereby, the notice published August 31, 1993 stands as written.

Dated: February 9, 1995.

Hal M. Bybee,

Acting District Manager.

[FR Doc. 95–4644 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–HC–P

[AZ–010–95–1610]

Arizona Strip District Resource Management Plan: Intent to Amend

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend the Arizona Strip District Resource Management Plan, Arizona.

SUMMARY: Pursuant to the BLM Planning Regulations (43 CFR part 1600) this notice advises the public that the Arizona Strip District, Bureau of Land Management, is proposing to amend the Arizona Strip District Resource Management Plan in order to implement management practices that will help recover the Northeastern Mojave Desert population of desert tortoises. The main issues anticipated in this plan amendment are: (1) recovery of the northeastern Mojave Desert population of desert tortoises, listed by the U.S. Fish and Wildlife Service as threatened; and (2) impacts on existing and future uses of resources on public lands in the Mojave Desert managed by the Arizona Strip District.

This amendment is limited to the area categorized as desert tortoise habitat (Arizona Strip Resource Management Plan, 1991) or designated by the U.S. Fish and Wildlife Service as critical habitat for desert tortoises.

A land use plan amendment and environmental analysis will be prepared for the subject lands by an interdisciplinary team including range, wildlife, recreation, minerals, lands and realty, and cultural resource specialists. The existing land use plans and maps are available for review at the Shivwits Resource Area Office in St. George, Utah.

DATES: Interested parties may submit comments to the District Manager at the address shown below on or before May 5, 1995.

ADDRESSES: Comments should be sent to the District Manager, Bureau of Land Management, Arizona Strip District, 390 North 3050 East, St. George, Utah 84770.

FOR FURTHER INFORMATION CONTACT: George Cropper, Area Manager, Shivwits Resource Area, 345 E. Riverside Drive, Suite 103, St. George, Utah 84770, (801) 628–4491 to obtain additional information regarding this plan amendment.

Roger G. Taylor,

District Manager.

[FR Doc. 95–4750 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–32–P

[NV–942–05–1420–00]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATE: Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–785–6541.

SUPPLEMENTARY INFORMATION:

1. The supplemental plats of the following described lands were officially filed at the Nevada State Office, Reno, Nevada on January 20, 1995:

The supplemental plat showing new lottings created by the segregation of Mineral Survey No. 4777 in section 24, T. 12 S., R. 46 E., Mount Diablo Meridian, Nevada, was accepted on January 13, 1995.

The supplemental plat showing amended lottings created by the segregation of Mineral Survey No. 4777 in section 19, T. 12 S., R. 47 E., Mount Diablo Meridian, Nevada, was accepted on January 13, 1995.

These plats were prepared at the request of Mr. Gary Babbitt for R. T. Vanderbilt Co., Inc.

2. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on January 31, 1995:

The plat representing the dependent resurvey of a portion of the subdivision of section 12, the further subdivision of section 12, and the metes-and-bounds survey of Lot 1, section 12, T. 14 N., R. 19 E., Mount Diablo Meridian, Group No. 746, Nevada, was accepted January 24, 1995.

This survey was executed to meet certain administrative needs of the U. S. Forest Service.

3. The Plats of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on April 12, 1995:

The plat representing the independent resurvey of the Third Standard Parallel North, through Range 33½ East, and the survey of a portion of the subdivisional lines of T. 16 N., R. 33½ E., Mount Diablo Meridian, Group No. 695, Nevada, was accepted January 19, 1995.

The plat, in four sheets, representing the dependent resurvey of a portion of Mineral Survey Nos. 2664 and 3206, an independent resurvey of the Third Standard Parallel North, through a portion of Range 34 East; and the survey of a portion of the subdivisional lines and a portion of the Lahontan Valley Bombing Range Boundary, T. 16 N., R. 34 E., Mount Diablo Meridian, Group No. 695, Nevada, was accepted January 19, 1995.

These surveys were executed to meet certain administrative needs of the U. S. Navy.

4. Subject to valid existing rights the provisions of existing withdrawals and classifications, the requirements of applicable laws, emergency closures, and other segregations of record, those portions of the lands listed for T. 16 N., R. 34 E., under item 3 as ''survey'' are open to application, petition, and disposal, including application under the mineral leasing laws. All such valid applications received on or prior to April 12, 1995, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

5. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: February 15, 1995

John S. Parrish,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 95–4645 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–HC–P

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of receipt of applications for permits.

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.*).

Permit No. 798744

Applicant: Kootenai Tribe of Idaho, Fisheries Program, Bonners Ferry, Idaho

The applicant requests a permit to take (capture, collect, radio tag, mark, and release) the Kootenai River population of the white sturgeon (*Acipenser transmontanus*) in the Kootenai River, Idaho to conduct captive propagation and scientific research to enhance the propagation and survival of the species.

Permit No. 799001

Applicant: University of Hawaii, Department of Zoology, Honolulu, Hawaii

The applicant requests a permit to take (capture, mark, band, take blood, measure, and release) Hawaii akepas (*Loxops coccineus coccineus*), Hawaii creepers (*Oreomystis mana*), akiapolaaus (*Hemignathus munroi*), and Hawaiian hawks (*Buteo solitarius*) on the island of Hawaii for scientific research to enhance the survival of the species. These studies were previously authorized under the Regional Director's permit no. PRT–702631.

DATES: Written comments on the permit applications must be received by March 29, 1995.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents, within 30 days of the date of publication of this notice, to the following office: U.S. Fish and Wildlife Service, Ecological Services, Division of Consultation and Conservation Planning, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Telephone: 503–231–2063; FAX: 503–231–6243. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: February 16, 1995.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–4680 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–55–P

INTERSTATE COMMERCE COMMISSION

[Docket Nos. AB–32 (Sub-No. 60X) and AB–355 (Sub-No. 12X)]

Boston and Maine Corporation—Abandonment Exemption—in Hillsboro County, NH; Springfield Terminal Railway Company—Discontinuance of Service Exemption—in Hillsboro County, NH

Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* for B&M to abandon and ST to discontinue service over a segment of B&M's line of railroad, known as the Portsmouth Branch (the Line), between milepost 37.10 and milepost 39.68, a distance of approximately 2.58 miles, in Manchester, Hillsboro County, NH.

B&M and ST certify that: (1) No local traffic has moved over the Line for at least 2 years; (2) any overhead traffic on the Line has been rerouted over other lines; (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 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use this exemption, any employee adversely affected by the abandonment or discontinuance 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 29, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 9, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 20, 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 applicants' representative: John R. Nadolny, Iron Horse Park, No. Billerica, MA 01862.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

B&M and ST have filed an environmental report which addresses the effects of the abandonment and discontinuance, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 3, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission,

[1] 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 before the effective date of this notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

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 is 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: February 17, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4707 Filed 2–24–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment assistance, at the address shown below, not later than March 9, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 9, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 13th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Cannon Shoe/Thurmont Shoe (Wkrs)	Thurmont, MD	2/13/95	12/09/94	30,722	Men's leather dress shoes.
R. Neumann & Co (Wkrs)	Hoboken, NJ	2/13/95	02/01/95	30,723	Leather grips and bookmarks.
Boise Cascade Corp (WCIW	Council, ID	2/13/95	01/30/95	30,724	Raw wood products.
Gerrity Oil & Gas (Wkrs)	Denver, CO	2/13/95	01/31/95	30,725	Oil and gas.
Goldtex, Inc (Wkrs)	Goldsboro, NC	2/13/95	01/30/95	30,726	Childrens apparel.
Takata Fabrication Corp (Wkrs)	Piqua, Ohio	2/13/95	02/01/95	30,727	Automobile seat belts.
Waca Oil & Gas (Wkrs)	Glenville, WV	2/13/95	02/03/95	30,728	Natural gas and crude oil.
Oxford of Belton (Co)	Belton, SC	2/13/95	02/03/95	30,729	Ladies blouses.
Genlyte Group (Wkrs)	Secaucus, NJ	2/13/95	01/29/95	30,730	Model makers.
C&J Clark America (Wkrs)	Franklin, WV	2/13/95	01/30/95	30,731	Men's shoes.
Contract Apparel (Wkrs)	El Paso, TX	2/13/95	01/24/95	30,732	Sewing.
McDonnel Douglas CorpUAW	Monrovia, CA	2/13/95	01/31/95	30,733	Commercial passenger aircraft.
Artex Mfg (Co)	Yates Center, KS	2/13/95	01/30/95	30,734	Sportswear.
Washington Public Power Supply (IBEW)	Richland, WA	2/13/95	01/27/95	30,735	Electrical energy.
Exxon Upstream Technical Computing (Wkr)	Houston, TX	2/13/95	01/31/95	30,736	Oil and gas.
Native Textiles (Wkr)	Dallas, PA	2/13/95	02/02/95	30,737	Knitting fabric.
F and M Hat Company (Co)	Denver, PA	2/13/95	02/06/95	30,738	Wool felt hat bodies.
Control Powers (Wkr)	Ardmore, OK	2/13/95	01/16/95	30,739	Switch gears.

[FR Doc. 95–4713 Filed 2–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30, 137]

Diamond Tool and Horseshoe Co; Duluth, MN; Notice of Affirmative Determination Regarding Application for Reconsideration

On February 8, 1995, after being granted a filing extension, the workers and the Diamond Tool Directly Affiliated Labor Union (DALU) Local 18650 AFL–CIO requested administrative reconsideration of the Department's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on November 28, 1994 and published in the Federal Register on December 16, 1994 (59 FR 65076).

The workers submitted an additional list of customers who reported increased imports in the relevant period.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 14th day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–4733 Filed 2–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,593 Cody, WY; TA–W–27,593A Bakersfield, CA]

Marathon Oil Co.; Exploration and Production; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 21, 1992, applicable to all workers of the subject firm. The certification was published in the Federal Register on November 3, 1992 (57 FR 49722).

At the request of one of the workers and the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred at Bakersfield, California.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The intent of the Department's certification is to include all workers of Marathon Oil Company, Exploration and Production in Cody, Wyoming and in Bakersfield, California who were adversely affected by increased imports of crude oil.

The amended notice applicable to TA–W–27,593 is hereby issued as follows:

''All workers of Marathon Oil Company, Exploration and Production, Cody, Wyoming and Bakersfield, California who became totally or partially separated from employment on or after July 29, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 14th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–4717 Filed 2–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,578]

McKay Drilling Co.; Aurora, CO and Operating at Other Sites in the Following States: TA–W–30,578A North Dakota; TA–W–30,578B Wyoming; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated January 30, 1995, one of the petitioners requested administrative reconsideration of the Department's notice of termination of investigation. The notice was issued on January 13, 1995 and published in the Federal Register on January 27, 1995 (60 FR 5440).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that McKay Drilling ceased operations in January, 1986 when all the workers were separated.

Your petition dated December 1, 1994 sought TAA for the McKay Drilling workers. However, the worker separations of more than eight years ago are out of scope for any consideration for trade adjustment assistance. The statute (Trade Act of 1974) at Section 223 specifically states that no certification shall apply to any worker whose separation was more than one year prior to the date of the petition. Accordingly, the investigation was terminated since it would serve no purpose to continue.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 14th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–4732 Filed 2–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,468]

Pontiac Weaving Corp.; Cumberland, RI; Notice of Affirmative Determination Regarding Application for Reconsideration

On January 13, 1995, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on January 6, 1995 and will soon be published in the Federal Register.

New findings show that the parent company of Pontiac Weaving increased its imports in 1994.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 14th day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–4734 Filed 2–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,328, TA–W–30,329, TA–W–30,329A, TA–W–30,329B, TA–W–30,329C]

United Technologies Corporation; Pratt and Whitney, et al; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a certification of Eligibility to Apply for Worker Adjustment Assistance on December 13, 1994, applicable to all workers at United Technologies Corporation, Pratt & Whitney located in North Haven and Southington, Connecticut. The notice was published in the Federal Register on January 20, 1995 (60 FR 4195).

The Department reviewed the certification for workers of the subject firm. The findings show that production of jet engine parts at Pratt & Whitney facilities in Connecticut, including East Hartford, Middletown, and Rocky Hill is integrated with that of the North Haven and Southington plants.

The intent of the Department's certification is to include all workers of Pratt & Whitney. The amended notice applicable to TA–W–30,328 and TA–W–30,329 is hereby issued as follows:

''All workers of United Technologies Corporation, Pratt & Whitney, North Haven, Connecticut (TA–W–30,328); Southington, Connecticut (TA–W–30,329); East Hartford, Connecticut (TA–W–30,329A); Middletown, Connecticut (TA–W–30,329B); and Rocky Hill, Connecticut (TA–W–30,329C) engaged in employment related to the production of jet engine parts who became totally or partially separated from employment on or after September 7, 1993 through two years

from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 16th day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–4714 Filed 2–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,927; NAFTA–00120]

Walker Manufacturing Co.; Hebron, OH; Notice of Revocation of Negative Determination

This notice revokes the Notice of Negative Determination on Reconsideration for petitions TA–W–29,927 and NAFTA–00120 which was published on page 8065 in the Federal Register on February 10, 1995 (60 FR 8065) in Document Number FR 95–3404.

This notice is revoked since it was published prematurely.

Signed in Washington, D.C., this 14th day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–4716 Filed 2–24–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00261]

Mahan Western Industries, Inc., Leather and Heel Department A/K/A Miller Manufacturing Leather and Heel Department; El Paso, TX; Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on November 22, 1994, applicable to all workers of the leather and heel department of the subject firm in El Paso, Texas.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that the claimants' wages for Mahan Western Industries, Inc., are being reported under the Unemployment Insurance tax account for Miller Manufacturing, EL Paso, Texas.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The intent of the Department's certification is to include all workers of Mahan Western Industries, Inc., formerly Miller Manufacturing in El Paso, Texas.

The amended notice applicable to NAFTA—00261 is hereby issued as follows:

''All workers of the Leather and Heel Department of Mahan Western Industries, Inc., a/k/a Miller Manufacturing, Leather and Heel Department, El Paso, Texas who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed in Washington, DC., this 16th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Service, Office of Trade Adjustment Assistance.

[FR Doc. 95–4715 Filed 2–24–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and Time: March 20, 1995; 3:30pm–6:30pm; March 2, 1995; 8:30am–5:00pm; March 22, 1995; 8:30am–12:00pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230—March 20, 1995; Rooms 365, 370, 375; March 21, 1995; Rooms 365, 375, 380; 390; March 22, 1995; Rooms 365, 370, 380.

Type of Meeting: Closed.

Contact Person: Gilbert B. Devey, Program Director, Biomedical Engineering & Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–4661 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (#1754).

Dates and Times: March 12, 1995 from 8:00 pm to 10:00 pm; March 13–15, 1995 from 8:00 am to 6:00 pm; March 16, 1995 from 8:30 am until 12:00 pm.

Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Gerald Selzer, Program Director, Division of Biological. Instrumentation and Resources (BIR), Room 615 National Science Foundation, 4201 Wilson Blvd. Arlington, VA 22230, Tel: (703) 306–1469.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF.

Agenda: To review and evaluate proposals submitted in response to the Macromolecular Structure Database proposal solicitation (NSF 92–96).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–4665 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis in Biological Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 643, as amended), the National Science Foundation announces the following meeting of the Special Emphasis Panel in Biological Sciences (1754).

Date and Time: March 16, 17, 1995; 8:30 a.m. to 6:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230, Conference Room 390.

Type of Meeting: Closed.

Closed: March 16, 17, 1995; 8:30 a.m. to 6:00 p.m.

Contact Persons: Dr. David Capco or Dr. Marcia Steinberg, National Science

Foundation, Room 655 South-Arlington, Virginia 22230, Telephone: 703/306–1442 or 306–1443.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research for women in Molecular and Cellular Buosciences.

Agenda: To review and evaluate Research Planning and Career Advancement proposals for Women Scientists and Engineers as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information; concerning individuals associated with the proposals. These matters are with exemption (4) and (6) of 5 U.S.C. 522(c), Government in the Sunshine Act.

Dated: February 21, 1995.

[FR Doc. 95–4668 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross-Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross-Disciplinary Activities (#1193).

Date and Time: April 4, 1995; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, Room 1150, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Harry G. Hedges, Program Director, CISE/CDA, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Minority Institutions Infrastructure proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–4660 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation -#1194).

Date and Time: March 15, 1995, 8:30 a.m.-5:00 p.m.

Place: Room 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Warren DeVries, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1330.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Grant Opportunities for Academic Liaison with Industry (GOALI) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–4667 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Earth Sciences Proposal Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Earth Sciences Proposal Review Panel (1569).

Date: March 15, 16 & 17, 1995.

Time: 8:00 a.m. to 6:00 p.m. each day.

Place: Room 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Alan M. Gaines, Section Head, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA, (703) 306–1553.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate earth sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–4666 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Engineering; 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: Advisory Committee for Engineering.

Date and Time: March 20 and 21, 1995: 8:30 a.m.–5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Ken Chong, Program Director, Structural Systems and Construction Process Program, Dr. Priscilla Nelson, Program Director, Geomechanical, Geotechnical and Geo-Environmental Program, or Dr. John Scalzi, Program Director, Large Structural & Building Systems, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1361.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: The combined programs of Structures, Geomechanical and Building Systems will convene a Committee of Visitors to review the programs.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act would be improperly disclosed.

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–4662 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development #1199.

Date and Time: March 13 & 14, 1995—8:00 a.m.–5:00 p.m..

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA, Room 380.

Type of Meeting: Closed.

Contact Person: Betty Jones & Costello Brown, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1633.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate programs for Comprehensive Partnerships for Minority Student Achievement (CPMSA) as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–4664 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research.

Date and Time: April 25th and 26th, 1995 @ 8:15 am.

Place: National Science Foundation, Rooms 680, 1020, 1150, 1005, 365, 379, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: G. X. Tessema, and H. Hollis Wickman, DMR, PDs, Room: 1065, Phone: 703–306–1995.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals.

Agenda: To review and evaluate CMP proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Office.

[FR Doc. 95–4659 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Materials Research (#1203).

Date and Time: March 13–15, 1995; 8:00 a.m. to 5:00 p.m.

Place: Florida State University, Tallahassee, FL.

Type of Meeting: Closed.

Contact Person: Dr. Adriaan M. de Graaf, Executive Officer, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–182; FAX (703) 306–0515.

Purpose of Meeting: To provide advice and recommendations concerning the continued support for the National High Magnetic Field Laboratory (NHMFL) being established by Florida State University, the University of Florida, and Los Alamos National Laboratory.

Agenda: To review and evaluate the progress report and proposal for continued funding from the NHMFL.

Reason for Closing: The progress report being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–4669 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Undergraduate Education.

Date and Time: March 16, 1995 7:30 p.m. to 9:00 p.m.; March 17, 1995; 8:30 a.m. to 5:00 p.m.; March 18, 1995; 8:30 a.m. to 5:00 p.m.

Place: Doubletree National Airport Hotel, 300 Army/Navy Drive, Arlington, VA 22202.

Type of Meeting: Closed.

Contact Person: Dr. Jim Lightbourne, Section Head, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1667.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Course and Curriculum Development (CCD) Panel Meeting.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–4663 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Power Co. Palisades Plant; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. DPR–20, issued to the Consumers Power Company, the licensee, for operation of the Palisades Nuclear Plant. The plant is located at the licensee's site in Van Buren County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed action requests an exemption from certain requirements of 10 CFR 50.60, ''Acceptance Criteria for Fracture Prevention Measures for Light-Water Nuclear Power Reactors for Normal Operation,'' to allow application of an alternate methodology to determine the low temperature over-pressure protection (LTOP) setpoint for the Palisades Plant. The proposed alternate methodology is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria (WGOPC) to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. These guidelines have been incorporated into Code Case N–514, ''Low Temperature Overpressure Protection,'' which has been approved by the ASME Code Committee. The content of this code case has been incorporated into appendix G of Section XI of the ASME

Code and published in the 1993 Addenda to Section XI.

The philosophy used to develop Code Case N–514 guidelines is to ensure that the LTOP limits are still below the pressure/temperature (P/T) limits for normal operation, but allows the pressure that may occur with activation of pressure-relieving devices to exceed the P/T limits, provided acceptable margins are maintained during these events. This philosophy protects the pressure vessel from LTOP events and still maintains the Technical Specification P/T limits applicable for normal heatup and cooldown in accordance with Appendix G to 10 CFR Part 50 and Sections III and XI of the ASME Code.

The proposed action is in accordance with the licensee's request for exemption dated February 10, 1995.

The Need for the Proposed Action

10 CFR 50.60 states that all light-water nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR Part 50 defines P/T limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. 10 CFR 50.60(b) specifies that alternatives to the described requirements in Appendices G and H to 10 CFR Part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent transients that would produce pressure excursions exceeding the Appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed an LTOP system. The LTOP system includes pressure-relieving devices in the form of power-operated relief valves (PORVs) that are set at a pressure low enough that if a transient occurred while the coolant temperature is below the LTOP enabling temperature, they would prevent the pressure in the reactor vessel from exceeding the Appendix G P/T limits. To prevent these valves from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint.

In addition, in order to prevent cavitation of a reactor coolant pump, the operator must maintain a differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The licensee LTOP analysis indicates that using the Appendix G safety margins to determine the PORV setpoint would result in a pressure setpoing within its operating window, but there would be no margin for normal operating pressure surges. Therefore, operating with these limits could result in the lifting of the PORVs and cavitation of the reactor coolant pumps during normal operation. Therefore, the licensee proposed that in determining the PORV setpoint for LTOP events for Palisades, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins required by Appendix G to 10 CFR Part 50. The alternate methodology is consistent with ASME Code Case N–514. The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for LTOP considerations.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's application. Appendix G of the ASME Code requires that the P/T limits be calculated: (a) using a safety factor of 2 on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter of the vessel wall thickness and a length of 6 times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Palisades reactor vessel material.

In determining the PORV setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, use of the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients.

Because adequate safety margins will be maintained, the change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed action involves use of more realistic safety margins for determining the PORV setpoint during LTOP events. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative would be to deny the proposed action. Denial of the exemption would not reduce environmental impacts associated with the facility.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statement related to operation of the Palisades Plant, dated June 1972, and its addendum dated February 1978.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the Michigan State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to

prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the request for exemption dated February 10, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Van Wylen Library, Hope College, Holland, MI 49423.

Dated at Rockville, Maryland, this 21st day of February, 1995.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–4730 Filed 2–24–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–70 and DPR–75, issued to Public Service Electric and Gas Company, et al. (PSE&G or the licensee) for operation of Salem Nuclear Generating Station (SNGS), Units 1 and 2, located in Salem County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

By letter dated April 16, 1993 (NLR–N83042), PSE&G requested a license amendment to reflect changes to the Updated Final Safety Analysis Report (USFAR) for Salem, Units 1 and 2. The proposed UFSAR change would add an exception to a general statement in the containment isolation system description. The general statement is that automatic containment isolation valves that receive signals to close, fail closed on loss of air or power. The proposed exception would apply to the outboard isolation valves for the control air system. These four valves (11, 12, 21, and 22CA330, collectively identified as CA–330) fail closed on loss of air but fail as-is upon loss of the vital 125 VDC power supply to their solenoid control valves.

Need for Proposed Action

The revision of the licensing basis is needed to exempt the CA–330 valves from the general statement in the USFAR that automatic containment isolation valves that receive signals to close, fail closed on loss of air or power. The staff has examined the design of the isolation system for the control air header piping penetration. With the exception of the failure position for valve CA–330 on loss of its 125 VDC power supply, the design meets all applicable criteria. Failure of the 125 VDC power supply results in a slight degradation in containment isolation reliability. Upon failure of the 125 VDC power supply, the valve will remain in the ''as is'' position. Since the valve is normally open, this means that the valve will stay open and will not close on an isolation signal or loss of air header pressure. For all other single failures, the valve will automatically close upon either loss of air or an isolation signal.

Environmental Impacts of the Proposed Action

The staff has evaluated the conditions for the ''as-is'' failure and finds that the reduction in safety margin due to this condition is acceptably small. First of all, there is a check valve in series with the air-operated valve so that containment integrity is maintained at all times. Secondly, the probability of loss of air pressure is quite low since the normal air supply is backed up with a safety grade supply which is activated automatically upon sensing low air pressure. With an operable air supply, the penetration is not a containment leak path since the air pressure is greater than the peak calculated containment pressure.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Salem Nuclear Generating Station, Units 1 and 2, dated April 1973.

Agencies and Person Contacted

In accordance with its stated policy, the staff consulted with the New Jersey State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the application for license amendments dated April 16, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Dated at Rockville, Maryland, this 21st day of February 1995.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–4731 Filed 2–24–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26233]

Filings Under the Public Utility Holding Company Act of 1935, As Amended (''Act'')

February 17, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to

provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 15, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issues in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates, et al. (70–8523)

Eastern Utilities Associates (''EUA''), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, and its wholly owned subsidiary, EUA Cogenex Corporation (''Cogenex''), P.O. Box 2333, Boston, Massachusetts 02107, have filed an application-declaration pursuant to Sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43(a) and 45(a) promulgated thereunder.

Cogenex requests authority to acquire a non-associate company, Highland Energy Group, Inc. (''Highland Energy''), in a transaction structured as a statutory merger of Highland Energy with a subsidiary of EUA to be established for the acquisition. Highland Energy is a national energy services company that has extensive experience in the industry of energy efficiency. Highland Energy designs, executes, finances, monitors, maintains, and guarantees energy savings programs for public consumers, such as schools and hospitals, and for private energy consumers, such as office buildings and businesses, under multi-year contracts.

To effect the acquisition, EUA would establish a subsidiary (''Newco'') which would acquire the shares of Highland Energy in exchange for shares of EUA. The initial authorized capitalization of would be 200,000 shares of common stock, $.01 par value, of which 10,000 would be issued to EUA for $100. Following the establishment of Newco and its acquisition of the shares of Highland Energy, Newco would change its name to EUA Highland Corporation (''EUA Highland'') and Cogenex would acquire all the shares of EUA Highland from EUA for $100.

The consideration for the acquisition by Newco of Highland Energy will be in EUA common shares to be paid at the time Highland Energy shares are transferred to Cogenex (''Closing'') plus a contingent earn-out amount, to be paid in EUA common shares at a later time. Any amounts representing fractional shares will be paid in cash. The payment made at the Closing will be worth an estimated $4.2 million (''Closing Amount''), measured by the average closing market price over a 5-day period before the Closing.

The earn-out amount to be paid later in EUA common shares will range from zero to $3.8 million, measured by the average closing market price over a 5-day period before the date the earn-out amount is due. The amount owed at that time will be based on the earnings performance of EUA Highland over the three year period following the Closing. Notwithstanding the foregoing, EUA's obligation to pay the earn-out amount in EUA shares is limited to the number of shares used to pay the Closing Amount. Any excess of the earn-out amount over the value, measured as described in this paragraph, of the number of shares issued by EUA to pay the earn-out amount will be payable in cash. Assuming an EUA common share price of $22.00 per share, up to 363,636 common share of EUA could be issued in the acquisition.

Additionally, Cogenex requests authority through December 31, 1997 to make investments in EUA Highland in any combination of capital contributions or short-term loans not to exceed a combined aggregate amount of $10 million. The terms of such short-term borrowing will be the same terms as those for funds borrowed by Cogenex from EUA under its system lines of credit. Further, Cogenex requests authorization to guarantee performance obligations of EUA Highland in connection with ongoing operations, in amounts that in aggregate will not exceed $10 million.

New England Electric System, et al. (70–8555)

New England Electric System (''NEES''), a registered holding company, and its wholly owned nonutility subsidiary company, New England Electric Resources, Inc. (''NEERI''), both of 25 Research Drive, Westborough, Massachusetts 01582, have filed an application-declaration under sections 6(a), 7, 9, 10 and 12(b) of the Act and rule 45 thereunder.

By Commission orders dated September 4, 1992 (HCAR No. 25621) and April 1, 1994 (HCAR No. 26017), NEERI was authorized to provide electrical related and consulting services to nonaffiliates and NEES was authorized to provide financing to NEERI. By Commission order May 25, 1994 (HCAR No. 26057), NEERI was authorized to invest in a company formed to develop, manufacture and market a low harmonic distortion uninterruptible power supply and NEES was authorized to provide additional financing to NEERI.

NEERI now proposes to engage in preliminary research and development activities (''Development Activities'') in connection with potential investments in exempt wholesale generators and foreign utility companies. NEES proposes to provide up to $10 million to NEERI from time-to-time through December 31, 1997, through capital contributions and/or non-interest bearing subordinated loans, for NEERI's Development Activities.

Central and South West Corporation, et al. (70–8557)

Central and South West Corporation (''CSW''), a registered holding company, its service company subsidiary, Central and South West Services, Inc. (''Services''), both located at 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, CSW's public-utility subsidiary companies, Central Power and Light Company (''CPL''), 539 North Carancahua Street, Corpus Christi, Texas 78401–2802, Public Service Company of Oklahoma (''PSO''), 212 East Sixth Street, Tulsa, Oklahoma 74119–1212, Southwestern Electric Power Company (''SWEPCO''), 428 Travis Street, Shreveport, Louisiana 71156–0001, West Texas Utilities Company (''WTU''), 301 Cypress Street, Abilene, Texas 79601–5820, and a nonutility subsidiary company, Transok, Inc. (''Transok''), 2 West Sixth Street, Tulsa, Oklahoma 74119 (collectively, ''Subsidiaries'') have filed an application-declaration under Sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 54 thereunder.

CSW and its Subsidiaries propose to continue, through March 31, 1997, their short-term borrowing program, which includes the sale of commercial paper by CSW to commercial paper dealers and financial institutions and the sale of short-term notes to banks and their trust

departments by CSW and the Subsidiaries (''External Program'') and the CSW System money pool (''Money Pool''), as previously authorized by orders dated March 31, 1993, September 28, 1993, March 18, 1994, June 15, 1994, and February 1, 1995 (HCAR Nos. 25777, 25897, 26007, 26066 and 26226, respectively) (''Prior Orders''). The External Program would be coordinated through the use of the Money Pool, whereby CSW and its Subsidiaries would make loans to, and the Subsidiaries would borrow from, the Money Pool. Loans to the Subsidiaries through the Money Pool will be made pursuant to open-account advances or loans evidenced by notes.

The External Program and the Money Pool would make funds available to the Subsidiaries for the interim financing of their capital expenditure programs and their other working capital needs, and to CSW to loan and, when approved by the Commission, to make capital contributions to any of the Subsidiaries and in both instances to repay previous borrowings incurred for such purposes. Funds for the Money Pool would be available from surplus funds from the treasuries of CSW and the Subsidiaries, from proceeds from the sale of commercial paper by CSW and bank borrowings by CSW and its Subsidiaries. Funds to be loaned to the Subsidiaries are obtained in the following order of priority: (1) Available surplus funds of the Subsidiaries will be used to satisfy the borrowing needs of other Subsidiaries before any funds of CSW are used; (2) available surplus funds in CSW's treasury; and (3) external borrowings by CSW from the sale of commercial paper and/or bank borrowings. External borrowings by CSW would not be made unless there were no surplus funds in the treasuries of the Subsidiaries or CSW sufficient to meet borrowing needs. However, no loan will be made by CSW or any Subsidiary if the borrowing company could borrow more cheaply directly from banks or through the sale of its own commercial paper. When more than one Subsidiary is borrowing, each borrowing Subsidiary will borrow *pro rata* from each fund source in the same proportion that the amount of funds provided by that fund source bears to the total amount of short-term funds available to the Money Pool.

The interest rate applicable on any day to the then outstanding loans through the Money Pool will be the composite weighted average daily effective cost incurred by CSW for short-term borrowings from external sources. If there are no borrowings outstanding then the rate would be the certificate of deposit yield equivalent of the 30-day Federal Reserve ''AA'' Industrial Commercial Paper Composite Rate (''Composite''), or if no composite is established for that day then the applicable rate will be the Composite for the next preceding day for which the Composite is established.

The aggregate principal amounts of short-term borrowing outstanding at any one time requested by CSW and its Subsidiaries are: (1) CSW—$1.2 billion; (2) CP&L—$300 million; (3) PSO—$125 million; (4) SWEPCO—$150 million; (5) WTU—$65 million; (6) Services—$110 million; and (7) Transok—$200 million. These amounts reflect an increase in borrowing levels from those authorized in the Prior Orders for: (1) CSW of $250 million to accommodate additional investments in CSW International, Inc., CSW Energy, Inc., CSW Communications and new Money Pool and short-term borrowing requirements; (2) PSO of $25 million to provide interim financing for additional capital expenditures and other temporary working capital needs; and (3) WTU of $15 million to provide interim financing for additional capital expenditures and other temporary working capital needs. The aggregate principal amount of outstanding borrowings for CSW and its Subsidiaries together will not exceed $1.2 billion.

To provide funds for the Money Pool, CSW proposes to issue and sell commercial paper (''Commercial Paper''). The Commercial Paper will mature in 270 days or less and will be issued from time-to-time through March 31, 1997 to commercial paper dealers (''Dealers'') and certain financial institutions.

The Commercial Paper issued to Dealers will be in the form of either physical or book-entry unsecured promissory notes. Such notes will be issued and sold by CSW directly to Dealers at a rate not to exceed the rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity sold by issuers thereof to Dealers. No commission or fee will be payable in connection with the issuance and sale of the Commercial Paper. The purchasing dealer, however, will reoffer the notes at a rate less than the rate to the issuer and, as principal, will reoffer such notes in such a manner as not to constitute a public offering under the Securities Act of 1933.

Sales of Commercial Paper directly to financial institutions will be undertaken only if the resulting cost of money is equal to or less than that available from Dealers or banks. Terms for directly placed notes would be similar to those of dealer placed notes.

CSW and its Subsidiaries further propose to borrow money from banks, from time-to-time through March 31, 1997, to the extent that the surplus funds of CSW and the Subsidiaries are insufficient to meet the Subsidiaries' requests for short-term loans and subject to the limitations on aggregate principal amounts, above. Such borrowing will not be made unless it would produce a lower cost of money than the issue of CSW's Commercial Paper and, in any event, they will not bear a rate of interest higher than the effective cost of money for unsecured prime commercial bank loans prevailing on the date of borrowing. The borrowings will be evidenced by promissory notes maturing no later than March 31, 1997 and will be subject to prepayment by the borrower, or under certain circumstances with consent of the lending bank, in whole at any time or in part from time-to-time, without penalty.

Compensation arrangements under lines of credit with banks maintained by CSW and its Subsidiaries are on a balance or fee basis. In general, fees range from 1/10 to 1/5 of 1% per annum on the average unused portion of the commitment and balance arrangements require average balances of 3% of the amount of the commitment. CSW also proposes, from time-to-time through March 31, 1997, to borrow funds managed by the trust departments of banks if such borrowings result in a cost of money equal to or less than that available from the sale of commercial paper or other bank borrowings.

Neither CSW nor the Subsidiaries will use the proceeds from the proposed borrowings to finance the acquisition of an ''exempt wholesale generator'' or ''foreign utility company,'' as respectively defined in Sections 32 and 33 of the Act, without further Commission authorization.

The Southern Company, et al. (70–8567)

The Southern Company (''Southern''), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, and its wholly owned subsidiary company, Southern Nuclear Operating Company, Inc. (''Southern Nuclear''), 40 Inverness Center Parkway, Birmingham, Alabama 35204, have filed an application-declaration under Sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 54 thereunder.

Southern Nuclear proposes to borrow, from time to time through March 31, 1998, from Southern or other lenders up to an aggregate principal amount of $10 million at any time outstanding.

Borrowings from Southern will have maturities not to exceed ten years and will accrue interest at a rate equal to the average effective interest cost of Southern's outstanding obligations for borrowed money on the first day of each month, or if no obligations are outstanding at the time, at a rate equal to the weekly average of the thirty-day certificate of deposit rate (secondary market) as reported in the Federal Reserve statistical release H.15 (519) for the next to the last complete business week of the preceding calendar month. However, this rate will not exceed the prime rate in effect at a nationally recognized bank to be designated by Southern. Loans obtained from lenders other than Southern will have maturities not to exceed ten years and will accrue interest at a rate not to exceed the prime rate plus 2% for variable rate loans and the prime rate at the time of borrowing plus 3% for fixed rate loans. Such loans may be secured or unsecured and may be guaranteed by Southern.

Southern proposes through March 31, 1998, to make up to $5 million in open account advances to Southern Nuclear from time to time, which, at the option of Southern, may be converted into capital contributions or additional shares of common stock of Southern Nuclear. To the extent any such advances are converted to equity, the borrowing authority sought herein shall be reduced by the amount of the advances so converted, so that the total capitalization of Southern Nuclear does not exceed $11.6 million (including its present common equity of $1.6 million). The rate of return on Southern Nuclear's common equity capital will not exceed the average of the most recent rates of return allowed by the Alabama Public Service Commission and the Georgia Public Service Commission.

Southern Nuclear states that the funds will be used by Southern Nuclear in connection with its working capital needs, including the purchase of equipment and office furniture, leasehold improvements and loans to employees for purposes such as residential energy programs, purchases of computers and employee transfer expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4650 Filed 2–24–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35394; File No. SR–CHX–95–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by Chicago Stock Exchange, Incorporated Relating to Reporting and Disclosure Requirements

February 17, 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 February 8, 1995, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change, and on February 16, 1995, filed Amendment No. 1 to the proposed rule change,[1] as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX, pursuant to Rule 19b–4 of the Securities Exchange Act of 1934 (''Act''), proposes to (1) amend Article VI, Rule 5 and add an interpretation thereto to require that members and member organizations maintain *written* procedures to ensure compliance with the securities laws (and SEC regulations promulgated thereunder) and the Rules of Exchange; (2) amend Article XI Rule 4 to provide the Exchange with the authority to require that a member or member organization have an accounting firm audit its books and to clarify that all members and member organizations are required to comply with the disclosure requirements of Rule 17a–5; and (3) add Article XI, Rule 9 to require that floor brokers who do not clear their own trades procure a letter of guarantee prior to trading.

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 placed 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 CHX has two purposes for amending Article VI, Rule 5 to require that members and member organizations maintain written supervisory procedures: (1) Requiring written procedures allows the CHX to more easily verify the *existence* of procedures; and (2) such a requirement facilitates the CHX's verification of the *content* of the procedures. The visibility of such written procedures will remind members and member organizations of their obligations to comply with the securities laws, SEC rules, and the Exchange's rules, thus enhancing compliance.

The CHX's purpose for adding Article XI, Rule 4(c) thereto is to clarify that all CHX members and member organizations are required to file monthly and quarterly Focus Reports with the CHX in accordance with SEC Rule 17a–5 unless the member or member organization is exempt.

The CHX's purpose for adding Article XI, Rule 9 is to enhance the safety and soundness of the clearing system by ensuring that Floor Brokers have sufficient financial resources to stand behind their trades. As a result, fewer disruptions due to the financial distress of a floor broker are likely to occur. The reliability of the clearing system is thus augmented.

2. Statutory Basis

The proposed rule changes are consistent with Sections 6(b)(1) and 6(b)(5) of the Act in that the proposed rule changes will aid the Exchange in enforcing compliance by its members and member organizations with the securities laws and the Exchange's rules as well as aiding in preventing fraudulent or manipulative acts in the clearing of trades.

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.

[1] Amendment No. 1 made non-substantive, clarifying changes to the proposal. *See* Letter from Jay O. Wright, Esq., Foley & Lardner, to Elisa Metzger, Senior Counsel, SEC, dated February 14, 1995.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such 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 CHX. All submissions should refer to File No. SR–CHX–95–03 and should be submitted by March 20, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4648 Filed 2–24–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35397; File No. SR–CBOE–95–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the Chicago Board Options Exchange, Incorporated, Related to Certain Procedures Regarding Trading Halts, Trading Suspensions, the Reopening of Trading After a Trading Halt or Suspension, and the Shut Down of RAES

February 21, 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 Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The CBOE proposes to amend its rules and Regulatory Circulars RG94–17 and RG93–58 (formerly RG92–40) to conform to existing practice regarding (1) the factors the Exchange considers in deciding whether to halt or suspend trading and (2) the circumstances under which trading is generally halted or suspended by the Exchange. The CBOE also proposes to establish procedures for the resumption of trading after a halt or suspension is lifted, and to grant the Control Room the authority to turn off the Retail Automatic Execution System (''RAES'') with respect to a stock option if the Control Room receives a credible indication that trading in the underlying stock has been halted.

The text of the proposed rule changes is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, CBOE included statements concerning the purpose of and the basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries set forth in Sections (A), (B) and (C) below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of the proposed rule changes is to conform the rules to existing practice both regarding the factors considered in a decision to halt or suspend trading and regarding the circumstances under which trading generally will be halted or suspended, to establish procedures for the resumption of trading after a halt or suspension is lifted, and to grant the Control Room the authority to turn off RAES if the Control Room receives a credible indication that trading has stopped in the underlying stock.

Status of Rotation as Factor Considered in Halt or Suspension

Specifically, the proposal would amend Rules 6.3(a), 6.4(a) and 24.7(a) to include the status of the trading rotation [1] as a factor that may be considered in a decision whether to halt or suspend trading. Although it is not presently explicit in the rules, it is current practice to consider the rotation status in deciding whether to halt or suspend trading. For example, if the rotation is near completion, Floor Officials or the Exchange may decide it is in the interest of a fair and orderly market to complete the rotation before calling a halt or suspension in trading. The proposed amendment to the rules would notify members and the public that, when deciding whether to halt trading, Floor Officials may consider the extent to which the rotation has been completed and other factors regarding the status of the rotation. When deciding whether to suspend trading, the Board of Directors similarly would be able to consider the extent to which the rotation is completed or other factors regarding the status of the rotation.

Regulatory Halt

The proposal would add Interpretation .04 to Rule 6.3 and Interpretation .01 to Rule 6.4 to state the current practice that, in general, trading in a stock option will be halted when a regulatory halt in the underlying stock has occurred in the primary market for that stock. Any two Floor Officials may halt trading in any security in the interests of a fair and orderly market for a period not in excess of two consecutive business days.

[1] A ''trading rotation'' is a series of very brief time periods during each of which bids, offers, and transactions in only a single, specified option contract can be made. *See* CBOE Rule 6.2.

Similiarly, the proposal would state the current practice that, in general, trading in a stock option will be suspended when a regulatory suspension in the underlying stock has occurred in the primary market for that stock. In the case of a regulatory suspension, the Board of Directors is authorized to suspend trading in any security in the interests of a fair and orderly market from an indefinite period.

Rules 6.3 and 6.4 list factors considered in deciding whether to halt or suspend trading. These factors are currently considered in deciding whether to halt trading in the related stock option. Moreover, generally, when a regulatory halt in the underlying stock has been declared in the primary market, the Exchange will decide to halt or suspend trading in the overlying stock option. The Exchange believes that the close relationship between the underlying stock and the pricing of stock options overlying that security typically justify such a result. When a regulatory halt is declared in the underlying stock, it often is because some news is pending regarding the underlying stock and the primary market wants to allow time for the dissemination of such news. For the same reason, it generally is appropriate in that circumstance to halt trading in the overlying stock option. By addition the proposed interpretations to Rules 6.3 and 6.4, CBOE would inform members and the public of the existence of this general practice to halt or suspend trading in a stock option when a regulatory halt in the underlying stock has been declared.

The proposal also would amend Rules 6.3(a)(iii) and 6.4(a)(ii) to clarify that these rules are only applicable in the case of a security other than an option. Securities other than options include, for example, the securities traded at CBOE which are subject to Chapter 30 of the CBOE Rules. Securities presently subject to Chapter 30 are: Stock, warrants (which term includes currency and index warrants except as otherwise expressly provided or as the context otherwise requires), UIT interest, and such other securities instruments, and contracts as the Board of Directors may from time to time declare are subject to Chapter 30. The changes are necessary to clarify that Rules 6.3(a)(iii) and 6.4(a)(ii) do not apply to stock options or any other options traded at CBOE, but only to securities traded at CBOE other than options.

Circuit Breaker Halts

The proposal also would delete Rule 6.3A, which provides for a halt in trading of all equity and index options when there has been a floor-wide New York Stock Exchange halt or suspension as a result of activation of circuit breakers on the New York Stock Exchange. This rule is unnecessary because the only circumstances under which Rule 6.3A could apply are situations that Rule 6.3B already expressly governs. There are only two circuit breakers that lead to a New York Stock Exchange floor-wide halt—when there has been a Dow Jones Industrial Average drop of 250 or more points below its closing value on the previous trading day and when on the same day there is a cumulative drop of 400 or more points from the previous day's closing value. Rule 6.3B already governs trading halts under both of these circumstances. Under Rule 6.3B, the mandatory circuit breaker halt would terminate automatically after the expiration of the applicable one hour or two hour time period.

The proposal would eliminate the requirements contained in Rule 6.3A that, prior to a reopening rotation, (i) an additional determination must be made that a halt or suspension is not in effect in the primary market where the underlying security for each class of options is traded; (ii) a determination must be made, in the case of index options, that a halt or suspension is not in effect in the primary market of the securities constituting 50% or more of the index value; and (iii) two Floor Officials, in consultation with a designated senior executive officer, must conclude in their judgment that the interests of a fair and orderly market are served by a resumption of trading. After a circuit breaker halt, therefore, trading would resume automatically unless the Exchange affirmatively acted to declare a further halt or suspension pursuant to other rules, such as Rules 6.3, 6.4 or 24.7.

CBOE believes that trading should resume after a circuit breaker halt, subject only to these normal rules regarding trading halts and suspensions. Pursuant to Rules 6.3, 6.4 and 24.7, a halt or suspension in the underlying security (to which Rule 6.3A refers) is among the factors considered in the decision to suspend or halt trading, but this factor does not necessarily require a halt or suspension nor limit the Exchange's ability to exercise judgment in these circumstances. CBOE believes that the interests of a fair and orderly market are better served when the rules allow Exchange officials the discretion to evaluate market conditions and circumstances and to exercise their judgment as to when to halt or suspend trading, without the restrictions on the exercise of that judgment that are contained in Rule 6.3A.

Reopening After Circuit Breaker Halt

The proposal also would eliminate the requirement in Rule 6.3A that, if trading is halted due to activation of circuit breakers, reopening rotations shall be held. Rule 6.3A apparently makes a reopening rotation mandatory and prevents Exchange officials from reopening without a rotation. CBOE believes the interests of a fair and orderly market are better served when the rules allow Exchange officials the discretion to evaluate market conditions and circumstances and to exercise their judgment as to whether to reopen with or without a rotation.

Procedures regarding reopening after a halt triggered by circuit breakers will be added by amending Rule 6.3B, Interpretation .02. The amended Interpretation .02 would require a reopening rotation unless two Floor Officials, or an Order Book Official acting on authorization from a senior Exchange official, conclude it is appropriate under the circumstances to employ a different method of reopening, including but not limited to, no rotation, an abbreviated rotation, or a variation in the manner of the rotation. The purpose of amended Interpretation .02 to Rule 6.3B is to grant Floor Officials the discretion to deviate from a typical reopening rotation after the expiration of a circuit breaker halt. Order Book Officials would also have this discretion, but only if a senior Exchange official authorized such discretion. This could be accomplished by the senior Exchange official making a general announcement to all Order Book Officials.

The CBOE believes it is reasonable to presume that a reopening rotation will be held after a circuit breaker halt because, after a floor-wide halt, it is physically difficult to have two Floor Officials available at each trading post to make a decision regarding the resumption of trading. The presumption allows for a universal treatment of the reopening after a circuit breaker halt, yet still permits appropriate Exchange officials to exercise judgment to deviate from this presumed course of action when a different method of reopening is appropriate.

Corresponding Amendments to Regulatory Circulars

Regulatory Circular RG94–17

The proposal would amend Regulatory Circular RG94–17, which addresses inter-exchange procedures in volatile markets, to make it consistent

with the proposed amended Interpretation .02 to Rule 6.3B. Regulatory Circular RG94–17 discusses CBOE's procedures during a halt in options trading due to a Dow Jones Industrial Average drop of 250 or more points below its closing value on the previous trading day or a cumulative drop of 400 points in the Dow Jones Industrial Average on the same day. Pursuant to the proposed change to Interpretation .02 to Rule 6.3B, after the expiration of the one hour or two hour period set forth in Rule 6.3B, a reopening rotation would be held in each class of options unless two Floor Officials (or an Order Book Official acting upon authorization from a senior Exchange official) conclude a different method of reopening is appropriate. Additionally, RG94–17 would be amended to delete the requirements contained in Rule 6.3A that, before reopening after a circuit breaker halt, the Exchange must verify that (1) there is no halt or suspension in effect in the primary market where the underlying stock is traded and (2) with respect to an index option, there is no halt or suspension in the primary market of the securities constituting 50% of the index.

Regulatory Circular RG93–58

The proposal would amend Regulatory Circular RG93–58 (RG93–58 is a reprint of Regulatory Circular RG92–40 dated, July 8, 1992), which addresses trading halt policy regarding options on individual equity securities, to make the circular consistent with the proposed amendment to Rule 6.3. Regulatory Circular RG93–58 would be further amended to state that it does not address the Exchange's trading halt policy when a halt has been declared as a result of the operation of a circuit breaker pursuant to Rule 6.3B, due to a 250 or 400 point intra-day drop of the Dow Jones Industrial Average.

Consistent with Rule 6.3, RG93–58 would be amended so that two Floor Officials may exercise judgment regarding trading halts and so that the concurrence of a senior Exchange staff official would not be required. Presently, Rule 6.3 provides that a decision as to whether to halt trading may be made by any ''two Floor Officials,'' so this amendment to RG93–58 would make the guidelines in RG93–58 consistent with Rule 6.3. Furthermore, Floor Officials need to be able to exercise their judgment without obtaining the concurrence of a senior Exchange staff official, because it may be physically difficult for a senior Exchange staff official to be present at all trading posts during circumstance where a trading halt may be simultaneously necessary in multiple options classes.

Regulatory Circular RE93–58 provides Floor Officials with non-mandatory guidelines to assist them in their decision regarding a trading halt. Pursuant to Rule 6.3, ''[a]ny two Floor Officials may halt trading in any security in the interests of a fair and orderly market.'' Floor Officials are free to exercise judgment and discretion in deciding whether to halt trading. The language of Rule 6.3 is discretionary and does not require that Floor Officials declare a trading halt, so proposed amendments to various paragraphs of RG93–58 delete language which would limit Floor Officials' discretion by imposing mandatory criteria.

The proposal would further amend RG93–58 to reflect CBOE's general practice, as set forth in the proposed interpretation to Rule 6.3, to halt trading in an overlying stock option when a regulatory halt in the underlying stock has been declared in the primary market for that stock.

RG93–58 would be further amended to delete the requirement that, in connection with a halt due to no last sale and/or quotation dissemination either by the Exchange or to the Options Price Reporting Authority (''OPRA''),[2] trading may only resume 15 minutes after notification to the news wire services. The guidelines provide that the news wire services will be notified of the dissemination difficulty. However, under such circumstances, since trading presumably would have been proceeding in other markets, it is important for the options market to resume trading as soon as practical after the dissemination difficulty which led to the halt is no longer present. CBOE believes that waiting 15 minutes to resume trading would be inordinately long and may be contrary to the interests of a fair and orderly market. Nonetheless, the proposed amendments would specifically state CBOE's general practice to notify member firms and news wire services before the resumption of trading.

The language in paragraph one of RG93–58 would be further amended to clarify that there is a preference, but not a requirement, to halt trading if two Floor Officials believe that the dissemination problem will last more than 15 minutes. The language would be further amended to clarify that, if the two Floor Officials believe that the dissemination problem will be resolved within the next 15 minutes, then there is no preference for a halt—even if that expectation proves to be incorrect. The present language would be further amended to clarify that trading ordinarily will continue if two Floor Officials believe it is likely the dissemination problem will be resolved in less than 15 minutes. THe present language appears to require trading to continue under such circumstances. Again, these guidelines should not limit Floor Officials' discretion, since Rule 6.3 provides for discretion in such circumstances. If a systems problem prevented CBOE or OPRA from disseminating CBOE's last sale or quote data, this would be an unusual market condition and, pursuant to Rule 6.3, two Floor Officials may halt trading.

The proposed amendments would delete the requirement in paragraph four of RG93–58 that, in connection with a primary market floor-wide trading halt and despite the determination by two Floor Officials that sufficient markets will support trading other than at the primary market, trading may resume only upon a one hour notification to the news wire services. Again, since trading of the underlying stock is continuing at an exchange other than the primary exchange, the CBOE believes that waiting one hour to resume options trading at the CBOE could be inordinately long and might be contrary to the interests of a fair and orderly market. Instead, paragraphs one and six of RG93–58 would be amended so that the guidelines for the resumption of trading would be consistent with Rule 6.3(b), which provides that trading in a security that has been the subject of a halt may resume upon a determination by two Floor Officials that the conditions which led to the halt are no longer present, or that the interests of a fair and orderly market are best served by a resumption of trading. However, the proposed amendments would specifically state CBOE's general practice to notify member firms and news wire services before the resumption of trading.

RAES

Finally, the proposal would add Interpretation. 05 to Rule 6.3 to grant authority to the senior person then in

[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11A3–2. Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

OPRA provides for the collection and dissemination of last sale and quotation information on options that are traded on the five exchanges participating in the plan. The exchanges include the CBOE, the Philadelphia Stock Exchange, the American Stock Exchange, the Pacific Stock Exchange, and the New York Stock Exchange.

The OPRA plan was implanted in response to directives of the SEC that provisions be made for the Consolidated reporting of transactions in eligible options contracts listed and traded on national securities exchanges.

charge of the Exchange's Control Room to turn off RAES with respect to a stock option if that senior person confirms that the Control Room has received a credible indication (including, but not limited to, information from the trading crowd)[3] that trading in the underlying stock has been halted or suspended. After exercising such authority, that senior person would need to immediately seek confirmation of this decision from two Floor Officials. The purpose of this interpretation is to prevent orders from being placed on RAES during the interval after the trading in the underlying stocks has been halted or suspended but before two Floor Officials have declared a trading halt pursuant to Rule. 6.3(a) or before a Post Director or Order Book Official has suspended trading pursuant to Interpretation .01 to Rule 6.3. This interpretation is necessary because, when a stock halts due to pending news, the direction of the effect of the news may be anticipated and, while Floor Officials are being called to a post to decide whether to halt trading, firms could place an order on RAES which could be detrimental to the market makers signed onto the system. Under the current Interpretations to Rule 6.3, the Post Director or Order Book Official must turn off RAES concurrently with any suspension of trading. If an ''ST'' symbol (for an exchange listed security) or an ''H'' symbol (for a security traded primarily in the over-the-counter market) is displayed on the Class Display Screen that displays current market information for the underlying security, the Order Book Official or Post Director may suspend trading in the related equity option for a period not to exceed five minutes and concurrently shall turn off RAES applicable to the affected options class or classes.[4] The Control Room, however, may receive information that trading has stopped in the underlying stock before the Post Director or Order Book Official sees the ''ST'' symbol or ''H'' symbol on the Class Display Screen for the underlying stock. Consequently, it is important for the Control Room to have authority to turn off RAES without being required to wait for the ''ST'' or ''H'' symbol to appear on the class display screen or for the Post Director or Order Book Official to act.

The proposal would provide that the Post Director, Order Book Official, or their representative will re-start RAES after the trading halt or suspension has ceased. This would be consistent with Rules 6.8(f) and 24.15(f), which provide that each day RAES is available, a Post Director or his representative will start RAES.

Conclusion

CBOE believes that the proposed rule changes are consistent with and further the objectives of Section 6(b)(5) of the Act, in that the rule changes are designed to perfect the mechanism of a free and open market and to protect investors and the public interest by enabling Floor Officials to evaluate and consider market conditions and circumstances in determining whether to halt or suspend trading and in deciding on a method to reopen trading after a halt or suspension. CBOE believes that the proposed rule change regarding the authority of the Control Room to turn off RAES with respect to a stock option upon credible information that trading in the underlying stock has been halted is also consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule changes will impose any burden on competitions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes 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 80 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 changes, or

(B) Institute proceedings to determine whether the proposed rule changes 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submission should refer to file number SR–CBOE–95–05 and should be submitted by March 20, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4705 Filed 2–24–95; 8:45 am]

BILLING CODE 8101–01–M

[3] BOE represents that if information of an impending halts or suspension comes from the trading crowed or from a source other than hard information in the Control Room, the senior person in charge of the Control Room would first verify it before turning off RAES. To verify the existence of a trading halt or suspension, the senior person would rely upon hard information in the Control Room including (1) the quote of the underlying security being pulled from the Class Display Screen, (2) an ST or H appearing on the Class Display Screen via the Consolidated Tape Association, (3) a print-out in the Control Room confirming the halt or suspension of trading in the underlying security, and (4) notification of the trading halt or suspension via the ''Hoot and Holler'' system. The Hoot and Holler system is a voice linkage between all of the exchanges and the Commission. Telephone conversation between Edward Joyce, CBOE, and John Ayanian, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, on Thursday, February 16, 1995.

[4] *See* Securities Exchange Act Release No. 34126 (May 27, 1994), 59 FR 29309 (June 6, 1994) (Approval Order giving the Order Book Officials or the Post Director the authority to suspend trading, and to turn off RAES for the affected options class or class whenever trading in the underlying security is halted).

[5] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35393; File No. SR–NASD–95–7]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating To a Query-Based Vendor Fee for Distribution of Certain Market Information

Feburary 17, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 3, 1995 the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') 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 NASD. 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 NASD hereby files a proposed rule change to establish a vendor fee of $.01/query for delivery of certain market information, on a non-continuous basis, to the vendor's subscribers. In this context, the term ''vendor'' may include an NASD member firm, or a non-member engaged in the business of supplying financial data. The information being distributed would be real-time market data consisting of inside bid/ask and last sale information for securities listed on The Nasdaq Stock market (''Nasdaq''), various Nasdaq indices, and similar quotation and transaction information on over-the-counter (''OTC'') equity securities.[2] The proposed fee would take effect within 90 days of the Commission's approval of this rule change, and be incorporated into Schedule D to the NASD By-Laws, Part VIII, Section C. The full text of the proposed rule change is set forth below. New language is italicized.

PART VIII—Schedule of NASD Charges for Services and Equipment

* * * * * * *

C. Special Options

1.—4. No Change

5. Non-Continuous Access to Nasdaq Level 1 and Last Sale Information.	*Permits vendor to process and distribute Nasdaq Level 1 and Last Sale information to its subscribers on a non-continuous or query-response basis.*	*$.01/query.*

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 NASD 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 next of these statements may be examined at the places specified in Item IV below. The NASD 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 sole purpose of this rule change is to establish a single fee for vendors wishing to provide basic, real-time market data to low volume users. In recent years, the NASD has been approached by several member firms that wished to provide retail customers with a cost-effective alternative to calling their brokers for current market information. Advances in telecommunications and personal computers (''PCs'') have prompted firms to offer ''snapshots'' of real-time information through (i) telephonic, voice-responsive services, (ii) dial-up PC services, (iii) display phones, and (iv) pagers. The typical users of such services are individual investors who may be monitoring the value of a portfolio, tracking intra-day activity in a given stock to facilitate an investment decision, or observing a market trend based on periodic queries for the current level of a popular stock index. In some instances, the member firm will levy a modest charge on its customers who elect to access current market information through these devices. In sum, the market data needs of the target users do not warrant their subscription to a bundled service offered by a commercial vendor which service frequently includes analytic information, ticker displays, and dynamically-updated quotation and transaction information.

To date, the parties most interested in providing basic market data directly to investors have been NASD members with a large base of retail clients. This proposal is intended to accommodate the business needs of such firms at a price that should prove attractive to many small investors. Nevertheless, any commercial data vendors that might wish to offer this type of service will also be accommodated. The service covered by this proposal would be limited to ''snapshots'' of real-time information furnished in response to a discrete query by the end user. The information provided through the query-response process would not be dynamically updated. Hence, the end user would have to make individual queries to obtain, for example, the most current quotation/last sale information on his/her portfolio of securities at various times during the trading day. This characteristic differentiates the instant service from most vendor offerings, which provide a continuous broadcast of real-time information with dynamic updating to authorized display devices. On the other hand, the instant service does not require the end user to have a costly piece of hardware to obtain current quotation/transaction prices on a given Nasdaq stock.

Interested vendors would provide the service pursuant to a contract with NSMI. Under this contract, the vendor would be responsible for monitoring query traffic and paying the appropriate amount to NSMI. The contract would permit periodic audits by NSMI to ensure payment of all monies due.

The NASD believes that the proposed rule change is consistent with the requirements of Sections 11A(a)(1)[3] and 15A(b)(5)[4] of the Act. Section 11A(a)(1) contains the Congressional findings and objectives respecting a national market system. Among other things, the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The computer facilities that support the operations of Nasdaq are owned and operated by The Nasdaq Stock Market, Inc. (''NSMI''), a wholly-owned subsidiary of the NASD. Among other things, NSMI is responsible for the collection, processing, and the distribution of real-time quotation and transaction data originated by broker-dealer participants in Nasdaq and the OTC Bulletin Board (''OTCBB'') service.

[3] 15 U.S.C. 78k–1(a)(1).

[4] *Id.* 78*o*–3(b)(5).

Congress advocated the application of new technologies to effect the widespread dissemination of quotation and transaction information to investors. Section 15A(b)(5) requires the equitable allocation of reasonable dues, fees, or other charges among persons using any facility or system which the NASD operates or controls.

The proposed service and fee are specifically designed to accommodate the information needs of individual investors, particularly small investors who do not require the breadth of market data and analytic information that an institutional investor or market maker would need. This initiative would enable any end user to receive selected, real-time market data for a fee of $.01/query (payable by the vendor to NSMI) without the user having to acquire an expensive piece of hardware. Although the NASD (through NSMI) already has a non-professional subscriber fee of $4/month/interrogation device for receipt of inside bid/ask and last sale prices,[5] the cost of vendor supplied equipment and the fixed level of these fees ($13 for access to information from all markets) tends to discourage subscription by low-volume users. Some of these end users instead choose to pay (to the vendor only) for electronic access to delayed market data; Nasdaq does not charge for delayed information. The instant proposal would provide a superior option to small investors wishing to access current market information, on demand, for either Nasdaq or OTC equities. Accordingly, the NASD posits that this proposal will facilitate broader dissemination of Nasdaq and OTC market data to retail investors.

Further, the NASD submits that the proposal is consistent with the requirements of Section 15A(b)(5) in that $.01/query fee is believed to be readily affordable to small investors, the most likely end users. As noted above, some of these individuals may now pay a fee to vendors to access delayed market data via telephonic voice response systems. The proposed fee is structured to strike a balance between affordability and the provision of real-time market data in response to discrete queries by end users. Based on these factors, the NASD reiterates the belief that this proposal is consistent with the requirements of Section 15A(b)(5).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in 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

Comments were neither solicited nor received.

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 reasons for so finding or (ii) as to which the NASD 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR–NASD–95–7 and should be submitted by March 20, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4649 Filed 2–24–95; 8:45 am]

BILLING CODE 8010–01–M

[5] *NASD Manual*, Schedules to the By-Laws, Schedule D, Part VIII, Sec. A(8)(a), (CCH ¶ 1850).

[6] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35395; File No. SR–PSE–95–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating To Establishing New Listing Fees Applicable to Small Corporate Offering Registration (''SCOR'') Securities

February 17, 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 February 13, '1995, the Pacific Stock Exchange, Inc. (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The 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 PSE is proposing to establish new fees applicable to Small Corporate Offering Registration (''SCOR'') securities.[1]

SCOR Marketplace—Listing Fee Schedule

Original Listings

The Original Listing fees are fixed fees and issues are not charged by the number of shares being listed.

Common Stock.....$5,000.00
Preferred Stock.....5,000.00

Processing Fee

Per Original Listing Application*:.....$500.00
Name change.....250.00
Change in Par Value.....250.00

*This is a fixed charge for the review of potential listings and is non-refundable. Issues approved for listing may have this charge credited toward the original listing fee.

Substitution of Original Listing

Per Application.....Fixed charge of $750.00

Substitution may occur as a result of a change in state of incorporation, reincorporation under laws of same state, a reverse stock split, recapitalizations, or similar events.

Listing of Additional Shares

Per Application:
$.0025 per share
Minimum charge of $500.00
Maximum charge of $2,500.00

[1] The PSE's proposal for the listing and trading of SCOR securities is currently pending Commission approval. The proposal was published for public comment in Securities Exchange Act Release No. 35140 (December 22, 1994), 60 FR 159 (January 3, 1995) (File No. SR–PSE–94–31).

Maximum charge of $5,000.00 per annum

Annual Maintenance Fee

For one issue $1,000.00
For each additional issue.....500.00
Payable January of each year following listing.

Conversion Fee

Conversion from the SCOR Market place to Tiers I or II.
Common Stock.....$15,000.00

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add the following fees, relating to the Exchange's SCOR Marketplace program, to the exchange's Listing Fee Schedule. The Exchange is proposing to establish original listing fees of $5,000 for common stock and $5,000 for preferred stock. The Exchange is also proposing to adopt the following processing fees: $500 per original listing application; $250 per name change; and $250 per change in par value. In addition, the Exchange is proposing to set a fixed charge of $750 per application for a substitution of original listing which may occur as a result of a change in state of incorporation, reverse stock split, recapitalization, or similar events. With respect to the listing of additional shares, the Exchange is proposing to establish the following fees per application: $.0025 per share, with a minimum charge of $500, a maximum charge of $2,500, and in the case of multiple applications, a maximum charge of $5,000 per annum. The Exchange is also proposing to adopt an annual maintenance fee of $1,000 per issue, plus $500 for each additional issue. Finally, the Exchange is proposing to establish a conversion fee (for conversion from listing within the SCOR Market place to the regular listing) of $15,000 for common stock.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4) of the Act in that it is intended to provide for the equitable allocation of reasonable fees and charges among persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE 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

Written comments on the proposed rule change were neither solicited nor 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 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 PSE. All submissions should refer to File No. SR–PSE–95–03 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4706 Filed 2–24–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License #05/05–0130]

Federated Capital Corporation; License Surrender

Notice is hereby given that Federated Capital Corporation (''FCC''), 30955 Northwestern Highway, Farmington Hills, Michigan 48334, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (''the Act''). *FCC* was licensed by the Small Business Administration on November 14, 1978.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on February 1, 1995, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 16, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–4769 Filed 2–24–95; 8:45 am]

BILLING CODE 8025–01–M

[Delegation of Authority No. 1–A; Rev. 20]

Delegation of Authority; Notice

Delegation of Authority No. 1–A (Revision 20) is hereby revised to read as follows:

(a) Pursuant to authority vested in me by the Small Business Act of 1958, 72 Stat. 384, as amended, authority is hereby delegated to the following officials in the following order:

1. Deputy Administrator.
2. General Counsel.
3. Chief of Staff.
4. Counselor to the Administrator.
5. Associate Deputy Administrator for Economic Development.
6. Associate Deputy Administrator for Government Contracting and Minority Enterprise Development to perform, in event of the absence or incapacity of the

Administrator any and all acts which the Administrator is authorized to perform, including but not limited to authority to issue, modify, or revoke delegations of authority and regulations, except exercising authority under section 9(d) and 11 of the Small Business Act, as amended.

(b) An individual acting on any of the positions in paragraph (a) remains in the line of succession only if he or she has been designated acting by the Administrator or Acting Administrator due to a vacancy in the position.

(c) This delegation is not in derogation of any authority residing in the above-listed officials relating to the operations of their respective programs, nor does it affect the validity of any delegations currently in force and effect and not revoked or revised herein.

EFFECTIVE DATE: February 10, 1995.

Dated: February 10, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–4657 Filed 2–24–95; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99000123]

Prospect Street NYC Discovery Fund, L.P.; Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1994)) by Prospect Street NYC Discovery Fund, L.P. at 250 Park Avenue, 17th Floor, New York, New York 10177, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. *et seq.*), and the rules and regulations promulgated thereunder. The applicant's principal area of operation will be the New York City metropolitan area and, on a selected basis, it may consider making investments outside such area within the United States.

Prospect Street NYC Discovery Fund, L.P., a Delaware limited partnership, will be managed by Prospect Street NYC Discovery Fund, Inc., a Delaware Corporation and sole general partner of the Partnership. The officers and directors of Prospect Street NYC Discovery Fund, Inc. are: Richard E. Omohundro, Jr., C.F.A. (Chief Executive Officer), John F. Barry III (Executive Vice President), and Ronald D. Celmer (Secretary and Treasurer). Additional individuals assisting in the management of the applicant will include John A. Frabotta, Preston I. Carnes, Jr., Kevin F. Littlejohn and Dana Erikson.

The following limited partners will own 10 percent or more of the proposed SBIC:

Name	Percentage of ownership
NYC Economic Development Corporation, 110 William Street, New York, New York 10038	33.00
Brooklyn Union Gas, One MetroTech Center, Brooklyn, NY 11201–3850	33.00
Consolidated Edison, 4 Irving Place, New York, New York 10003	33.00

The New York City Economic Development Corporation (EDC) is a quasi-independent agency responsible for improving New York City's business climate and providing help to local communities. EDC is a substantial limited partner to the applicant and will provide a unique source of investment opportunities by directing inquiries from entrepreneurs to the applicant.

The applicant will begin operations with Regulatory Capital of $15.0 million and will be a source of start up, early and middle stage equity investments in small growth companies located in the New York metropolitan area which are developing, producing or commercializing advance technologies.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

A copy of this notice will be published in a newspaper of general circulation in New York City, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: February 21, 1995.

Robert D. Stillman,

Assistant Administrator for Investment.

[FR Doc. 95–4656 Filed 2–24–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 95–16]

Extension of Inspectorate America Corporation's Customs Gauger Approval to the Sites Located in Virginia Beach, Virginia and Searsport, Maine

AGENCY: Customs Service, Treasury.

ACTION: Notice of the extension of Inspectorate America Corporation's Customs gauger approval to include its Virginia Beach, VA and Searsport, ME gauging facilities.

SUMMARY: Inspectorate America Corporation of Houston, Texas, a Customs approved gauger and accredited laboratory under § 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs gauger approval to include the Virginia Beach, VA and Searsport, ME sites. Specifically, the extension includes both sites' Customs approval to gauge petroleum and petroleum products, organic compounds in bulk and liquid form and animal and vegetable oils.

SUPPLEMENTARY INFORMATION:

Background

Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Inspectorate America Corporation, a Customs commercial approved gauger and accredited laboratory, has applied to Customs to extend its Customs gauger approval to its Virginia Beach, VA and Searsport, ME facilities. Review of the qualifications of both sites shows that the extension is warranted and, accordingly, has been granted.

EFFECTIVE DATES: January 19, 1995.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW, Washington, D.C. 20229 at (202) 927–1060.

Dated: January 21, 1995.

A.W. Tennant,

Director, Office of Laboratories and Scientific Service.

[FR Doc. 95–4639 Filed 2–24–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–17]

Customs Approval of P.G.S. Enterprises, Inc., as a Commercial Gauger

AGENCY: Customs Service, Treasury.

ACTION: Notice of approval of P.G.S. Enterprises, Inc., as a commercial gauger.

SUMMARY: P.G.S. Enterprises, Inc., of Houston, Texas has applied to U.S. Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils under part 151.13 of the Customs Regulations (19 CFR 151.13) at their Houston, Texas and Arroyo, Puerto Rico facilities. Customs has determined that both offices meet all of the requirements for approval as a commercial gauger. Therefore, in accordance with part 151.13(f) of the Customs Regulations, P.G.S. Enterprises, Inc., Houston, Texas and Arroyo, Puerto Rico facilities are approved to gauge the products named above in all Customs districts.

LOCATION: P.G.S. Enterprises' approved sites are located at: 1122 Mabry Mill Road, Houston, Texas 77062; and Condominio Mar del Sur 16–D, Arroyo, Puerto Rico.

EFFECTIVE DATE: February 10, 1995.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW, Washington, D.C. 20229 at (202) 927–1060.

Dated: February 13, 1995.

A.W. Tennant,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 95–4638 Filed 2–24–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–95–9]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 20, 1995.

ADDRESSES: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT:

Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 22, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28078.

Petitioner: The Boeing Company.

Sections of the FAR Affected: 14 CFR 25.810(a)(1)(iv) and 25.1309(a).

Description of Relief Sought: To allow the Boeing Company temporary relief from the requirements mandated by close proximity of door 2 escape slides to engine inlets that slides successfully deploy in 25 knot winds with engines running at idle. This request is for the Boeing 777–200 airplane.

[FR Doc. 95–4779 Filed 2–24–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on March 7, 1995, at 9:00 a.m.

ADDRESSES: The meeting will be held at the Air Transport Association, 1301 Pennsylvania Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Marlene Vermillion, Flight Standards Service, Air Transportation Division (AFS–200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on March 7, 1995, at the Air Transport Association, 1301 Pennsylvania Ave., NW., Washington, DC. The agenda for this meeting will include status reports on the All Weather Operations Working Group and the Single Engine Operations Working Group and a discussion of a new working group on Fatigue Countermeasures and Alertness Management Techniques. Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading ''**FOR FURTHER INFORMATION CONTACT**.''

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on February 17, 1995.

Quentin J. Smith, Jr.,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–4776 Filed 2–24–95; 8:45 am]

BILLING CODE 4910–13–M

Research and Special Programs Administration

[Docket No. P–93–2W; Notice 2]

Grant of Waiver: Repair of Gas Transmission Lines

Summary. The Research and Special Programs Administration (RSPA) waives certain maintenance regulations to permit various gas pipeline operators to repair steel transmission lines with Clock Spring® wrap. The waiver, which is subject to conditions and future performance evaluations, advances the use of new technology.

Background. Twenty-eight companies and their subsidiaries,[1] all gas pipeline operators, requested that RSPA waive the safety standards in 49 CFR 192.713(a) and 192.485 for gas transmission lines operating at 40 percent or more of specified minimum yield strength (SMYS). The operators requested the waiver to get permission to repair the lines with Clock Spring® wrap.[2] The request came in a November 22, 1993, petition submitted by the Interstate Natural Gas Association of America (INGAA), a gas pipeline trade association.[3]

Under § 192.713(a), each imperfection or damage that impairs the serviceability of a segment of transmission line operating at 40 percent or more of SMYS must be repaired. If it is feasible to remove the line from service, pipe containing the imperfection or damage must be replaced. Otherwise, a full encirclement welded split sleeve must be installed over the imperfection or damage. The waiver request asks permission to use Clock Spring® wrap for repairs instead of the methods prescribed by § 192.713(a).

Section 192.485(a) requires replacement of transmission line pipe that is generally corroded to the extent that wall thickness is unsafe, unless operating pressure is reduced appropriately or, if the area of general corrosion is small, the corroded pipe is repaired. A similar requirement applies under § 192.485(b) to transmission lines with unsafe localized corrosion pitting, except that repair is not limited to small areas. The waiver request asks permission to use Clock Spring® wrap to repair large areas of general corrosion as an alternative to pipe replacement or pressure reduction under § 192.485(a).[4]

In an earlier waiver of § 192.713(a), RSPA allowed Panhandle Eastern Corporation (Panhandle) to use Clock Spring® wrap to repair six locations on its Line # 2 in Fayette County, Ohio (58 FR 13823; March 15, 1993). The waiver was subject to the conditions that Panhandle: (1) Install the wrap using the procedures described in documents supporting its petition; (2) perform the inspections described in its petition;[5] (3) promptly report to RSPA the results of the inspections and any unfavorable performance of the wrap, and (4) determine and report to RSPA the cause of any unfavorable performance. In addition, Panhandle advised that it would determine the need to repair generally corroded areas by using ASME B31G, ''Manual for Determining the Remaining Strength of Corroded Pipelines.'' Also, Panhandle said it would determine whether Clock Spring® wrap would provide a reliable repair in particular instances by using a computer program developed by the Gas Research Institute (GRI) based on laboratory and field tests of pipe repaired with the wrap.

In the present waiver request, the operators offered to conform to the Panhandle waiver, except that they would: (1) Use an enhanced program, GRI WRAP, to determine whether Clock Spring® wrap would provide a reliable repair in particular instances; (2) use either the ASME B31G procedure or RSTRENG[6] to determine if corroded areas require repair under § 192.485; (3) coordinate Clock Spring® wrap installations with GRI (to establish a representative data base to support a possible rule change), and within 2 years, with GRI's assistance, excavate and evaluate a statistical sampling of sites,[7] record the results, and give the results to RSPA upon request; (4) report Clock Spring® wrap repairs to RSPA or its state agent within 30 days of repair; (5) use personnel to install Clock Spring® wrap who have been trained and certified by Clock Spring Company; and (6) record installations of Clock Spring® wrap under § 192.709.[8]

Comments on Proposed Waiver/ In Notice 1 of this proceeding (59 FR 49739; September 29, 1994), RSPA proposed to grant the present waiver request for the safety and economic reasons stated in the notice. However, we proposed to restrict the waiver to repairs no more than 10 feet long. We felt this restriction was needed because the pipeline industry has had no experience in repairing large areas of generally corroded pipe other than by pipe replacement. At the same time, we specifically requested comments on the aspect of the waiver request that would allow unlimited areas of general corrosion to be repaired with Clock Spring® wrap. In addition, regarding the offer to report Clock Spring® wrap repairs, we proposed that reports be sent both to RSPA and to the state agent. We also proposed that the reports be sent

[1] ANR Pipeline Co.; Arkla Energy Resources Co. (including Mississippi River Transmission Co.); CNG Transmission Corp.; Colorado Interstate Gas Co. (including Wyoming Interstate Co., Ltd. and Young Gas Storage Co., LTD.); Columbia Gas Transmission Corp.; Columbia Gulf Transmission Co.; El Paso Natural Gas Co.; Enron Corp. (including Florida Gas Transmission Co., Houston Pipe Line Co., Intratex Gas Company, Northern Border Pipeline Co., Northern Natural Gas Company, Oasis Pipeline Co., and Transwestern Pipeline Co.); Granite State Gas Transmission Company; Great Lakes Gas Transmission Co.; Kern River Gas Transmission Co.; KN Energy, Inc.; Koch Industries, Inc. and all subsidiaries; Michigan Consolidated Gas Co.; Mid Louisiana Gas Co.; Natural Gas Pipeline Company of America and all subsidiaries; Michigan Consolidated Gas Co.; Mid Louisiana Gas Co.; Natural Gas Pipeline Company of America and all subsidiaries; Northwest Pipeline Corp.; Pacific Gas & Electric Co.; Pacific Gas Transmission Co.; Panhandle Eastern Corp. (including Panhandle Eastern Pipeline Co., Texas Eastern Transmission Co., Trunkline Gas Co., and Algonquin Gas Transmission Co.); Questar Pipeline Co.; Southern California Gas Co.; Southern Natural Gas (including Southern Natural Gas Co., South Georgia Natural Gas Co., Sea Robin Pipeline Co., Sonat Intrastate-Alabama Inc., and Bear Creek Storage Co.); Tenneco Gas Transportation Co. (including Tennessee Gas Pipeline Co, East Tennessee Natural Gas Co., Midwestern Gas Transmission Co., and Channel Gas Transmission Co.); Texas Gas Transmission Corp.; Transcontinental Gas Pipe Line Corp.; Williams Natural Gas Co.; and Williston Basin Interstate Pipeline Co.

[2] Clock Spring® wrap, manufactured by the Clock Spring Company of North America, is a composite material of polyester resin reinforced by glass filament. On installation, it is tightly wound and adhesively bonded to damaged pipe.

[3] By letter dated March 22, 1994, INGAA added Granite State Gas Transmission Company to the original list of companies seeking a waiver.

[4] Section 192.485(a) does not preclude the use of Clock Spring® wrap to repair small areas of general corrosion, nor does § 192.485(b) preclude the use of Clock Spring® wrap to repair localized corrosion pitting. However, if these defects are on transmission lines operating at 40 percent or more of SMYS, § 192.713(a) precludes their repair with Clock Spring® wrap.

[5] The inspections include examination and measurement of Clock Spring® wrap repairs and samples of wrap buried next to the repairs. Two repairs are to be evaluated at intervals of 2, 4, and 8 years. Measurements include strain gage readings of two repairs at 6-month intervals to verify the absence of wrap and adhesive creep.

[6] RSTRENG is a computer program developed to carry out the procedure called ''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe.'' This procedure was developed by Battelle for the American GAs Association as an alternative to the ASME B31G procedures. Both B31G and RSTRENG may be used to comply with § 192.485.

[7] The INGAA petition defined a site to include multiple repairs on a single pipeline in the same area or multiple pipelines in the same right-of-way in the same area.

[8] Section 192.709 requires pipeline operators to keep a record of each repair to a transmission line for as long as the line is in service. This requirement applies to all transmission line repairs, and would apply to Clock Spring® wrap repairs regardless of the offer to comply with the regulation.

before the time of installation to give RSPA or the state agent a chance to inspect the installation process. As to the offer concerning personnel qualification, we proposed that initial training and certification be supplemented by periodic refresher training and recertification. Finally, we said we would review the performance evaluations of Clock Spring® wrap repairs, and consider terminating the waiver 3 years after it is granted.

RSPA received written comments on the proposed waiver from eight entities: INGAA, Enron Operations Corp. (Enron), Southern Natural Gas (Southern), Coastal Corporation (Coastal), Bay State Gas Company (Bay State), Columbia Gas Transmission Corporation, Natural Gas Pipeline Company of America (Natural), and Panhandle. The comments are discussed below according to the issues presented. All the commenters supported the proposed waiver, although some commenters requested changes in the proposed conditions under which the waiver could be applied.

Reporting Repairs. INGAA, Enron, Natural, and Panhandle advised that 30 days' advance notification would not be in the public interest when repairs are needed quickly. Coastal wanted RSPA to accept the original proposal to report Clock Spring® wrap repairs within 30 days after installation. INGAA and Natural suggested the waiver allow operators to give notice when they decide to use Clock Spring® wrap to repair a damaged pipeline. The operators, said INGAA, Coastal, and Natural, should then be allowed to proceed immediately with repairs, unless, INGAA and Natural said, the appropriate agency tells the operator it wants to view the installation. Panhandle opposed this latter condition because it would make pipeline maintenance subject to agency schedules.

Given the importance of repairing unsafe conditions as soon as practicable, requiring notification of Clock Spring® wrap repairs at least 30 days beforehand could discourage use of the wrap. Although we agree operators should not have to conform their repair plans to government work schedules, RSPA or state agents need some period of advance notification to prepare to inspect wrap installations. Therefore, as a condition of the waiver, we are requiring that operators report scheduled Clock Spring® wrap repairs a reasonable time in advance of installation to allow for government inspection. Under this condition, which does not apply to emergency installations, deciding when to install Clock Spring® wrap after giving notice must take into account the reasonable travel time of government inspectors. But operators would not have to delay installation to conform to government work schedules apart from reasonable travel time.

Personnel Training. INGAA, Coastal, and Natural suggested the waiver allow installation personnel who have been trained and certified by the Clock Spring Company to train and certify other personnel. Also, INGAA suggested refresher training and recertification should be required only for personnel who infrequently install Clock Spring® wrap. Enron recommended that certified installers maintain their qualifications under RSPA's proposed qualification of personnel rules.[9]

Our concern about Clock Spring® wrap installers is that they be qualified. The suggestion that persons who have received initial training and certification from the Clock Spring Company be allowed to train and certify others is reasonable and would satisfy this concern. As for refresher training, installers would be subject to the refresher training requirements of the proposed qualification rules. Because we probably will issue final qualification rules before installers need refresher training, it is not now necessary to make refresher training part of this waiver. However, when we consider the performance evaluations of Clock Spring® wrap, we will reexamine the refresher training issue if final qualification rules have not been published.

Waiver Termination. Enron asked us not to include a termination date in the waiver. Instead, Enron recommended the waiver remain in effect until it is revoked or becomes unnecessary because of a change in the regulations. Southern advised the waiver should be extended after 3 years if the performance evaluations are favorable.

By saying we would consider terminating the waiver within 3 years after it is granted, we meant the waiver might be revoked after 3 years if the performance of Clock Spring® wrap repairs is generally unfavorable. We did not intend for the waiver to last only 3 years. If the initial evaluations are favorable, the waiver would continue in effect, unless new information causes us to revoke the waiver or a rule change makes the waiver no longer necessary.

Repair Length. Southern requested that we clarify that the proposed 10-foot restriction applies to corroded pipe under § 192.485(a), and not to imperfections or damage under § 192.713(a). Coastal asked that we eliminate the proposed restriction entirely, saying there is no practical limit to repairs using Clock Spring® wrap. Bay State said the 10-foot limit was arbitrary, since Clock Spring® wrap has been shown to be an effective alternative to pipe replacement. Panhandle felt the 10-foot limit was unnecessary and artificial.

As stated above, RSPA specifically asked for comments on the merits of allowing unlimited areas of general corrosion to be repaired with Clock Spring® wrap. None of the commenters expressed concern about the safety of using Clock Spring® wrap beyond the 10-foot range. Indeed, a few commenters pointed out there is no engineering basis for imposing a 10-foot limit. Accordingly, in the absence of an engineering basis, and considering the sound GRI test results and the plans to evaluate Clock Spring® wrap installations, we believe the waiver may be applied safely without a limit on the length of repair.

Role of GRI. Panhandle requested clarification of GRI's role in carrying out the waiver. The operator did not welcome assistance from GRI in any capacity other than as a record keeper.

Because Clock Spring® wrap is new technology, a major purpose of this waiver is to provide an opportunity to evaluate the performance of the wrap under various operating conditions. Long range, if the results are favorable, we would use the collected data as a basis to change the safety standards that, in certain instances, prohibit the use of Clock Spring® wrap as a pipeline repair method. As mentioned above, GRI has agreed to assist operators in this data collection effort by assuring the data are representative. GRI also will assist operators to evaluate the wrap in a statistical sampling of sites, record the results, and provide the results to RSPA. GRI's participation will add uniformity and reliability to evaluations that might otherwise vary among operators. Thus, we believe GRI's participation is an integral part of this waiver. Any operator who is unwilling to cooperate with GRI in the data collection aspect of this waiver is not entitled to apply the waiver.

*Grant of Waiver.*Therefore, for the reasons stated in Notice 1 of this proceeding, RSPA, by this order, finds that the requested waiver is not inconsistent with pipeline safety. The petition for waiver of §§ 192.485 and

[9] RSPA proposed qualification standards for persons who perform, or supervise the performance of, operation, maintenance, or emergency-response functions regulated under 49 CFR Part 192 or 195 (59 FR 39506; Aug. 3, 1994). To maintain qualifications, refresher training was proposed to occur at 24-month intervals after certification.

192.713(a), allowing the use of Clock Spring® wrap to repair large areas of general corrosion or other imperfections or damage on transmission lines operating at 40 percent or more of SMYS, is granted to the 28 companies and their subsidiaries, subject to the following conditions:

(1) Clock Spring® wrap must be installed using procedures recommended by the manufacturer;

(2) Clock Spring® wrap must be installed consistent with the program, GRI WRAP;

(3) Clock Spring® wrap must be installed consistent with a GRI plan, including, at 2-year intervals, excavating and evaluating a statistical sample of sites, recording the results, and sending the results to RSPA;

(4) To allow inspection by RSPA and state agencies serving as interstate enforcement agents, scheduled non-emergency installations of Clock Spring® wrap must be reported (by phone, fax, or mail) a reasonable time before installation to the RSPA pipeline regional office and state agent with authority over the repair; and

(5) Persons installing Clock Spring® wrap must have been trained and certified in installation procedures either by the Clock Spring Company or by persons the Clock Spring Company has trained and certified.

Authority: 49 U.S.C. § 60118(c)

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 95–4704 Filed 2–24–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under the VA Homeless Providers Grant and Per Diem Program

AGENCY: Veterans Health Administration, VA.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs is announcing the availability of funds for applications for assistance under VA's Homeless Providers Grant and Per Diem program. This Notice contains information concerning the program, application process and amount of funding available.

DATES: An original completed grant application (plus three copies) for assistance under the VA Homeless Providers Grant and Per Diem Program must be received in Mental Health and Behavioral Sciences Service in Washington, DC by 5:30 p.m. Eastern Time on April 28, 1995. Applications may not be sent by facsimile (FAX). In the interest of fairness to all competing applicants this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR A COPY OF THE APPLICATION PACKAGE, CONTACT: For a copy of the application package contact Veterans Industries, 10770 N. 46th Street (A 400), Tampa, FL, 33617; (813) 228–2871 between the hours of 8 a.m. and 4:30 p.m. Eastern Time, Monday through Friday (this is not a toll-free call). For documents relating to the VA Homeless Providers Grant and Per Diem Program see the final rule codified at 38 CFR 17.700 published elsewhere in this Federal Register (*see* also 59 FR 28284). Funds made available through this Notice are subject to those regulations.

ADDRESSES: An original completed grant application (plus three copies) must be submitted to the following address: Mental Health and Behavioral Sciences Service (111C), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, Attention: Roger J. Casey. Applications must be *received* in Mental Health and Behavioral Sciences Service by the application deadline.

FOR FURTHER INFORMATION CONTACT: Roger J. Casey, Program Manager, VA Homeless Providers Grant and Per Diem Program, Mental Health and Behavioral Sciences Service (111C), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420; (202) 535–7313 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This Notice announces the availability of funds for assistance under VA's Homeless Providers Grant and Per Diem program. This program is authorized by Pub. L. 102–590, the Homeless Veterans Comprehensive Service Programs Act of 1992. Funding applied for under this Notice may be used for: (1) Expansion, remodeling or alteration of existing buildings; (2) acquisition of buildings, and acquisition and rehabilitation of buildings; (3) new construction; and (4) procurement of vans. Applicants must have established supportive housing or supportive services programs after November 10, 1992. Applicants may apply for more than one type of assistance.

Those applicants interested in applying for per diem payments, or in-kind assistance through VA in lieu of per diem payments, need only submit Request for Recognition of Eligibility. Requirements for receiving per diem payments are specified at 38 CFR 17.715—17.723.

Grant applicants may not receive assistance to replace funds provided by any state or local government to assist homeless persons. For existing projects, VA will fund only the portion of the project that will expand the program. A proposal for an existing project that seeks to shift its focus by changing the population to be served or the precise mix of services to be offered is not eligible for consideration. Not more than 25 percent of services available in projects funded through this grant program may be provided to clients who are not receiving those services as veterans.

Authority

VA's Homeless Providers Grant and Per Diem Program is authorized by sections 3 and 4 of Pub. L. 102–590, the Homeless Veterans Comprehensive Service Programs Act of 1992; 38 USC 7721 note. The Program is implemented by the final rule codified at 38 CFR 17.700 published elsewhere in this Federal Register. The funds made available under this Notice are subject to the requirements of those regulations.

Allocation

A total of $6.0 million is available for the grant and per diem components of this program. A maximum of one award will be made for the procurement of a van or vans as Pub. L. 102–590 limits the number of such grants to twenty and VA made nineteen such awards last year. Such award, like all others, will be contingent upon the applicant achieving the requisite score.

Application Requirements

The specific grant application requirements will be specified in the application package. The package includes all required forms and certifications. Conditional selections will be made based on criteria described in the application. Applicants who are conditionally selected will be notified of the additional information needed to confirm or clarify information provided in the application. Applicants will then have one month to submit such information. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other components of the grant and per diem program.

Dated: February 15, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 95–4653 Filed 2–24–95; 8:45 am]

BILLING CODE 8320–01–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 38
Monday, February 27, 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).

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, March 6, 1995, and at 8:30 a.m. on Tuesday, March 7, and Wednesday, March 8, 1995, in Washington, D.C.

The March 6 meeting is closed to the public. (See 60 FR 9078, February 16, 1995.) The March 8 meeting is also closed to the public and will consist entirely of briefings. The March 7 meeting is open to the public and will be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

Agenda

Monday Session

March 6–1:00 p.m. (Closed)

1. Consideration of Mail Reclassification Case Filing with the Postal Rate Commission. (Gail G. Sonnenberg, Vice President, Marketing Systems, and Charles C. McBride, Manager, Reclassification.)
2. Consideration of International Mail Rates and Services. (Mary S. Elcano, Senior Vice President and General Counsel.)

Tuesday Session

March 7—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, February 6–7, 1995.
2. Remarks of the Postmaster General/Chief Executive Officer. (Marvin Runyon.)
3. Status Report on Washington, D.C., Mail Service. (Henry A. Pankey, Vice President, Mid-Atlantic Area Operations.)
4. Capital Investment.
   a. Washington-National Airport Mail Center (final decision). (Henry A. Pankey, Vice President, Mid-Atlantic Area Operations).
5. Tentative Agenda for the April 3–4, 1995, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 95–4931 Filed 2–23–95; 3:56 pm]

BILLING CODE 7710–12–M

MERIT SYSTEMS PROTECTION BOARD

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 2:00 p.m. on Tuesday, February 21, 1995, and at 9:30 a.m. on Wednesday, February 22, 1995, a quorum of the members of the Merit Systems Protection Board met in open session. The purpose of the meeting was to discuss and vote upon proposals to restructure the Board in accordance with the National Performance Review.

In calling the meeting, a majority of the Board members determined that Board business required its consideration of this matter on less than seven days' notice to the public and that no earlier notice of the meeting was practicable.

The meeting was held in the Board's conference room at Board headquarters at 1120 Vermont Avenue, N.W., Washington, DC 20419.

Dated: February 22, 1995.

Mark Kelleher,

Chief Counsel to the Board Member.

[FR Doc. 95–4938 Filed 2–23–95; 3:50 am]

BILLING CODE 7400–01–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the ''Government in Sunshine Act'' (5 U.S.C. § 552b), notice is hereby given of the Board's meeting described below. The Board will also conduct a public hearing pursuant to 42 U.S.C. § 2286b to gather additional information on technical issues underlying the Board's Recommendation 94–1.

TIME AND DATE: 9:30 a.m., March 22, 1995.

PLACE: The Conference Center (Municipal Auditorium), 214 Park Avenue S.W., Aiken, South Carolina. The entrance to the facility is located at 215 The Alley.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Experience with and available technologies for stabilizing transplutonium solutions at the Savannah River Site.
2. Storage conditions of spent nuclear fuel at the Hanford, Idaho and Savannah River Sites.
3. Available technologies for stabilizing spent nuclear fuel for interim storage at Hanford, Idaho and Savannah River Sites.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll free number.

SUPPLEMENTARY INFORMATION: The Board repeatedly expressed the view that the Department of Energy needs to accelerate its current schedule for converting certain unstable nuclear defense-related materials to forms suitable for safe storage. The Board's most recent effort to address this potential threat to the public health and safety was expressed in its Recommendation 94–1, dated May 26, 1994. In that recommendation we stated, among other things, that:

> The halt in production of nuclear weapons and materials to be used in nuclear weapons froze the manufacturing pipeline in a state that, for safety reasons, should not be allowed to persist unremediated. The Board has concluded from observations and discussions with others that imminent hazards could arise within two to three years unless certain problems are corrected.
>
> We are especially concerned about specific liquids and solids containing fissile material and other radioactive substances in spent fuel storage pools, reactor basins, reprocessing canyons, processing lines, and various buildings once used for processing and weapons manufacture.
>
> It is not clear at this junction how fissile materials produced for defense purposes will eventually be dealt with long term. What is clear is that the extant fissile materials and related materials require treatment on an accelerated basis to convert them to forms more suitable for safe interim storage.

Recommendation 94–1 in its entirety is on file at DOE's Public Reading Room, Gregg-Graniteville Library, 171 University Parkway, University of South Carolina, Aiken, SC 29801, and at the Defense Nuclear Facilities Safety Board's Washington office. It is also set forth in the Federal Register at 59 FR 28848.

In accordance with the powers granted to the Board, a public hearing

will be conducted by the Board in an open meeting. The Board has invited recognized experts in the fields of the treatment and storage of spent nuclear fuel and special nuclear materials to testify at this hearing in order to assist the Board and to inform the public as to proper treatment of these materials. The experts are expected to answer Board questions based on their experience and technical knowledge and to provide additional documents as necessary. This hearing is an information-gathering function. Examination of those appearing before us will be limited to the questions put to them by the Board. An opportunity will be available for comments by members of the interested public at the conclusion of testimony by the experts.

A transcript of this proceeding will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and at the DOE's Public Reading Room, Gregg-Graniteville Library, 171 University Parkway, University of South Carolina, Aiken, SC 29801.

The Board intends further meetings and hearings on these matters. The Board will announce these by separate Federal Register notice.

The Board reserves its right to further schedule and otherwise regulate the course of these meetings and hearings, to recess, reconvene, postpone or adjourn the meeting and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: February 23, 1995.

John T. Conway,

Chairman.

[FR Doc. 95–4876 Filed 2–23–95; 2:32 pm]

BILLING CODE 3670–01–M

MERIT SYSTEMS PROTECTION BOARD

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 9:30 a.m. on Tuesday, February 28, 1995, a quorum of the members of the Merit Systems Protection Board will meet in open session. The purpose of the meeting is to discuss and vote upon proposals to restructure the Board in accordance with the National Performance Review, and in preparation for the Board's hearing on appropriations scheduled for March 2, 1995.

In calling the meeting, a majority of the Board members has determined that Board business requires its consideration of this matter on less than seven days' notice to the public and that no earlier notice of the meeting was practicable.

The meeting will be held in the Board's conference room at Board headquarters at 1120 Vermont Avenue, N.W., Washington, DC 20419.

Dated: February 22, 1995.

Mark Kelleher,

Chief Counsel to the Board Member.

[FR Doc. 95–4939 Filed 2–23–95; 3:50 pm]

BILLING CODE 7400–01–M

Corrections

Federal Register
Vol. 60, No. 38
Monday, February 27, 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.

FEDERAL EMERGENCY MANAGEMENT AGENCY

Hotel and Motel Fire Safety Act National Master List, 1994

Correction

In notice document 94–29217 beginning on page 61932 in the issue of Friday, December 2, 1994, make the following corrections:

1. On page 61949, in the table, insert the following entries for California BEFORE the seventh entry from the bottom:

CA1095 RESIDENCE INN LIVERMORE/PLEASANTON.		1000 AIRWAY BLVD	LIVERMORE CA 94550–	(510)373–1800
CA0885 COMFORT INN		118 N. CHEROKEE LN	LODI CA 95240–	(209)367–4848
CA0891 COMFORT INN		118 N. CHEROKEE LN	LODI CA 95240–	(209)367–4848
CA0016 BEST WESTERN ELDORADO INN.		2037 PACIFIC COAST HWY	LOMITA CA 90717–	(310)534–0700
CA0054 EMBASSY SUITES HOTEL		1117 N. H ST	LOMPOC CA 93436–	(805)735–8311
CA0074 INN OF LOMPOC		1122 N. H ST	LOMPOC CA 93436–	(805)735–7744
CA1200 MOTEL 6, #1365		1521 N. H ST	LOMPOC CA 93436–	(805)735–7631
CA0929 QUALITY INN & EXECUTIVE SUITES.		1621 N. H ST	LOMPOC CA 93436–	(805)735–8555
CA0185 BEST WESTERN GOLDEN SAILS HOTEL.		6285 E. PACIFIC COAST HWY	LONG BEACH CA 90803–	(310)596–1631
CA1119 COMFORT INN LONG BEACH.		3201 E. PACIFIC COAST HWY	LONG BEACH CA 90804–	(310)597–3374
CA0228 FRIENDSHIP INN		50 ATLANTIC AVE	LONG BEACH CA 90802–	(310)435–8369
CA0784 HOLIDAY INN CONVENTION WORLD TRADE CENTER.		500 E. FIRST ST	LONG BEACH CA 90802–	(310)435–8511
CA1256 HOWARD JOHNSON PLAZA HOTEL.		1133 ATLANTIC AVE	LONG BEACH CA 90813–	(310)590–8858
CA0453 HYATT REGENCY LONG BEACH.		200 S. PINE AVE	LONG BEACH CA 90802–4553	(310)491–1234
CA0565 LONG BEACH AIRPORT MARRIOTT.		4700 AIRPORT PLAZA DR	LONG BEACH CA 90815–	(310)425–5210
CA0420 LONG BEACH HILTON		TWO WORLD TRADE CTR	LONG BEACH CA 90831–3102	(310)983–3400
CA1376 MOTEL 6		5665 E. 7TH ST	LONG BEACH CA 90804–	(310)597–1311
CA1023 RENAISSANCE HOTEL LONG BEACH.		111 E. OCEAN BLVD	LONG BEACH CA 90802–	(310)437–5900
CA1000 RESIDENCE INN BY MARRIOTT LONG BEACH.		4111 E. WILLOW ST	LONG BEACH CA 90815–	(310)595–0909
CA0003 SANDPIPER INN		3624 E. PACIFIC COAST HWY	LONG BEACH CA 90804–	(310)498–7544
CA0695 SEA PORT MARINA HOTEL		6400 E. PACIFIC COAST HWY	LONG BEACH CA 90803–	(310)434–8451
CA0450 SHERATON LONG BEACH HOTEL.		333 E. OCEAN BLVD	LONG BEACH CA 90802–	(310)436–3000
CA1260 BEST WESTERN DRAGON GATE INN.		818 N. HILL ST	LOS ANGELES CA 90012–	(213)617–3077
CA0882 BEST WESTERN THE MAYFAIR.		1256 W. SEVENTH ST	LOS ANGELES CA 90017–2315	(213)484–9789
CA1269 BEST WESTERN WESTWOOD PACIFIC HOTEL.		11250 SANTA MONICA BLVD	LOS ANGELES CA 90025–	(310)478–1400
CA0839 BEVONSHIRE LODGE MOTEL.		7575 BEVERLY BLVD	LOS ANGELES CA 90036–	(213)936–6154
CA0618 BRENTWOOD SUITES HOTEL.		199 N. CHURCH LN	LOS ANGELES CA 90049–	(310)476–6255
CA1004 CARLYLE INN		1119 S. ROBERTSON BLVD	LOS ANGELES CA 90035–	(310)275–4445
CA0497 CENTURY PLAZA HOTEL AND TOWER.		2025 AVE. OF THE STARS	LOS ANGELES CA 90067–	(310)277–2000
CA0694 CLAREMONT HOTEL		1044 TIVERTON AVE	LOS ANGELES CA 90024–	(310)208–5957

CA0058 CLARK PLAZA HOTEL		141 S. CLARK DR	LOS ANGELES CA 90048–	(310)278–9310
CA0805 COMFORT INN EAGLE ROCK.		2300 W. COLORADO BLVD	LOS ANGELES CA 90041–1145	(213)256–1199
CA1122 COMFORT INN TOWNE		4122 S. WESTERN AVE	LOS ANGELES CA 90062–	(213)294–5200
CA0846 COURTYARD BY MARRIOTT CENTURY CITY.		10320 W. OLYMPIC BLVD	LOS ANGELES CA 90064–	(310)556–2777
CA1121 ECONO LODGE		11933 WASHINGTON BLVD	LOS ANGELES CA 90066–	(310)398–1651
CA0436 EMBASSY SUITES		9801 AIRPORT BLVD	LOS ANGELES CA 90045–	(310)215–1000
CA0072 FIGUEROA HOTEL		939 S. FIGUEROA ST	LOS ANGELES CA 90015–	(213)627–8971
CA0372 FOUR SEASONS HOTEL		300 S. DOHENY DR	LOS ANGELES CA 90048–	(310)273–2222
CA1307 FRIENDSHIP INN HOLLYWOOD PREMIERE MOTEL.		5333 HOLLYWOOD BLVD	LOS ANGELES CA 90027–	(213)466–1691
CA0465 GRAND MOTEL		1479 S. LA CIENAGA BLVD	LOS ANGELES CA 90035–	(310)652–3644
CA0441 HOLIDAY INN CROWNE PLAZA LOS ANGELES AIRPORT.		5985 W. CENTURY BLVD	LOS ANGELES CA 90045–5463	(310)642–7500
CA0682 HOLIDAY INN LOS ANGELES CONVENTION CENTER.		1020 S. FIGUEROA ST	LOS ANGELES CA 90015–	(213)748–1291
CA0531 HOLLYWOOD METROPOLITAN HOTEL.		5825 SUNSET BLVD	LOS ANGELES CA 90028–	(213)962–5800
CA0924 HOTEL INTER CONTINENTAL LOS ANGELES.		251 S. OLIVE ST	LOS ANGELES CA 90012–	(213)617–3300
CA0285 HOTEL NIKKO AT BEVERLY HILLS.		465 S. LA CIENEGA BLVD	LOS ANGELES CA 90048–	(310)247–0400
CA1287 HYATT LAX HOTEL		6225 W. CENTURY BLVD	LOS ANGELES CA 90045–	(310)337–1234
CA1062 HYATT REGENCY LOS ANGELES.		711 S. HOPE ST	LOS ANGELES CA 90017–	(213)683–1234
CA0566 J.W. MARRIOTT CENTURY CITY.		2151 AVE. OF THE STARS	LOS ANGELES CA 90067–	(213)277–2777
CA0655 JERRY'S MOTEL		285 S. LUCAS AVE	LOS ANGELES CA 90026–	(213)481–0921
CA0435 LOS ANGELES AIRPORT HILTON & TOWERS.		5711 W. CENTURY BLVD	LOS ANGELES CA 90045–5631	(310)410–4000
CA0729 LOS ANGELES AIRPORT MARRIOTT HOTEL.		5855 W. CENTURY BLVD	LOS ANGELES CA 90045–	(310)641–5700
CA0137 LOS ANGELES ATHLETIC CLUB.		431 W. SEVENTH ST	LOS ANGELES CA 90014–	(213)895–0707
CA0445 LOS ANGELES HILTON AND TOWERS.		930 WILSHIRE BLVD	LOS ANGELES CA 90017–	(213)629–4321
CA1279 LOS ANGELES WEST TRAVELODGE.		10740 SANTA MONICA BLVD	LOS ANGELES CA 90025–	(310)474–4576
CA0344 ORCHID HOTEL		819 S. FLOWER ST	LOS ANGELES CA 90017–	(213)624–5855
CA0269 ORCHID SUITES HOTEL		1753 N. ORCHID AVE	LOS ANGELES CA 90028–	(213)461–7260
CA0352 PARK PLAZA HOTEL		607 S. PARK VIEW ST	LOS ANGELES CA 90057–	(213)384–5281
CA0931 QUALITY HOTEL LOS ANGELES AIRPORT.		5249 W. CENTURY BLVD	LOS ANGELES CA 90045–	(310)645–2200
CA0482 RAMADA RENAISSANCE HOTEL LOS ANGELES AIRPORT.		9620 AIRPORT BLVD	LOS ANGELES CA 90045–	(310)337–2800
CA0251 SHERATON GRANDE HOTEL.		333 S. FIGUEROA ST	LOS ANGELES CA 90071–	(213)617–1133
CA0336 SHERATON LOS ANGELES AIRPORT HOTEL.		6101 W. CENTURY BLVD	LOS ANGELES CA 90045–	(310)642–1111
CA0668 SKYWAYS AIRPORT HOTEL		9250 AIRPORT BLVD	LOS ANGELES CA 90045–	(310)670–2900
CA0270 STOUFFER CONCOURSE HOTEL.		5400 W. CENTURY BLVD	LOS ANGELES CA 90045–	(310)216–5858
CA0283 THE BEVERLY PLAZA HOTEL.		8384 W. THIRD ST	LOS ANGELES CA 90048–	(213)658–6600
CA0362 THE BILTMORE LOS ANGELES.		506 S. GRAND AVE	LOS ANGELES CA 90071–	(213)624–1011
CA0980 THE KAWADA HOTEL		200 S. HILL ST	LOS ANGELES CA 90012–	(213)621–4455
CA0249 THE NEW OTANI HOTEL & GARDEN.		120 S. LOS ANGELES ST	LOS ANGELES CA 90012–	(213)629–1200
CA0677 THE WESTIN BONAVENTURE.		404 S. FIGUEROA ST	LOS ANGELES CA 90071–	(213)624–1000
CA0989 TRAVELODGE HOTEL AT LAX.		5547 W. CENTURY BLVD	LOS ANGELES CA 90045–	(310)649–4000
CA0981 UNIVERSITY HILTON LOS ANGELES.		3540 S. FIGUEROA ST	LOS ANGELES CA 90007–	(213)748–4141
CA0321 WILSHIRE CREST INN		6301 ORANGE ST	LOS ANGELES CA 90048–	(213)936–5131
CA0774 WILSHIRE MOTEL		12023 WILSHIRE BLVD	LOS ANGELES CA 90025–	(310)478–3545
CA1255 WYNDHAM CHECKERS HOTEL.		535 SO. GRAND	LOS ANGELES CA 90071–	(213)624–0000
CA1120 HILGARD HOUSE HOTEL		927 HILGARD AVE	LOS ANGELES CA 90024–	(310)208–3945
CA0222 LODGE AT VILLA FELICE		15350 S. WINCHESTER BLVD	LOS GATOS CA 95030–	(408)395–6710
CA1251 MOTEL 6, #274		14685 WARREN ST	LOS HILLS CA 93249–	(805)797–2346
CA0843 BLUE HERON		1899 9TH ST	LOS OSOS CA 93401–	(805)528–1493
CA0636 ECONOMY MOTELS OF AMERICA.		14684 ALOMA ST	LOST HILLS CA 93249–	(805)797–2371
CA0031 TRAVELODGE CENTURY FREEWAY.		11401 LONG BEACH BLVD	LYNWOOD CA 90262–	(310)763–4029
CA0637 ECONOMY MOTELS OF AMERICA.		1855 W. CLEVELAND AVE	MADERA CA 93637–	(209)661–1131
CA0551 MAMMOTH LAKES SHILO INN.		2963 MAIN ST	MAMMOTH LAKES CA 93546–2179	(503)641–6565
CA1436 MOTEL 6		3372 MAIN ST	MAMMOTH LAKES CA 93546–	(619)934–6660
CA0792 BARNABEY'S HOTEL		3501 SEPULVEDA BLVD	MANHATTAN BEACH CA 90266–	(310)545–8466
CA1308 COMFORT INN		850 N. SEPULVEDA BLVD	MANHATTAN BEACH CA 90266–	(310)318–1020

CA0401 RADISSON PLAZA HOTEL & GOLF COURSE.		1400 PARKVIEW AVE	MANHATTAN BEACH CA 90266–	(310)546–7511
CA0877 RESIDENCE INN BY MARRIOTT MANHATTAN BEACH LAX.		1700 N. SEPULVEDA	MANHATTAN BEACH CA 90266–	(310)546–7627
CA0229 BEST WESTERN INN OF MANTECA.		1415 E. YOSEMITE AVE	MANTECA CA 95336–	(209)825–1415
CA0858 MANTECA INN		150 NORTHWOODS AVE	MANTECA CA 95336–	(209)239–1291
CA1057 INNCAL		3280 DUNES DR	MARINA CA 93933–	(408)384–1800
CA0403 DOUBLETREE HOTEL MARINA DEL REY.		4100 ADMIRALTY WAY	MARINA DEL REY CA 90292–	(310)301–3000
CA1005 MARINA INTERNATIONAL HOTEL.		4200 ADMIRALTY WAY	MARINA DEL REY CA 90292–	(310)301–2000
CA0386 MARINA SUITES HOTEL		737 WASHINGTON BLVD	MARINA DEL REY CA 90292–	(310)821–4455
CA0434 RITZ CARLTON HOTEL MARINA DEL REY.		4375 ADMIRALTY WAY	MARINA DEL REY CA 90292–	(310)823–1700
CA0530 THE MANSION INN		327 WASHINGTON ST	MARINA DEL REY CA 90291–	(310)821–2557
CA0286 MARIPOSA LODGE	PO BOX 733	1052 HWY. 140	MARIPOSA CA 95338–	(209)966–3607
CA0001 THE MINERS INN MOTEL	PO BOX 246	5155 HWY. 140	MARIPOSA CA 95338–	(209)742–7777
CA0310 WOODFORDS INN	PO BOX 426		MARKLEVILLE CA 96120–	(916)694–2410
CA1339 ECONO LODGE		721 10TH ST	MARYSVILLE CA 95901–	(916)742–8586
CA0015 OXBOW MOTEL		1078 N. BEALE RD	MARYSVILLE CA 95901–	(916)742–8238
CA0960 MENLO PARK INN		1315 EL CAMINO REAL	MENLO PARK CA 94025–	(415)326–7530
CA0085 MERMAID INN MOTEL		727 EL CAMINO REAL	MENLO PARK CA 94025–	(415)323–9481
CA0998 RIVIERA MOTOR LODGE		15 EL CAMINO REAL	MENLO PARK CA 94025–	(415)321–8772
CA0082 STANFORD PARK HOTEL		100 EL CAMINO REAL	MENLO PARK CA 94025–	(415)322–1234
CA1364 MOTEL 6		1215 R ST	MERCED CA 95340–	(209)722–2737
CA1202 MOTEL 6, #1029		1410 V ST	MERCED CA 95340–	(209)384–2181
CA1201 MOTEL 6, #23		1983 E. CHILDS AVE	MERCED CA 95340–	(209)384–3702
CA0378 PARKWAY INN		1199 MOTEL DR	MERCED CA 95340–	(209)722–2726
CA0200 BEST WESTERN EL RANCHO INN & EXECUTIVE SUITES.		1100 EL CAMINO REAL	MILLBRAE CA 94030–	(415)588–2912
CA0232 CLARION HOTEL SAN FRANCISCO AIRPORT.		401 E. MILLBRAE AVE	MILLBRAE CA 94030–	(415)692–6363
CA1309 COMFORT INN AIRPORT WEST.		1390 EL CAMINO REAL	MILLBRAE CA 94030–	(415)952–3200
CA0765 MILLWOOD INN		1375 EL CAMINO REAL	MILLBRAE CA 94030–	(415)583–3935
CA0203 WESTIN HOTEL SAN FRANCISCO AIRPORT.		1 OLD BAYSHORE HWY	MILLBRAE CA 94030–	(415)692–3500
CA0281 COMFORT INN		66 S. MAIN ST	MILPITAS CA 95035–	(408)262–7666
CA0090 CROWN STERLING SUITES HOTEL.		901 E. CALAVERAS BLVD	MILPITAS CA 95035–	(408)942–0400
CA0638 ECONOMY INNS OF AMERICA.		270 S. ABBOTT AVE	MILPITAS CA 95035–	(408)946–8889
CA0909 HOLIDAY INN SAN JOSE NORTH.		777 BELLEW DR	MILPITAS CA 95035–	(408)321–9500
CA1061 INNCAL		95 DEMPSEY RD	MILPITAS CA 95035–	(408)942–1798
CA1123 MILPITAS COMFORT INN		66 S. MAIN STREET	MILPITAS CA 95035–	( ) –
CA1206 MILPITAS SUPER 8 MOTEL		485 SOUTH MAIN ST	MILPITAS CA 95035–	(408)946–1615
CA0196 MILPITAS TRAVELODGE		378 W. CALAVERAS BLVD	MILPITAS CA 95035–	(408)263–0500
CA0724 SHERATON SAN JOSE HOTEL.		1801 BARBER LN	MILPITAS CA 95035–	(408)943–0600
CA0256 HAMPTON INN		26328 OSO PKWY	MISSION VIEJO CA 92691–	(714)582–7100
CA0422 BEST WESTERN MALLARDS INN.		1720 SISK RD	MODESTO CA 95350–	(209)577–3825
CA0541 EL CAPITAN MOTEL		1121 NEEDHAM ST	MODESTO CA 95354–	(209)522–1021
CA0391 HOLIDAY INN MODESTO		1612 SISK RD	MODESTO CA 95350–2589	(209)521–1612
CA1368 MOTEL 6		1920 W. ORANGEBURG AVE	MODESTO CA 95350–	(209)522–7271
CA1390 MOTEL 6		722 KANSAS AVE	MODESTO CA 95351–	(209)524–3000
CA0726 RAMADA INN MODESTO		2001 W. ORANGEBURG AVE	MODESTO CA 95350–	(209)521–9000
CA0768 RED LION HOTEL MODESTO.		1150 9TH ST	MODESTO CA 95354–	(209)526–6000
CA1426 MOTEL 6		16958 ST. RTE. 58	MOJAVE CA 93501–	(805)824–4571
CA0075 HOLIDAY INN MONROVIA		924 W. HUNTINGTON DR	MONROVIA CA 91016–	(818)357–1900
CA0047 HOWARD JOHNSON HOTEL		700 W. HUNTINGTON DR	MONROVIA CA 91016–	(818)357–5211
CA0692 ARBOR INN		1058 MUNRAS AVE	MONTEREY CA 93940–	(800)351–8811
CA0389 BAY PARK HOTEL		1425 MUNRAS AVE	MONTEREY CA 93940–	(408)649–1020
CA1124 COMFORT INN DEL MONTE BEACH.		2401 DEL MONTE AVE	MONTEREY CA 93540–	(408)373–7100
CA0416 DOUBLETREE HOTEL AT FISHERMAN'S WHARF.		2 PORTOLA PLAZA	MONTEREY CA 93940–	(408)649–4511
CA0800 HOLIDAY INN RESORT		1000 AQUAJITO RD	MONTEREY CA 93940–	(408)373–6141
CA0684 HYATT REGENCY MONTEREY.		ONE OLD GOLF COURSE RD	MONTEREY CA 93940–	(408)372–1234
CA0374 MONTEREY BAY INN		242 CANNERY ROW	MONTEREY CA 93940–	(408)373–6242
CA0970 MONTEREY CARMEL TRAVELODGE AT FAIRGROUNDS.		2030 N. FREMONT ST	MONTEREY CA 93940–	(408)373–3381
CA0161 MONTEREY DOWNTOWN TRAVELODGE.		675 MUNRAS AVE	MONTEREY CA 93940–	(408)373–1876
CA0561 MONTEREY MARRIOTT		350 CALLE PRINCIPAL	MONTEREY CA 93940–	(408)649–4234
CA1330 MONTEREY MOTOR LODGE.		55 CAMINO AQUIJITO	MONTEREY CA 93940–	(800)558–1900
CA1203 MOTEL 6, #1026		100 RESERVATION ROAD	MONTEREY CA 93933–	(408)384–1000
CA0178 SAND DOLLAR INN		755 ABREGO ST	MONTEREY CA 93940–	(408)372–7551
CA0376 SPINDRIFT INN		652 CANNERY ROW	MONTEREY CA 93940–	(408)646–8900
CA0300 THE MARIPOSA INN		1386 MUNRAS AVE	MONTEREY CA 93940–	(408)649–1414
CA0299 THE MONTEREY HOTEL		406 ALVARADO ST	MONTEREY CA 93940–	(408)375–3184

CA0375 VICTORIAN INN		487 FOAM ST	MONTEREY CA 93950–	(408)373–8000
CA1348 MOTEL 6		2124 N. FREMONT ST	MONTEREY CA 93940–	(408)646–8585
CA0742 BEST WESTERN IMAGE SUITES.		24840 ELDER AVE	MORENO VALLEY CA 92557–	(714)924–4546
CA1397 MOTEL 6		23581 ALESSANDRO BLVD	MORENO VALLEY CA 92553–	(909)656–4451
CA1204 MOTEL 6, #1072		24630 SUNNYMEAD BLVD	MORENO VALLEY CA 92553–	(909)243–0075
CA0021 RODEWAY INN RIVERSIDE MORENO VALLEY.		23330 SUNNYMEAD BLVD	MORENO VALLEY CA 92388–	(714)242–0699
CA0325 BAY VIEW LODGE		225 HARBOR ST	MORRO BAY CA 93442–	(805)772–2771
CA1276 BEST WESTERN SAN MARCOS MOTOR INN.		250 PACIFIC ST	MORRO BAY CA 93442–	(805)772–2248
CA0617 BLUE SAIL INN		851 MARKET AVE	MORRO BAY CA 93442–	(805)772–7132
CA0879 ECONO LODGE		1100 MAIN ST	MORRO BAY CA 93442–	(805)772–5609
CA1158 EL RANCH BEST WESTERN		2460 MAIN ST	MORRO BAY CA 93442–	(805)772–2212
CA0280 EMBARCADERO INN		456 EMBARCADERO	MORRO BAY CA 93442–	(805)772–2700
CA1347 MOTEL 6		298 ATASCADERO RD	MORRO BAY CA 93442–	(805)772–5641
CA1205 MOTEL 6, #004		4301 EL CAMINO REAL	MORRO BAY CA 94306–	(415)949–0833
CA0051 THE INN AT MORRO BAY		19 COUNTRY CLUB RD	MORRO BAY CA 93442–	(805)772–5651
CA1286 SISKIYOU LAKE GOLF RESORT.		1000 SISKIYOU LAKE BLVD	MOUNT SHASTA CITY CA 96067–9482.	(916)926–3030
CA0545 BEST WESTERN INN		93 EL CAMINO REAL W	MOUNTAIN VIEW CA 94040–	(415)967–6957
CA0243 COMFORT INN		1561 W. EL CAMINO REAL	MOUNTAIN VIEW CA 94040–	(415)967–7888
CA0093 COUNTY INN		850 LEONG DR	MOUNTAIN VIEW CA 94043–	(415)961–1131
CA0155 RESIDENCE INN BY MARRIOTT MOUNTAIN VIEW.		1854 EL CAMINO REAL W	MOUNTAIN VIEW CA 94040–	(415)940–1300
CA0282 RODEWAY INN		55 FAIRCHILD DR	MOUNTAIN VIEW CA 94043–	(415)967–6856
CA1125 RODEWAY INN		55 FAIRCHILD DRIVE	MOUNTAIN VIEW CA 94043–	(415)967–6856
CA1058 TRAVELODGE		4325 WATT AVE	N. HIGHLANDS CA 95660–	(916)971–9440
CA1171 MOTEL 6, #1262			N. PALM SPRINGS CA 92258–	(619)251–1425
CA0190 CHABLIS LODGE		3360 SOLANO AVE	NAPA CA 94558–	(707)257–1944
CA0477 CHURCHILL MANOR BED & BREAKFAST.		485 BROWN ST	NAPA CA 94559–	(707)253–7733
CA0091 JOHN MUIR INN		1998 TROWER AVE	NAPA CA 94558–	(707)257–7220
CA0201 LA RESIDENCE COUNTRY INN.		4066 ST. HELENA HWY	NAPA CA 94558–	(707)253–0337
CA0245 NAPA VALLEY TRAVELODGE.		853 COOMBS ST	NAPA CA 94559–	(707)226–1871
CA1028 SHERATON INN NAPA VALLEY.		3425 SOLANO AVE	NAPA CA 94558–	(707)253–7433
CA0866 STEELE PARK RESORT INC		1605 STEELE CANYON RD	NAPA CA 94558–	(707)966–2123
CA0158 THE CHATEAU HOTEL		4195 SOLANO AVE	NAPA CA 94558–	(707)253–9300
CA0355 THE INN AT NAPA VALLEY CROWN STERLING SUITES.		1075 CALIFORNIA BLVD	NAPA CA 94559–	(707)253–9540
CA0754 E Z 8 MOTELS INC		607 ROOSEVELT AVE	NATIONAL CITY CA 91950–	(619)474–7502
CA0772 E Z 8 MOTELS INC		1700 PLAZA BLVD	NATIONAL CITY CA 91950–	(619)474–6491
CA0263 RADISSON INN & SUITES NATIONAL CITY.		700 NATIONAL CITY BLVD	NATIONAL CITY CA 91950–	(619)336–1100
CA1352 MOTEL 6		1215 HOSPITALITY LN	NEEDLES CA 92363–	(619)326–5131
CA1383 MOTEL 6		1420 J ST	NEEDLES CA 92363–	(619)326–3399
CA0371 TRAVELERS INN		1195 3RD ST. HILL	NEEDLES CA 92362–	(619)326–4900
CA0737 E Z 8 MOTELS INC		5555 CEDAR ST	NEWARK CA 94560–	(510)794–7775
CA1428 MOTEL 6		5600 CEDAR ST	NEWARK CA 94560–	(510)791–5900
CA0087 NEWARK FREMONT HILTON.		39900 BALENTINE DR	NEWARK CA 94560–	(510)490–8390
CA1332 PARK INN		5977 MOWRY AVE	NEWARK CA 94560–	(510)795–7995
CA0499 WOODFIN SUITE HOTEL		39150 CEDAR BLVD	NEWARK CA 94560–	(510)795–1200
CA0732 E Z 8 MOTELS INC		2434 W. HILLCREST DR	NEWBURY PARK CA 91320–	(805)499–0755
CA1399 MOTEL 6		2850 CAMINO DOS RIOS	NEWBURY PARK CA 91320–	(805)499–0585
CA0342 FOUR SEASONS HOTEL NEWPORT BEACH.		690 NEWPORT CENTER DR	NEWPORT BEACH CA 92660–	(714)759–0808
CA0568 NEWPORT BEACH MARRIOTT HOTEL.		900 NEWPORT CENTER DR	NEWPORT BEACH CA 92660–	(714)640–4000
CA0569 NEWPORT BEACH MARRIOTT SUITES.		500 BAYVIEW CIR	NEWPORT BEACH CA 92660–	(714)854–4500
CA1067 SHERATON NEWPORT BEACH HOTEL.		4545 MAC ARTHUR BLVD	NEWPORT BEACH CA 92660–	(714)833–0570
CA1411 MOTEL 6		4600 WATT AVE	NORTH HIGHLANDS CA 95660–	(916)973–8637
CA1310 COMFORT INN		8647 SEPULVEDA BLVD	NORTH HILLS CA 91343–	(818)893–3776
CA0036 MIKADO BEST WESTERN HOTEL.		12600 RIVERSIDE DR	NORTH HOLLYWOOD CA 91607–3496	(818)763–9141
CA1141 BEST WESTERN NORWALK INN.		10902 FIRESTONE BLVD	NORWALK CA 90650–	(310)929–8831
CA0363 COMFORT INN NORWALK		12512 PIONEER BLVD	NORWALK CA 90650–	(310)868–3453
CA1326 ECONO LODGE		12225 FIRESTONE BLVD	NORWALK CA 90650–4323	(310)868–0791
CA1377 MOTEL 6		10646 E. ROSECRANS AVE	NORWALK CA 90650–	(310)864–2567
CA0250 NORWALK SHERATON HOTEL.		13111 SYCAMORE DR	NORWALK CA 90650–	(310)863–6666
CA0934 QUALITY INN MARIN		215 ALAMEDA DEL PRADO	NOVATO CA 94949–	(415)883–4400
CA1044 RAMADA INN		825 EAST F ST	OAKDALE CA 95361–	(209)847–8181
CA0077 BEST WESTERN YOSEMITE GATEWAY INN.		40530 HWY. 41	OAKHURST CA 93644–	(209)683–2378
CA0550 OAKHURST SHILO INN		40644 HWY. 41	OAKHURST CA 93644–9621	(503)641–6565
CA1099 BEST WESTERN PARK PLAZA HOTEL.		150 HEGENBERGER RD	OAKLAND CA 94621–	(510)635–5300
CA0736 E Z 8 MOTELS INC		8471 ENTERPRISE WAY	OAKLAND CA 94621–	(510)562–4888

CA0824 EXECUTIVE INN EMBARCADERO COVE.		1755 EMBARCADERO	OAKLAND CA 94606–	(510)536–6633
CA0680 HAMPTON INN OAKLAND AIRPORT.		8465 ENTERPRISE WAY	OAKLAND CA 94621–	(510)632–8900
CA0919 HOLIDAY INN OAKLAND AIRPORT.		500 HEGENBERGER RD	OAKLAND CA 94621–	(510)562–5311
CA1199 MOTEL 6, #1015		8480 EDES AVE	OAKLAND CA 94621–	(510)638–1180
CA1198 MOTEL 6, #1080		1801 EMBARCADERO	OAKLAND CA 94606–	(510)436–0103
CA0140 OAKLAND AIRPORT HILTON HOTEL.		1 HEGENBERGER RD	OAKLAND CA 94621–	(510)635–5000
CA0996 PARC OAKLAND HOTEL		1001 BROADWAY	OAKLAND CA 94607–	(510)451–4000
CA0427 WASHINGTON INN		495 10TH ST	OAKLAND CA 94607–	(510)452–1776
CA1328 WATERFRONT PLAZA HOTEL.		10 WASHINGTON ST	OAKLAND CA 94607–	(510)836–3800
CA1165 BEST WESTERN OCEANSIDE INN.		1680 OCEANSIDE BLVD	OCEANSIDE CA 92054–	(619)722–1821
CA1387 MOTEL 6		1403 MISSION AVE	OCEANSIDE CA 92054–	(619)721–6662
CA1215 MOTEL 6, #679		3708 PLAZA DR	OCEANSIDE CA 92056–	(619)941–1011
CA0143 VILLA MARINA SUITES HOTEL.		2008 HARBOR DR. N	OCEANSIDE CA 92054–	(619)722–1561
CA0557 BEST WESTERN CASA OJAI.		1302 E. OJAI AVE	OJAI CA 93023–	(805)646–8175
CA0247 POINT REYES SEASHORE LODGE.	PO BOX 39	10021 COASTAL HWY. 1	OLEMA CA 94950–	(415)663–9000
CA1126 COMFORT INN AIRPORT S .		2301 S. EUCLID AVE	ONTARIO CA 91762–	(909)986–3556
CA0777 COUNTRY SUITES BY CARLSON.		231 N. VINEYARD AVE	ONTARIO CA 91764–	(714)983–8484
CA0480 DOUBLETREE CLUB HOTEL		429 N. VINEYARD AVE	ONTARIO CA 91764–	(714)391–6411
CA0603 FAIRFIELD INN BY MARRIOTT ONTARIO.		3201 E. CENTERLAKE DR	ONTARIO CA 91761–	(714)395–9300
CA1319 HOLIDAY INN EXPRESS—ONTARIO.		1818 E. HOLT BLVD	ONTARIO CA 91761–	(909)988–8466
CA0951 HOLIDAY INN ONTARIO INTERNATIONAL AIRPORT.		1801 E. G ST	ONTARIO CA 91764–	(909)983–3604
CA1401 MOTEL 6		1515 N. MOUNTAIN	ONTARIO CA 91762–	(909)986–6632
CA1252 MOTEL 6, #1009		1560 E. FOURTH ST	ONTARIO CA 91764–	(909)984–2424
CA0165 ONTARIO AIRPORT HILTON		700 N. HAVEN	ONTARIO CA 91764–	(714)980–0400
CA0560 ONTARIO AIRPORT MARRIOTT.		2200 E. HOLT BLVD	ONTARIO CA 91761–	(714)986–8811
CA1094 RESIDENCE INN ONTARIO AIRPORT.		2025 E. D ST	ONTARIO CA 91764–	(909)983–6788
CA0338 ANAHEIM ORANGE HILTON SUITES.		400 N. STATE COLLEGE BLVD	ORANGE CA 92668–	(714)938–1111
CA0849 DAYS INN		279 S. MAIN ST	ORANGE CA 92668–	(714)771–6704
CA1029 DOUBLETREE HOTEL		100 THE CITY DR	ORANGE CA 92668–	(714)634–4500
CA1242 MOTEL 6, #1004		2920 W. CHAPMAN	ORANGE CA 92668–	(714)634–2441
CA1068 RESIDENCE INN ORANGE		201 N STATE COLLEGE BLVD	ORANGE CA 92668–	(714)978–7700
CA0485 WASHINGTON SUITES HOTEL.		720 THE CITY DR. S	ORANGE CA 92668–	(714)740–2700
CA1267 BEST WESTERN GRAND MANOR INN.		1470 FEATHER RIVER BLVD	OROVILLE CA 95965–	(916)533–9675
CA0607 GRAND MANOR INN #36		1470 FEATHER RIVER BLVD	OROVILLE CA 95965–	(916)553–9673
CA1434 MOTEL 6		505 MONTGOMERY ST	OROVILLE CA 95965–	(916)532–9400
CA0620 CASA SIRENA MARINA RESORT.		3605 PENINSULA RD	OXNARD CA 93035–	(805)985–6311
CA0089 FINANCIAL PLAZA HILTON .		600 ESPLANADE DR	OXNARD CA 93030–	(805)485–9666
CA1152 MANDALAY BEACH RESORT.		2101 MANDALAY BEACH ROAD	OXNARD CA 93035–	(805)984–2500
CA0164 ASILOMAR CONFERENCE CENTER.	PO BOX 537	800 ASILOMAR BLVD	PACIFIC GROVE CA 93950–	(408)372–8016
CA0151 PACIFIC GARDENS INN		701 ASILOMAR BLVD	PACIFIC GROVE CA 93950–	(408)646–9414
CA0829 QUALITY INN PACIFIC GROVE.		1111 LIGHTHOUSE AVE	PACIFIC GROVE CA 93950–	(408)646–8885
CA0859 ROSEDALE INN		775 ASILOMAR BLVD	PACIFIC GROVE CA 93950–	(408)655–1000
CA0343 THE MARTINE INN		255 OCEANVIEW BLVD	PACIFIC GROVE CA 93950–	(408)373–3388
CA1336 LIGHTHOUSE HOTEL		105 ROCKAWAY BEACH AVE	PACIFICA CA 94044–	(415)355–6300
CA0723 EMBASSY SUITES PALM DESERT.		74700 HWY. 111	PALM DESERT CA 92260–	(619)340–6600
CA0753 HOLIDAY INN EXPRESS		74675 HWY. 111	PALM DESERT CA 92260–	(619)340–4303
CA0570 MARRIOTT DESERT SPRINGS RESORT.		74855 COUNTRY CLUB DR	PALM DESERT CA 92260–	(619)341–2211
CA0369 TRAVELERS INN		72322 HWY. 111	PALM DESERT CA 92260–	(619)341–9100
CA0761 BEST WESTERN HOST HOTEL.		1633 S. PALM CANYON	PALM SPRINGS CA 92264–	(619)325–9177
CA0619 CASA CODY BED AND BREAKFAST COUNTRY INN.		175 S. CAHUILLA RD	PALM SPRINGS CA 92262–	(619)320–9346
CA0588 COURTYARD BY MARRIOTT PALM SPRINGS.		1300 TAHQUITZ CANYON WAY	PALM SPRINGS CA 92262–	(619)322–6100
CA0207 GOLDEN PALM VILLA		601 GRENFALL RD	PALM SPRINGS CA 92264–	(619)327–1408
CA0253 HOLIDAY INN PALM MOUNTAIN RESORT.		155 S. BELARDO	PALM SPRINGS CA 92262–	(619)325–1301
CA0238 HYATT REGENCY SUITES PALM SPRINGS.		285 N. PALM CANYON DR	PALM SPRINGS CA 92262–	(619)322–9000
CA1212 MOTEL 6, #009		595 E. PALM CANYON DR	PALM SPRINGS CA 92264–	(619)325–6129
CA1216 MOTEL 6, #689		660 S. PALM CANYON DR	PALM SPRINGS CA 92262–	(619)327–4200
CA0346 ORCHID TREE INN		261 S. BELARDO RD	PALM SPRINGS CA 92262–6386	(619)325–2791

CA0259 PALM SPRINGS HILTON		400 E. TAHQUITZ CANYON	PALM SPRINGS CA 92262–	(619)320–6868
CA0549 PALM SPRINGS SHILO INN		1875 N. PALM CANYON DR	PALM SPRINGS CA 92261–2913	(503)641–6565
CA0556 QUALITY INN PALM SPRINGS.		1269 E. PALM CANYON DR	PALM SPRINGS CA 92264–	(619)323–2775
CA0128 RACQUET CLUB RESORT HOTEL.		2743 N. INDIAN CANYON DR	PALM SPRINGS CA 92262–	(619)325–1281
CA0799 RAMADA HOTEL RESORT		1800 E. PALM CANYON DR	PALM SPRINGS CA 92264–	(619)323–1711
CA0275 SUPER 8 LODGE		1900 N. PALM CANYON DR	PALM SPRINGS CA 92262–	(619)322–3757
CA0109 TRAVELODGE PALM SPRINGS.		333 E. PALM CANYON DR	PALM SPRINGS CA 92264–	(619)327–1211
CA0468 VAGABOND INN		1699 S. PALM CANYON DR	PALM SPRINGS CA 92262–	(619)325–7211
CA0209 WYNDHAM PALM SPRINGS HOTEL.		888 E. TAHQUITZ CANYON WAY	PALM SPRINGS CA 92262–	(619)322–6000
CA0785 E Z 8 MOTELS INC		430 W. PALMDALE BLVD	PALMDALE CA 93551–	(805)273–6400
CA0683 HOLIDAY INN PALMDALE		38630 5TH ST. W	PALMDALE CA 93550–	(805)947–8055
CA1214 MOTEL 6, #292		407 W. PALMDALE BLVD	PALMDALE CA 93550–	(805)272–0660
CA0651 HOTEL CALIFORNIA		2431 ASH ST	PALO ALTO CA 94306–	(415)322–7666
CA0709 HYATT HOTEL PALO ALTO		4219 EL CAMINO REAL	PALO ALTO CA 94306–	(415)493–8000
CA1172 MOTEL 6, #41		4301 EL CAMINO REAL	PALO ALTO CA 94306–	(415)949–0833
CA0832 LANTERN MOTEL		5799 WILDWOOD LN	PARADISE CA 95969–	(916)877–5553
CA0415 PONDEROSA GARDENS MOTEL INC.		7010 SKYWAY	PARADISE CA 95969–	(916)872–9094
CA0469 BEST WESTERN COLORADO INN.		2156 E. COLORADO BLVD	PASADENA CA 91107–	(818)793–9339
CA0234 BEST WESTERN PASADENA INN.		3570 E. COLORADO BLVD	PASADENA CA 91107–	(818)796–9100
CA0235 BEST WESTERN PASADENA ROYALE.		3600 E. COLORADO BLVD	PASADENA CA 91107–	(818)793–0950
CA0132 COMFORT INN PASADENA EAST.		2462 E. COLORADO BLVD	PASADENA CA 91107–	(818)405–0811
CA0359 DOUBLETREE HOTEL PASADENA.		191 N. LOS ROBLES AVE	PASADENA CA 91101–	(818)792–2727
CA0174 PASADENA HILTON		150 S. LOS ROBLES AVE	PASADENA CA 91101–	(818)577–1000
CA0454 THE RITZ CARLTON HUNTINGTON HOTEL.		1401 S. OAK KNOLL AVE	PASADENA CA 91106–	(818)568–3900
CA0612 ADELAIDE MOTOR INN		1215 YSABELL AVE	PASO ROBLES CA 93446–	(805)238–2770
CA0782 BEST WESTERN BLACK OAK MOTOR LODGE.		1135 24TH ST	PASO ROBLES CA 93446–	(805)238–4740
CA0014 TRAVELODGE PASO ROBLES.		2701 SPRING ST	PASO ROBLES CA 93446–	(805)238–0078
CA1238 MOTEL 6, #1372		1134 BLACK OAK DR	PASO ROYALES CA 93446–	(805)239–9090
CA0146 THE INN AT SPANISH BAY		2700 17-MILE DR	PEBBLE BEACH CA 93953–	(408)647–7500
CA0686 THE LODGE AT PEBBLE BEACH.		SEVENTEEN MILE DR	PEBBLE BEACH CA 93953–	(408)624–3811
CA0013 BEST WESTERN PETALUMA INN.		200 S. MCDOWELL BLVD	PETALUMA CA 94954–	(707)763–0994
CA0657 MOTEL 6		5135 MONTERO WAY	PETALUMA CA 94954–	(707)664–9090
CA1239 MOTEL 6, #1369		#1369 1368 N. MCDOWELL BLVD	PETALUMA CA 94952–	(707)765–0333
CA0935 QUALITY INN		5100 MONTERO WAY	PETALUMA CA 94954–	(707)664–1155
CA1311 ECONO LODGE		8477 TELEGRAPH ROAD	PICO RIVERA CA 90660–	(310)869–9588
CA0043 TRAVELODGE PICO RIVERA.		7222 ROSEMEAD BLVD	PICO RIVERA CA 90660–	(310)949–6648
CA1240 MOTEL 6, #1049		1501 FITZGERALD DR	PINOLE CA 94561–	(510)222–8174

2. On page 62109, in the table, the 19th entry from the top and the following entries for New Mexico, Nevada and New York should appear immediately thereafter as follows:

NM0068 HOLIDAY INN OF DEMING	PO BOX 1138		DEMING NM 88031–	(505)546–2661
NM0069 BEST WESTERN JICARILLA INN.	PO BOX 233		DULCE NM 87528–	(505)759–3663
NM0070 BEST WESTERN THE INN		700 SCOTT AVE	FARMINGTON NM 87401–	(505)327–5221
NM0071 BLUFFVIEW MOTEL		3700 BLOOMFIELD HWY	FARMINGTON NM 87401–	(505)327–6231
NM0072 COMFORT INN		555 SCOTT AVE	FARMINGTON NM 87401–	(505)325–2626
NM0073 HOLIDAY INN		600 E. BROADWAY	FARMINGTON NM 87499–	(505)327–9811
NM0074 LA QUINTA MOTOR INN		675 SCOTT AVE	FARMINGTON NM 87401–	(505)327–4706
NM0075 BEST WESTERN THE INN		3009 W. 66	GALLUP NM 87301–	(505)722–2221
NM0006 COMFORT INN		3208 W. HWY. 66	GALLUP NM 87301–	(505)722–0982
NM0076 DAYS INN WEST		3201 W. HWY. 66	GALLUP NM 87301–	(505)863–6889
NM0007 RODEWAY INN		2003 W. HWY. 66	GALLUP NM 87301–	(505)863–9385
NM0077 TRAVELERS INN		3304 W. HWY. 66	GALLUP NM 87301–	(505)722–7765
NM0078 BEST WESTERN THE INN		1501 E. SANTA FE AVE	GRANTS NM 87020–	(505)287–7901
NM0003 GRANTS SUPER 8 MOTEL		1604 E. SANTA AVE	GRANTS NM 87020–	(505)287–8811
NM0079 SANDS MOTEL		112 MCARTHUR DR	GRANTS NM 87020–	(505)287–2996
NM0008 INNKEEPERS OF NEW MEXICO.		309 N. MARLAND BLVD	HOBBS NM 88240–	(505)397–7171
NM0080 PECOS RIVER CONFERENCE.		STAR RT	ILFELD NM 87538–	(505)421–7018
NM0081 A DAY'S END LODGE		755 N. VALLEY DR	LAS CRUCES NM 88005–	(505)524–7753
NM0082 DAYS INN		2600 S. VALLEY DR	LAS CRUCES NM 88001–	(505)526–4441
NM0083 HAMPTON INN	PO BOX 2736		LAS CRUCES NM 88004–	(505)526–8311
NM0084 LA QUINTA MOTOR INN		790 AVENIDA DE MESILLA	LAS CRUCES NM 88005–	(505)524–0331
NM0085 LAS CRUCES HILTON		705 S. TELSHOR BLVD	LAS CRUCES NM 88001–	(505)522–4300
NM0086 PLAZA SUITES		301 E. UNIVERSITY BLVD	LAS CRUCES NM 88004–	(505)525–5500
NM0087 ROYAL HOST MOTEL		2146 W. PICACHO	LAS CRUCES NM 88001–	(505)524–8536

NM0088 SUPER 8 MOTEL EAST		4411 N. MAIN	LAS CRUCES NM 88001–	(505)382–1490
NM0089 LAS VEGAS SUPER 8 MOTEL.		2029 N. HWY. 85	LAS VEGAS NM 87701–	(505)425–5288
NM0090 PLAZA HOTEL		230 OLD TOWN PLAZA	LAS VEGAS NM 87701–	(505)425–3591
NM0091 REGAL MOTEL		1809 N. GRAND AVE	LAS VEGAS NM 87701–	(505)454–1456
NM0092 BEST WESTERN SKIES MOTOR INN.		1303 S. MAIN	LORDSBURG NM 88045–	(505)542–8807
NM0093 HILLTOP HOUSE HOTEL	PO BOX 250		LOS ALAMOS NM 87544–	(505)662–2441
NM0094 LOS ALAMOS INN		2201 TRINITY DR	LOS ALAMOS NM 87544–	(505)662–7211
NM0095 LOS LUNAS COMFORT INN		1711 MAIN ST. SW	LOS LUNAS NM 87031–	(505)865–5100
NM0096 INN OF THE MOUNTAIN GODS.		CARRIZO CANYON RD	MESCALERO NM 88340–	(505)257–5141
NM0009 MESON DE MESILLA	PO BOX 1212		MESILLA NM 88046–	(505)525–9212
NM0097 SUPER 8 MOTEL		1805 W. 2ND ST	PORTALES NM 88130–	(505)356–8518
NM0098 MELODY LANE & TRAVELHOST MOTEL.		136 CANYON RD.	RATON NM 87740–	(505)445–3655
NM0099 CARIBEL CONDOMINIUMS	PO BOX 590		RED RIVER NM 87558–	(505)754–2313
NM0100 LIFTS WEST CONDOMINIUM RESORT HOTEL.	PO BOX 318		RED RIVER NM 87558–	(505)754–2778
NM0101 PONDEROSA LODGE	PO BOX 528		RED RIVER NM 87558–	(505)754–2988
NM0102 RODE INN MOTEL	PO BOX 167		RESERVE NM 87830–	(505)533–6496
NM0103 BEST WESTERN INN AT RIO RANCHO.		1465 RIO RANCHO DR	RIO RANCHO NM 87124–	(505)892–1700
NM0105 BELMONT MOTEL		2100 WEST 2ND	ROSWELL NM 88201–	(505)623–4522
NM0015 BEST WESTERN EL RANCHO PALACIO MOTEL.		2205 N. MAIN	ROSWELL NM 88201–	(505)622–2721
NM0104 BEST WESTERN SALLY PORT INN.		2000 N. MAIN ST	ROSWELL NM 88201–	(505)622–6430
NM0106 BUDGET INN WEST		2200 W. 2ND	ROSWELL NM 88201–	(505)623–3811
NM0107 COMFORT INN		2803 W. 2ND ST	ROSWELL NM 88201–	(505)623–9440
NM0016 DAYS INN		1310 N. MAIN ST	ROSWELL NM 88201–	(505)623–4021
NM0108 FRONTIER MOTEL		3010 N. MAIN ST	ROSWELL NM 88201–	(505)622–1400
NM0109 BEST WESTERN SWISS CHALET INN.		1451 MECHEM DR	RUIDOSO NM 88345–	(505)258–3333
NM0017 CARRIZO LODGE	PO DRAWER A		RUIDOSO NM 88345–	(505)257–9131
NM0110 SUPER 8 MOTEL	PO BOX 2600		RUIDOSO NM 88345–	(505)378–8180
NM0111 ALEXANDER'S INN		529 E. PALACE AVE	SANTA FE NM 87501–	(505)986–1431
NM0112 BEST WESTERN INN AT LORETTO.		211 OLD SANTA FE TRAIL	SANTA FE NM 87501–	(505)988–5531
NM0113 CACTUS LODGE MOTEL		2864 CERRILLOS RD	SANTA FE NM 87501–	(505)471–7699
NM0114 EL PARADERO BED & BREAKFAST.		220 W. MANHATTAN	SANTA FE NM 87501–	(505)988–1177
NM0115 ELDORADO HOTEL		309 W. SAN FRANCISCO ST	SANTA FE NM 87501–	(505)988–4455
NM0116 FORT MARCY COMPOUND CONDOMINIUMS.		320 ARTIST RD	SANTA FE NM 87501–	(505)982–9480
NM0117 HILTON OF SANTA FE	PO BOX 2387		SANTA FE NM 87504–	(505)988–2811
NM0118 HOTEL PLAZA REAL		125 WASHINGTON AVE	SANTA FE NM 87501–	(505)988–4900
NM0119 HOTEL SANTA FE		1501 PASEO DE PERALTA	SANTA FE NM 87501–	(505)982–1200
NM0010 INN OF THE ANASAZI		113 WASHINGTON AVE	SANTA FE NM 87501–	(505)988–3030
NM0120 LA QUINTA MOTOR INN		4298 CERRILLOS RD	SANTA FE NM 87501–	(505)471–1142
NM0121 LUXURY INN		3752 CERRILLOS RD	SANTA FE NM 87501–	(505)473–0567
NM0122 PARK INN LIMITED		2900 CERILLOS RD	SANTA FE NM 87501–	(505)473–4281
NM0123 RAMADA INN		2907 CERRILLOS RD	SANTA FE NM 87501–	(505)471–3000
NM0124 RANCHO ENCANTADO	RT 4 BOX 57C		SANTA FE NM 87501–	(505)982–3537
NM0011 RESIDENCE INN BY MARRIOTT.	PO BOX 5248		SANTA FE NM 87502–	(505)988–7300
NM0125 SANTA FE BUDGET INN		725 CERRILLOS RD	SANTA FE NM 87501–	(505)982–5952
NM0126 TERRITORIAL INN		215 WASHINGTON AVE	SANTA FE NM 87501–	(505)989–7737
NM0139 THE BISHOP'S LODGE	PO BOX 2367		SANTA FE NM 87501–	(505)983–6377
NM0127 SAN MIGUEL MOTEL		916 CALIFORNIA AVE. NE	SOCORRO NM 87801–	(505)835–0211
NM0128 SUPER 8 MOTEL		1121 FRONTAGE RD. NW	SOCORRO NM 87801–	(505)835–4626
NM0129 HOLIDAY INN DON FERNANDO DE TAOS.	PO BOX V		TAOS NM 87571–	(505)758–4444
NM0130 QUALITY INN OF TAOS	PO BOX 2319		TAOS NM 87571–	(505)758–2200
NM0131 RANCHO RAMADA TAOS	PO BOX 6257		TAOS NM 87571–	(505)758–2900
NM0132 SAGEBRUSH INN	PO BOX 557		TAOS NM 87571–	(505)758–2254
NM0133 SONTERRA CONDOMINIUMS.	PO BOX 5244		TAOS NM 87571–	(505)758–7989
NM0134 TAOS SUPER 8 MOTEL	PO BOX 6008	1347 S. SANTA FE RD	TAOS NM 87571–	(505)758–1088
NM0135 BEST WESTERN HOT SPRINGS MOTOR INN.		2270 N. DATE ST	TRUTH OR CONSEQ. NM 87901–	(505)894–6665
NM0136 BANDELIER INN	PO BOX 250	STATE ROAD 4	WHITE ROCK NM 87544–	(505)672–3838
NM0137 BEST WESTERN CAVERN INN.	PO BOX 128		WHITE'S CITY NM 88268–	(505)785–2291
NV0018 MEADOW LANE MOTEL		US HWY. #93	ALAMO NV 89001–	(702)725–3371
NV0032 HOLIDAY INN EXPRESS		521 E. FRONT ST	BATTLE MOUNTAIN NV 89820–	(702)635–5880
NV0033 BURRO INN		HWY. 95 S	BEATTY NV 89003–	(702)553–2445
NV0021 EXCHANGE CLUB OF BEATTY.	PO BOX 97	604 MAIN ST	BEATTY NV 89003–	(702)553–2333
NV0108 STAGECOACH HOTEL/CASINO.	P O BOX 836		BEATTY NV 89003–	(702)553–2419
NV0003 STARVIEW MOTEL		1017 NV HWY	BOULDER CITY NV 89005–	(702)293–1658
NV0105 BEST WESTERN TRAILSIDE INN.		1300 NORTH CARSON STREET	CARSON CITY NV 89701–	(702)883–7300
NV0001 CARSON MOTOR LODGE		1421 N. CARSON	CARSON CITY NV 89701–	(702)882–3572

NV0034 CARSON STATION HOTEL CASINO.		900 S. CARSON ST	CARSON CITY NV 89701–	(702)883–0900
NV0035 DAYS INN CARSON CITY		3103 N. CARSON HWY	CARSON CITY NV 89406–	(702)423–7859
NV0115 MOTEL 6		2749 S CARSON ST	CARSON CITY NV 89701–	(702)885–7710
NV0091 CAL NEVA LODGE RESORT HOTEL SPA & CASINO.	PO BOX 368	#2 STATELINE RD	CRYSTAL BAY NV 39402–	(702)832–4000
NV0024 GOLD HILL HOTEL	PO BOX 304	HWY. 342 MAIN ST	DOUG MCQUIDE NV 89440–	(702)847–0111
NV0106 BEST WESTERN AMERITEL INN.		1930 IDAHO STREET	ELKO NV 89801–	(702)738–8787
NV0103 BEST WESTERN AMERITEL INN EXPRESS.		837 IDAHO STREET	ELKO NV 89801–	(702)738–7261
NV0116 MOTEL 6		3021 IDAHO ST	ELKO NV 89801–	(702)738–4337
NV0014 RODEWAY INN		1349 IDAHO ST	ELKO NV 89801–	(702)738–7000
NV0114 SHILO INN		2401 MOUNTAIN CITY HIGHWAY	ELKO NV 89801–	(503)641–6565
NV0098 BEST WESTERN PARK VUE MOTEL.		930 AULTMAN STREET	ELY NV 89301–	(702)289–4497
NV0036 COOPER QUEEN HOTEL AND CASINO.		805 E. 7TH ST	ELY NV 89301–	(702)289–4884
NV0117 MOTEL 6		PIOCHE HIWAY & AVENUE O	ELY NV 89301–	(702)289–6671
NV0015 SUNDOWN LODGE INC	PO BOX 324	MAIN ST	EUREKA NV 89316–	(702)237–5334
NV0109 COMFORT INN		1830 WEST WILLIAMS AVE	FALLON NV 89406–	(702)423–5554
NV0037 MAY INN FALLON		60 ALLEN RD	FALLON NV 89406–	(702)423–7859
NV0038 TOPAZ LODGE & CASINO		1979 US 395 S	GARDNERVILLE NV 89410–	(702)266–3338
NV0039 GOLD HILL HOTEL		HWY. 342 MAIN ST	GOLD HILL NV 89440–	(702)847–0111
NV0040 HYATT REGENCY LAKE TAHOE.		111 COUNTRY CLUB	INCLINE VILLAGE NV 89850–3239	(702)832–1243
NV0027 INN AT INCLINE CONDOMINIUMS.		1003 LAKE BLUE	INCLINE VILLAGE NV 89451–	(702)831–1052
NV0041 PRIMADONNA RESORT AND CASINO.	PO BOX 19129	I–15 S	JEAN NV 89109–	(702)382–1212
NV0002 WHISKEY PETE'S HOTEL AND CASINO.	PO BOX 19129	I–15 S	JEAN NV 89109–	(702)382–1212
NV0029 AIRPORT INN		5100 PARADISE RD	LAS VEGAS NV 89119–	(702)798–2777
NV0006 BARCELONA HOTEL CASINO.		5011 E. CRAIG RD	LAS VEGAS NV 89115–	(702)644–6300
NV0042 BEST WESTERN MARDI GRAS INN.		3500 PARADISE ROAD	LAS VEGAS NV 89109–	(702)731–2020
NV0007 BEST WESTERN MCCARRAN INN.		4970 PARADISE RD	LAS VEGAS NV 89119–	(702)798–5530
NV0043 BLAIR HOUSE HOTEL		344 E. DESERT INN RD	LAS VEGAS NV 89109–	(702)792–2222
NV0044 CAL DAN PRTNRS LTD PRNTR. DBA TOWN HALL HOTEL.		4155 KOVAL LN	LAS VEGAS NV 89109–	(702)731–2111
NV0045 CALIFORNIA HOTEL & CASINO.		12 ODEN	LAS VEGAS NV 89101–	(702)385–1222
NV0031 CAESAR'S PALACE		3570 LAS VEGAS BLVD. S	LAS VEGAS NV 89109–	(702)731–7368
NV0094 CIRCUS CIRCUS MANOR		2880 LAS VEGAS BLVD. S	LAS VEGAS NV 89109–	(702)734–0410
NV0092 CIRCUS CIRCUS SKYRISE		2880 LAS VEGAS BLVD. S	LAS VEGAS NV 89109–	(702)734–0410
NV0093 CIRCUS CIRCUS TOWERS		2880 LAS VEGAS BLVD. S	LAS VEGAS NV 89109–	(702)734–0410
NV0110 COMFORT INN SOUTH		5075 KOVAL LANE	LAS VEGAS NV 89109–	(702)736–3600
NV0030 CONVENTION INN HOTEL		735 E. DESERT INN RD	LAS VEGAS NV 89109–	(702)737–1555
NV0046 COURTYARD BY MARRIOTT LAS VEGAS.		3275 PARADISE RD	LAS VEGAS NV 89109–	(702)791–3600
NV0048 FAIRFIELD INN BY MARRIOTT.		3850 PARADISE RD	LAS VEGAS NV 89109–	(702)791–0899
NV0049 FITZGERALDS CASINO HOTEL.		301 E. FREMONT ST	LAS VEGAS NV 89101–	(702)388–2400
NV0050 FLAMINGO HILTON LAS VEGAS.		3555 LAS VEGAS BLVD. S	LAS VEGAS NV 89109–	(702)733–3320
NV0051 FOUR QUEENS HOTEL CASINO.		202 E. FREMONT ST	LAS VEGAS NV 89101–	(702)385–4011
NV0010 GLASS POOL INN		4613 LAS VEGAS BLVD. S	LAS VEGAS NV 89119–	(702)739–6636
NV0052 GOLDEN NUGGET HOTEL AND CASINO.		129 E. FREMONT ST	LAS VEGAS NV 89101–	(702)385–7111
NV0096 HARRAH'S LAS VEGAS CASINO HOTEL.		3475 LAS VEGAS BLVD. S	LAS VEGAS NV 89109–	(702)369–5000
NV0047 HOLIDAY INN		325 E. FLAMINGO RD	LAS VEGAS NV 89109–	(702)732–9100
NV0053 HOLIDAY INN EXPRESS		5265 INDUSTRIAL	LAS VEGAS NV 89118–	(702)369–1988
NV0054 HOWARD JOHNSON PLAZA SUITE HOTEL.		4255 S. PARADISE RD	LAS VEGAS NV 89109–	(702)369–4400
NV0055 IMPERIAL PALACE HOTEL & CASINO.		3535 LAS BLVD. S	LAS VEGAS NV 89109–	(702)731–3311
NV0012 LA QUINTA MOTOR INN 4536.		3782 LAS VEGAS BLVD. S	LAS VEGAS NV 89109–	(702)739–7457
NV0056 LAS VEGAS CLUB HOTEL & CASINO.		18 E. FREMONT ST	LAS VEGAS NV 89101–	(702)385–1664
NV0057 LAS VEGAS HILTON		3000 PARADISE RD	LAS VEGAS NV 89109–	(702)732–5111
NV0112 LAS VEGAS INN TRAVELODGE.		1501 W SAHARA AVENUE	LAS VEGAS NV 89102–	(702)733–0001
NV0121 MOTEL 6		4125 BOULDER HIGHWAY	LAS VEGAS NV 89121–	(702)457–8051
NV0122 MOTEL 6		5085 S INDUSTRIAL ROAD	LAS VEGAS NV 89118–	(702)739–6747
NV0058 RAMADA HOTEL SAN REMO.		115 E. TROPICANA AVE	LAS VEGAS NV 89109–7304	(702)739–9000
NV0059 RESIDENCE INN BY MARRIOTT LAS VEGAS.		3225 PARADISE RD	LAS VEGAS NV 89109–	(702)796–9300
NV0060 RIO SUITE HOTEL & CASINO.		3700 W. FLAMINGO RD	LAS VEGAS NV 89103–	(702)252–7777

NV0008 SHEFFIELD INN		3970 PARADISE RD	LAS VEGAS NV 89109–	(702)796–9000
NV0113 SHERATON DESERT INN		3145 LAS VEGAS BLVD SOUTH	LAS VEGAS NV 89109–	(702)733–4444
NV0009 SILVER SANDS MOTEL		4617 LAS VEGAS BLVD. S	LAS VEGAS NV 89119–	(702)736–2545
NV0061 SOMERSET HOUSE MOTEL		294 CONVENTION CENTER DR	LAS VEGAS NV 89109–	(370)735–4411
NV0062 SPORTSMANS MANOR		5660 BOULDES HWY	LAS VEGAS NV 89122–	(702)458–7071
NV0101 SUNRISE SUITES		4575 BOULDER HIGHWAY	LAS VEGAS NV 89121–	(702)434–0848
NV0011 SUPER 8 MOTEL		4435 LAS VEGAS BLVD. N	LAS VEGAS NV 89115–	(702)644–5666
NV0063 THE MIRAGE		3400 LAS VEGAS BLVD. S	LAS VEGAS NV 89109–	(702)791–7111
NV0005 WARREN MOTEL APTS		3965 LAS VEGAS BLVD. S	LAS VEGAS NV 89119–	(702)736–6235
NV0064 COLORADO BELLE HOTEL & CASINO.		2100 S. CASINO DR	LAUGHLIN NV 89028–	(702)298–4000
NV0065 EDGEWATER HOTEL AND CASINO.		2020 CASINO DR	LAUGHLIN NV 89029–	(702)298–2453
NV0066 FLAMINGO HILTON LAUGHLIN.		1900 S. CASINO DR	LAUGHLIN NV 89028–	(702)298–5111
NV0067 GOLD RIVER GAMBLING HALL RESORT.		2700 S. CASINO DR	LAUGHLIN NV 89029–	(702)298–2242
NV0068 HARRAH'S CASINO HOTEL LAUGHLIN.	PO BOX 10097		LAUGHLIN NV 89028–	(702)298–6826
NV0069 RAMADA EXPRESS HOTEL & CASINO.		2121 CASINO DR	LAUGHLIN NV 89029–	(702)298–4200
NV0104 RIVERSIDE RESORT HOTEL AND CASINO.		1650 CASINO DRIVE	LAUGHLIN NV 89029–	(702)298–2535
NV0022 BEST WESTERN STURGEON'S MOTEL REST & CASINO.	PO BOX 56	1420 CORNELL AVE	LOVELOCK NV 89419–	(702)273–2971
NV0023 SUPER 10 MOTEL	PO BOX 819	1390 CORNELL AVE	LOVELOCK NV 89419–	(702)273–2224
NV0004 PEPPERMILL RESORT HOTEL AND CASINO.		1134 MESQUITE BLVD	MESQUITE NV 89024–	(702)346–5232
NV0095 VIRGIN RIVER HOTEL & CASINO.		I–15 AND N. MESQUITE BLVD	MESQUITE NV 89024–	(702)346–7777
NV0070 CARSON VALLEY INN		1627 HWY. 395	MINDEN NV 89423–	(702)782–9711
NV0071 MINDEN BEST WESTERN		1795 IRON WOOD	MINDEN NV 89423–	( ) –
NV0072 PAHRUMP STATION DAYS INN.	PO BOX 38	2021 E. LOOP RD	PAHRUMP NV 89041–	(702)727–5100
NV0099 BEST WESTERN AIRPORT PLAZA MOTEL.		1981 TERMINAL WAY	RENO NV 89502–	(702)348–6370
NV0102 BEST WESTERN CONTINENTAL LODGE.		1885 SOUTH VIRGINIA	RENO NV 89502–	(702)329–1001
NV0089 CIRCUS CIRCUS HOTEL CASINO.		516 WEST ST	RENO NV 89503–	(702)329–0711
NV0090 CIRCUS CIRCUS HOTEL CASINO.		500 N. SIERRA ST	RENO NV 89503–	(702)329–0711
NV0097 CLARION HOTEL CASINO		3800 S. VIRGINIA ST	RENO NV 89502–	(702)825–4700
NV0073 FLAMINGO HILTON RENO		255 N. SIERRA ST	RENO NV 89501–	(702)785–7020
NV0075 HOLIDAY INN CONVENTION CENTER.		5851 S. VIRGINIA ST	RENO NV 89502–	(702)825–2940
NV0076 HOLIDAY INN DOWNTOWN RENO.		1000 E. 6TH ST	RENO NV 89512–	(702)786–5151
NV0028 JUNIPER COURT HOTEL		320 EVANS AVE	RENO NV 89501–	(702)329–7002
NV0026 LA QUINTA MOTOR INN		4001 MARKET ST	RENO NV 89502–	(702)348–6100
NV0119 MOTEL 6		866 N. WELLS AVE	RENO NV 89512–	(702)786–9852
NV0123 MOTEL 6		666 N. WELLS AVENUE	RENO NV 89512–	(702)329–8681
NV0100 MOTEL 6 #198		1400 STARDUST ST	RENO NV 89503–	(702)747–7390
NV0077 PEPPERMILL HOTEL & CASINO.		2707 S. VIRGINIA	RENO NV 89502–	(702)826–2121
NV0078 RENO HILTON		2500 E. SECOND ST	RENO NV 89595–	(702)789–2000
NV0079 RENO RAMADA HOTEL CASINO.		200 E. 6TH ST	RENO NV 89512–	(702)788–2000
NV0080 RODEWAY INN		2050 MARKET ST	RENO NV 89502–	(702)786–2500
NV0081 SANDS REGENCY HOTEL & CASINO.		345 N. ARLINGTON AVE	RENO NV 89501–	(702)348–2200
NV0082 VIRGINIAN HOTEL & CASINO.		140 N. VIRGINIA ST	RENO NV 89501–	(702)329–4664
NV0083 EL REY LODGE		430 S. HOBSON AT HWY. 95	SEARCHLIGHT NV 89046–	(702)297–1144
NV0120 MOTEL 6		2405 'B' ST	SPARKS NV 89431–	(702)358–1080
NV0084 SILVER CLUB HOTEL CASINO.		1040 C ST	SPARKS NV 89431–	(702)358–4771
NV0085 WESTERN VILLAGE INN & CASINO.		815 NICHOLS	SPARKS NV 89431–	(702)331–1069
NV0013 LAKE TAHOE HORIZON CASINO RESORT.		HWY. 50	STATELINE NV 89449–	(702)588–6211
NV0020 JIM BUTLER MOTEL INC		100 S. MAIN ST	TONOPAH NV 89049–	(702)482–3577
NV0086 THE STATION HOUSE AND CASINO.	PO BOX 1351	1100 ERIE MAIN ST	TONOPAH NV 89049–	(702)482–9777
NV0025 CHOLLAR MANSON	PO BOX 880		VIRGINIA CITY NV 89440–	( ) –
NV0118 MOTEL 6		US 40 AND US 93	WELLS NV 89835–	(702)752–2116
NV0087 SILVER SMITH CASINO RESORT.		100 WENDOVER BLVD	WENDOVER NV 89883–	(702)664–2231
NV0107 BEST WESTERN GOLD COUNTRY INN.		921 WEST WINNEMUCCA BLVD	WINNEMUCCA NV 89445–	(702)623–6999
NV0016 LAVILLA MOTEL		244 W. 4TH ST	WINNEMUCCA NV 89445–	(702)623–2334
NV0088 MODEL T MOTEL		1122 WINNEMUCCA BLVD	WINNEMUCCA NV 89445–	(702)623–0222
NV0017 MOTEL 6 #213		1600 W. WINNEMUCCA BLVD	WINNEMUCCA NV 89445–	(702)623–1180
NV0111 VAL–U INN		125 E WINNEMUCCA BLVD	WINNEMUCCA NV 89445–	(702)623–5248
NV0019 CASINO WEST MOTEL		11 N. MAIN ST	YERINGTON NV 89447–	(702)463–3144

NY0029 ALBANY INN		1579 CENTRAL AVE	ALBANY NY 12205–	(518)869–8471
NY0030 ALBANY MARRIOTT		189 WOLF RD	ALBANY NY 12205–	(518)458–8444
NY0033 AMBASSADOR MOTOR INN		1600 CENTRAL AVE	ALBANY NY 12205–	(518)456–8982
NY0420 BEST WESTERN ALBANY AIRPORT INN.		200 WOLF RD	ALBANY NY 12205–	(518)458–1000
NY0559 COMFORT INN – ALBANY		1606 CENTRAL AVENUE	ALBANY NY 12205–	(518)869–5327
NY0020 ECONO LODGE		1632 CENTRAL AVE	ALBANY NY 12205–	(518)456–8811
NY0199 HAMPTON INN		10 ULENSKI DR	ALBANY NY 12205–	(518)438–2822
NY0525 HOLIDAY INN TURF ON WOLF ROAD.		205 WOLF RD	ALBANY NY 12205–	(518)458–7250
NY0248 HOWARD JOHNSON HOTEL		1614 CENTRAL AVE	ALBANY NY 12205–	(518)869–0281
NY0251 HOWARD JOHNSON LODGE.		416 SOUTHERN BLVD	ALBANY NY 12209–	(518)462–6555
NY0577 MOTEL 6 (#1227)		100 WATERVLIET AVE	ALBANY NY 12206–	(518)438–7447
NY0332 NORTHWAY INN		1517 CENTRAL AVE	ALBANY NY 12205–	(518)869–0277
NY0585 OMNI ALBANY HOTEL		STATE AND LODGE STREETS	ALBANY NY 12207–	(518)462–6611
NY0383 RED ROOF #112		188 WOLF RD	ALBANY NY 12205–	(518)459–1971
NY0145 DOLLINGER'S MOTEL		213 S. MAIN ST	ALBION NY 14411–	(716)589–5541
NY0326 NEWPORT LANDING MOTEL.		438 W. AVE	ALBION NY 14411–	(716)589–6308
NY0331 NORTH STAR MOTEL	PO BOX 605	RT 12	ALEXANDRIA BAY NY 13607–	(315)482–9332
NY0345 OTTER CREEK INN		2 CROSSMON ST. EXTENSION	ALEXANDRIA BAY NY 13607–	(315)482–5248
NY0398 RIVEREDGE RESORT HOTEL.		17 HOLLAND ST	ALEXANDRIA BAY NY 13607–	(315)482–9917
NY0409 SAXON INN		ONE PARK ST	ALFRED NY 14802–	(607)871–2600
NY0211 HERMITAGE AT NAPEAGUE		MONTAUK HWY. AND NAVAJO LN	AMAGANSETT NY 11930–	(516)267–6151
NY0316 MILL GARTH COUNTRY INN		23 WINDMILL LN	AMAGANSETT NY 11990–	(516)264–3757
NY0336 OCEAN DUNES		BLUFF RD	AMAGANSETT NY 11930–	(516)267–8121
NY0517 WINWARD SHORES		MONTAUK HWY	AMAGANSETT NY 11930–	(516)267–8600
NY0490 TROUTBECK		40 SPINGARN RD	AMENIA NY 12501–	(914)372–9681
NY0516 WILLOWS MOTEL		RT. 343	AMENIA NY 12501–	(914)373–8090
NY0071 BUFFALO MARRIOTT		1340 MILLERSPORT HWY	AMHERST NY 14221–	(716)689–6900
NY0202 HAMPTON INN BUFFALO AMHERST.		10 FLINT RD	AMHERST NY 14226–	(716)689–4414
NY0221 HOLIDAY INN BUFFALO AMHERST.		1881 NIAGARA FALLS BLVD	AMHERST NY 14228–	(716)691–8181
NY0382 RED ROOF #104		42 FLINT RD	AMHERST NY 14226–	(716)689–7474
NY0449 SUPER 8 MOTEL OF AMHERST.		1 FLINT RD	AMHERST NY 14226–	(716)688–0811
NY0447 SUPER 8 MOTEL		RT. 30 S	AMSTERDAM NY 12010–	(518)843–5888
NY0148 DREAMERS COVE MOTEL		PECONIC BAY BLVD. & BAY AVE	AQUEBOGUE NY 11931–	(516)727–3212
NY0037 ARDEN HOMESTEAD			ARDEN NY 10910–	(914)351–5181
NY0126 DAYS INN AUBURN		37 WILLIAM ST	AUBURN NY 13021–	(315)252–7567
NY0450 SUPER 8 MOTEL OF AUBURN.		9 MCMASTER ST	AUBURN NY 13021–	(315)253–8886
NY0040 AVON INN		55 E. MAIN ST	AVON NY 14414–	(716)226–8181
NY0092 COCCA'S MOTEL		2624 RT. 9	BALLSTON SPA NY 12020–	(518)581–1033
NY0589 FRIENDSHIP INN		8212 PARK ROAD	BATAVIA NY 14020–	(716)343–2311
NY0419 SHERATON INN		8250 PARK RD	BATAVIA NY 14020–	(716)344–2100
NY0489 TREADWAY INN OF BATAVIA.		8204 PARK RD	BATAVIA NY 14020–	(716)343–1000
NY0337 OLD NATIONAL HOTEL		13 E. STEUBEN ST	BATH NY 14810–	(607)776–4104
NY0451 SUPER 8 MOTEL OF BATH		333 W. MORRIS ST	BATH NY 14810–	(607)776–2187
NY0472 SWISS CHALET MOTEL		12 W. WASHINGTON ST	BATH NY 14810–	(607)776–7800
NY0076 CAPRI BAYSHORE MOTOR INN.		300 BAYSHORE RD	BAYSHORE NY 11706–	(516)666–7275
NY0551 FIRE ISLAND HOTEL AND RESORT.		20 WEST MAIN STREET	BAYSHORE NY 11706–	(516)583–8000
NY0281 LAKE CHAUTAUQUA LUTHERAN CAMP RETREAT CNTR.	PO BOX 260	RD. # 1	BEMUS POINT NY 14712–	(716)386–4125
NY0044 BANNER MOTEL		1169 FRONT ST	BINGHAMTON NY 13905–	(607)723–8211
NY0057 BINGHAMTON REGENCY BEST WESTERN.		225 WATER ST. 1 SURBURBAN	BINGHAMTON NY 13901–	(607)722–7575
NY0058 BINGHAMTON SUPER 8 MOTEL.		650 FRONT ST	BINGHAMTON NY 13905–	(607)773–8111
NY0537 BROOME COUNTY YMCA		61 SUSQUEHANNA ST	BINGHAMTON NY 13901–	(607)772–0560
NY0590 COMFORT INN		1156 FRONT STREET	BINGHAMTON NY 13905–	(607)722–5353
NY0128 DAYS INN BINGHAMTON		1000 FRONT ST	BINGHAMTON NY 13905–	(607)724–3297
NY0560 ECONO LODGE		RT. 11, UPPER COURT STREET	BINGHAMTON NY 13904–	(607)775–3443
NY0179 FOOTHILLS MOTEL		591 UPPER COURT ST	BINGHAMTON NY 13904–	(607)775–1515
NY0213 HOJO INN BINGHAMTON		700 FRONT ST	BINGHAMTON NY 13905–	(607)724–1341
NY0581 MOTEL 6 (#1222)		1012 FRONT STREET	BINGHAMTON NY 13905–	(607)771–0400
NY0373 RAMADA INN		65 FRONT ST	BINGHAMTON NY 13905–	(607)724–2412
NY0484 THRU WAY MOTEL		399 COURT ST	BINGHAMTON NY 13904–	(607)724–2401
NY0192 GLEASON'S GATE II MOTEL	PO BOX 348E	RD #1	BLACK RIVER NY 13612–	(315)773–4135
NY0072 ECONO LODGE SOUTH		4344 MILESTRIP RD	BLASDELL NY 14219–	(716)825–7530
NY0308 MCKINLEY PARK INN		S. 3950 MCKINLEY PKWY	BLASDELL NY 14219–	(716)648–5700
NY0149 EAGLE'S NEST			BLOOMINGBURG NY 12721–	(914)733–4561
NY0340 OMNI SAGAMORE RESORT		SAGAMORE RD	BOLTON LANDING NY 12814–	(518)644–9400
NY0536 SAGAMORE RESORT HOTEL.		SAGAMORE RD	BOLTON LANDING NY 12814–	(518)644–9400
NY0385 RED ROOF INN		146 MAPLE DR	BOWMANSVILLE NY 14026–	(716)633–1100
NY0047 BEL AIR MOTEL		8961 RT. 11	BREWERTON NY 13029–	(315)699–5991
NY0070 BUFFALO HILTON		120 CHURCH ST	BUFFALO NY 14202–	(716)845–5100
NY0108 COMFORT SUITES		901 DICK RD	BUFFALO NY 14225–	(716)633–6000
NY0133 DAYS INN OF BUFFALO		4345 GENESEE ST	BUFFALO NY 14225–	(716)631–0800

NY0222 HOLIDAY INN BUFFALO DOWNTOWN.		620 DELAWARE AVE	BUFFALO NY 14202–	(716)886–2121
NY0223 HOLIDAY INN BUFFALO GATEWAY.		601 DINGEMS ST	BUFFALO NY 14206–	(716)869–2900
NY0265 HYATT REGENCY BUFFALO		2 FOUNTAIN PLAZA	BUFFALO NY 14202–	(716)856–1234
NY0554 JOURNEY'S END SUITES		601 MAIN STREET	BUFFALO NY 14203–	(716)854–5500
NY0550 LORD AMHERST MOTOR HOTEL.		5000 MAIN STREET	BUFFALO NY 14226–	(716)839–2200
NY0361 QUALITY INN		4217 GENESEE ST	BUFFALO NY 14225–	(716)633–5500
NY0422 SHERATON INN BUFFALO AIRPORT.		2040 WALDEN AVE	BUFFALO NY 14225–	(716)681–2400
NY0507 WELLESLEY INN		4630 GENESEE ST	BUFFALO NY 14225–	(716)631–8966
NY0578 MOTEL 6 (#1226)		4400 MAPLE ROAD	BUFFALO–AMHERST NY 14226–	(716)834–2231
NY0173 ESSEX MICROTEL LERAY		8000 VIRGINIA SMITH DR	CALCIUM NY 13616–	(315)629–5000
NY0068 BUDGET LODGE HERITAGE MOTOR INN.		4360 LAKESHORE DR	CANANDAIGUA NY 14424–	(716)394–2800
NY0074 CAMPUS LODGE MOTOR INN.		4341 LAKESHORE DR	CANANDAIGUA NY 14424–	(716)394–1250
NY0165 ECONO LODGE MUAR LAKES.		170 EASTERN BLVD	CANANDAIGUA NY 14424–	(716)394–9000
NY0341 ONANDA PARK		W. LAKE RD	CANANDAIGUA NY 14424–	(716)396–2252
NY0417 THE INN ON THE LAKE		770 S. MAIN ST	CANANDAIGUA NY 14424–	(716)394–7800
NY0075 CANASTOTA DAYSTOP		N. PETERBORO ST	CANASTOTA NY 13032–	(315)697–3309
NY0315 MIDWAY MOTEL	PO BOX 44	RT. 5	CANASTOTA NY 13032–	(516)697–7928
NY0190 GLEN IRIS INN		7 LETCHWORTH STATE PARK	CASTILE NY 14427–	(716)493–2622
NY0080 CATSKILL MOTOR LODGE		RT. 23 B	CATSKILL NY 12414–	(518)943–5800
NY0183 FRIAR TUCK INN	PO BOX 184	RD #1	CATSKILL NY 12414–	(518)678–2271
NY0064 BRAE LOCH INN		5 ALBANY ST	CAZENOVIA NY 13035–	(315)655–3431
NY0538 CAZENOVIA MOTEL		2364–2392 RT. 20 E	CAZENOVIA NY 13035–	(315)655–9101
NY0083 CHALET MOTOR INN		23 CENTERSHORE RD. & RT. 25A	CENTERPORT NY 11721–	(516)757–4600
NY0123 CRABTREE'S KITTLE HOUSE.		11 KITTLE RD	CHAPPAQUA NY 10514–	(914)666–8044
NY0302 MAPLE INN	PO BOX 46	8 BOWMAN AVE	CHAUTAUQUA NY 14722–	(716)357–4583
NY0441 SUMMER HOUSE INN	PO BOX 43	22 PECK ST	CHAUTAUQUA NY 14722–	(716)357–2101
NY0494 UNITED METHODIST MISSIONARY VACATION HOME.	PO BOX 997	S. LAKE DR	CHAUTAUQUA NY 14722–	(716)357–9544
NY0069 BUFFALO AIRPORT HOLIDAY INN.		4600 GENESEE ST	CHEEKTOWAGA NY 14225–	(716)634–6969
NY0042 BALSAM HOUSE		ATATEKA DR. FRIENDS LAKE	CHESTERTOWN NY 12817–	(518)494–2828
NY0184 FRIENDS LAKE INN		FRIENDS LAKE RD	CHESTERTOWN NY 12817–	(518)494–7840
NY0297 LODGE MOTEL		RT. 5 & 13	CHITTENANGO NY 13037–	(315)687–5009
NY0591 BEAR ROAD FRIENDSHIP INN.		901 SOUTH BAY ROAD	CICERO NY 13039–	(315)458–3510
NY0185 FROST VALLEY YMCA		HC 55 FROST VALLEY RD	CLARYVILLE NY 12725–	(914)985–2291
NY0049 BERTRAND'S MOTEL		229 JAMES ST	CLAYTON NY 13624–	(315)686–3641
NY0575 BEST WESTERN–CLIFTON PARK.	PO BOX 2070	RTE. 146 AND PLANK RD	CLIFTON PARK NY 12065–	(518)371–1811
NY0561 CLIFTON PARK COMFORT INN.		41 FIRE RD, OLD RT. 146	CLIFTON PARK NY 12065–	(518)373–0222
NY0573 BEST WESTERN INN OF COBLESKILL.		ROUTE 7	COBLESKILL NY 12043–	(518)234–4321
NY0201 HAMPTON INN ALBANY LATHAM.		981 NEW LOUDON RD	COHOES NY 12047–	(518)785–0000
NY0545 ALL SEASONS MOTOR LODGE.		1126 JERICHO TNPK	COMMACK NY 11725–	(516)864–3500
NY0200 HAMPTON INN		680 COMMACK RD	COMMACK NY 11725–	(516)462–5700
NY0110 COOPER INN		MAIN AND CHESTNUT ST	COOPERSTOWN NY 13326–	(607)547–9931
NY0112 COOPERSTOWN MOTEL		CHESTNUT AND BEAVER ST	COOPERSTOWN NY 13326–	(607)547–2301
NY0282 LAKE FRONT MOTEL		10 FAIR ST	COOPERSTOWN NY 13326–	(607)547–9511
NY0284 LAKE N PINES MOTEL INC	PO BOX 784	RD. #2	COOPERSTOWN NY 13326–	(607)547–2790

3. On page 62131, in the table, insert the following entries for Pennsylvania and Puerto Rico AFTER the first entry at the top:

PA.				
PA0128 COMFORT INN		1129 E. PITTSBURGH ST	GREENSBURG PA 15601–	(412)832–2600
PA0129 KNIGHTS INN		1215 S. MAIN ST	GREENSBURG PA 15601–	(412)836–7100
PA0130 SHERATON INN GREENSBURG.	RT. 30 E	100 SHERATON DR	GREENSBURG PA 15601–	(412)836–6060
PA0132 COLONIAL BRICK MOTEL	PO BOX AD	RT. 11	HALLSTEAD PA 18822–	(717)879–2162
PA0007 AMERICAN INN		495 EISENHOWER BLVD	HARRISBURG PA 17111–	(717)561–1885
PA0140 BEST WESTERN HOTEL CROWN PARK.		765 EISENHOWER BLVD	HARRISBURG PA 17111–	(717)558–9500
PA0133 BUDGETEL HARRISBURG HERSHEY.		200 N. MOUNTAIN RD	HARRISBURG PA 17112–	(717)540–9339
PA0134 BUDGETEL INN		990 EISENHOWER BLVD	HARRISBURG PA 17111–	(717)939–8000
PA0135 COMFORT INN HARRISBURG EAST.		4021 UNION DEPOSIT RD	HARRISBURG PA 17109–	(717)561–8100
PA0136 ECONO LODGE		150 NATIONWIDE DR	HARRISBURG PA 17110–	(717)545–9089
PA0137 HARRISBURG HILTON & TOWERS.		ONE N. 2ND ST	HARRISBURG PA 17101–	(717)233–6000
PA0138 HARRISBURG MARRIOTT		4650 LINDLE RD	HARRISBURG PA 17111–	(717)564–5511
PA0139 HOLIDAY INN HARRISBURG EAST.		4751 LINDLE RD	HARRISBURG PA 17111–	(717)939–7841

PA0389 HOWARD JOHNSON MOTOR LODGE.		473 S. EISENHOWER BLVD	HARRISBURG PA 17111–	(717)564–4730
PA0412 QUALITY INN RIVERFRONT		525 S. FRONT ST	HARRISBURG PA 17104–	(717)233–1611
PA0141 RED ROOF INN		950 EISENHOWER BLVD	HARRISBURG PA 17111–	(717)939–1331
PA0142 RED ROOF INN		400 CORPORATE CIR	HARRISBURG PA 17110–	(717)657–1445
PA0143 RESIDENCE INN		4480 LEWIS RD	HARRISBURG PA 17111–	(717)561–1900
PA0145 SHERATON INN HARRISBURG.		800 E. PARK DR	HARRISBURG PA 17102–	(717)561–2800
PA0422 SLEEP INN MOTEL		7930 LINGLESTOWN RD	HARRISBURG PA 17112–9390	(717)540–9100
PA0146 SUPER 8 MOTEL		4131 EXECUTIVE PARK DR	HARRISBURG PA 17111–	(717)564–7790
PA0147 DAYS INN BARKEYVILLE		RT. 8 & I–80 EXIT 3 GIBB RD	HARRISVILLE PA 16038–	(814)786–7901
PA0148 GRESHAM'S LAKEVIEW MOTEL.	PO BOX 6150	HC 6	HAWLEY PA 18428–	(717)226–4621
PA0131 SETTLERS INN LTD		FOUR MAIN AVE	HAWLEY PA 18428–	(717)226–2993
PA0149 SILVER BIRCHES	PO BOX 6275	HC 6	HAWLEY PA 18428–	(717)226–4388
PA0150 BEST WESTERN INN	PO BOX 250	32ND & N. CHURCH ST	HAZLETON PA 18201–	(717)454–2494
PA0151 HOLIDAY INN		RT. 309	HAZLETON PA 18201–	(717)455–2061
PA0152 HOLIDAY INN		3200 S. HERMITAGE RD	HERMITAGE PA 16159–	(412)981–1530
PA0015 ECONO LODGE HERSHEY	PO BOX 737	115 LUCY AVE	HERSHEY PA 17033–	(717)533–2515
PA0153 FRIENDSHIP INN HERSHEY		43 W. AREBA AVE	HERSHEY PA 17033–	(717)533–7054
PA0154 PINEHURST INN BED & BREAKFAST.		50 NORTHEAST DR	HERSHEY PA 17033–	(717)533–2603
PA0155 THE HERSHEY LODGE & CONV CENTER.	PO BOX 446	W. CHOCOLATE AVE & UNIVERSITY	HERSHEY PA 17033–	(717)543–3006
PA0155 THE HERSHEY LODGE & CONV CENTER.	PO BOX 446	W. CHOCOLATE AVE/UNIVERSITY DR.	HERSHEY PA 17033–	(717)543–3006
PA0156 TRIANGLE MOTEL		1518 E. CHOCOLATE AVE	HERSHEY PA 17033–	(717)533–2384
PA0157 FIFE & DRUM MOTOR INN		100 TERRACE ST	HONESDALE PA 18431–	(717)253–1392
PA0158 RESIDENCE INN BY MARRIOTT.		3 WALNUT GROVE DR	HORSHAM PA 19044–	(215)443–7330
PA0419 COMFORT INN HERSHEY		1200 MAE ST	HUMMELSTOWN PA 17036–	(717)566–2050
PA0159 DAYS INN HUNTINGDON	PO BOX 353	4TH ST. & US RT. 22	HUNTINGDON PA 16652–	(814)643–3934
PA0160 HOLIDAY INN		1395 WAYNE AVE	INDIANA PA 15701–	(412)463–3561
PA0161 INN TOWNER MOTEL		REAR 886 WAYNE AVE	INDIANA PA 15701–	(412)463–8726
PA0162 HARVEST DRIVE FAMILY MOTEL.		3370 HARVEST DR	INTERCOURSE PA 17534–	(717)768–7186
PA0163 TRAVELERS REST MOTEL	PO BOX 128	3701 OLD PHILADELPHIA PIKE	INTERCOURSE PA 17534–	(717)768–8731
PA0164 KNIGHTS COURT OF IRWIN	PO BOX 365	7990 RT. 30	IRWIN PA 15642–	(412)863–2600
PA0002 HARRY PACKER MANSION INN.	PO BOX 458	PACKER HILL	JIM THORPE PA 18229–	(717)325–8566
PA0165 INN AT JIM THORPE		24 BROADWAY	JIM THORPE PA 18229–	(717)325–2599
PA0166 COMFORT INN		455 THEATER DR	JOHNSTOWN PA 15904–	(814)266–3678
PA0167 MURPHY INN		3203 PENMAR LN	JOHNSTOWN PA 15904–	(814)266–4800
PA0168 SUPER 8 MOTEL		1440 SCALP AVE	JOHNSTOWN PA 15904–	(814)266–8789
PA0169 LONGWOOD INN		815 E. BALTIMORE PIKE	KENNETT SQUARE PA 19348–	(215)444–3515
PA0170 COMFORT INN		550 W. DEKALB PIKE	KING OF PRUSSIA PA 19406–	(610)962–0700
PA0395 ECONO LODGE AT VALLEY FORGE.		815 W. DEKALB PIKE	KING OF PRUSSIA PA 19406–	(215)265–7200
PA0171 HOWARD JOHNSON	RT. 202 N	127 S. GULPH RD	KING OF PRUSSIA PA 19406–	(215)265–4500
PA0426 MCINTOSH INN		260 N. GULPH RD	KING OF PRUSSIA PA 19406–	(610)768–9500
PA0172 SHERATON PLAZA HOTEL		1210 FIRST AVE	KING OF PRUSSIA PA 19406–1341	(610)265–1500
PA0173 STOUFFER VALLEY FORGE HOTEL.		480 N. GULPH RD	KING OF PRUSSIA PA 19403–	(215)337–1800
PA0174 VALLEY FORGE HILTON		251 W. DE KALB PIKE	KING OF PRUSSIA PA 19406–	(215)337–1200
PA0020 VALLEY FORGE SHERATON HOTEL.		1150 FIRST AVE	KING OF PRUSSIA PA 19406–	(215)337–2000
PA0411 FRIENDSHIP INN—KITTANNING.	RD 6	FRIENDSHIP PLAZA	KITTANNING PA 16201–	(412)543–1100
PA0175 QUALITY INN		405 BUTLER RD	KITTANNING PA 16201–	(412)543–1159
PA0176 LAHASKA HOTEL	PO BOX 500	5775 YORK RD	LAHASKA PA 18931–	(215)794–0440
PA0177 COMFORT INN LAKE ARIEL	RD #5	I–84 EXIT 5 & PA 191	LAKE ARIEL PA 18436–	(717)689–4148
PA0178 CANADIANA MOTEL		2390 LINCOLN HWY. E	LANCASTER PA 17602–	(717)397–6531
PA0179 CONTINENTAL INN		2285 LINCOLN HWY. E	LANCASTER PA 17602–	(717)299–0421
PA0180 ECONO LODGE NORTH		2165 US HWY. 30 E	LANCASTER PA 17602–	(717)299–6900
PA0181 ECONO LODGE SOUTH		2140 US HIGHWAY 30 EAST	LANCASTER PA 17602–	(717)397–1900
PA0181 ECONO LODGE SOUTH		2140 US HWY 30 EAST	LANCASTER PA 17602–	(717)397–1900
PA0182 EDEN RESORT INN		222 EDEN RD	LANCASTER PA 17601–	(717)569–6444
PA0187 FRIENDSHIP INN ITALIAN VILLA.		2331 LINCOLN HWY. EAST	LANCASTER PA 17602–	(717)397–4973
PA0183 FULTON STEAMBOAT INN	PO BOX 333	RT. 30 E. & RT. 896	LANCASTER PA 17602–	(717)299–9999
PA0184 HAMPTON INN		545 GREENFIELD RD	LANCASTER PA 17601–	(717)299–1200
PA0185 HOLIDAY INN NORTH		1492 LITITZ PIKE	LANCASTER PA 17601–	(717)393–0771
PA0186 HOWARD JOHNSON		2100 LINCOLN HWY. E	LANCASTER PA 17602–	(717)397–7781
PA0188 LANCASTER HILTON GARDEN INN.		101 GRANITE RUN DR	LANCASTER PA 17601–	(717)560–0880
PA0189 LANCASTER HOST RESORT.		2300 LINCOLN HWY. E	LANCASTER PA 17602–	(717)299–5500
PA0190 MCINTOSH INN		2307 LINCOLN HWY. E	LANCASTER PA 17602–	(717)299–9700
PA0190 MCINTOSH INN	RT. 30	2307 LINCOLN HWY. E	LANCASTER PA 17602–	(717)299–9700
PA0191 OLDE HICKORY INN		600 OLDE HICKORY RD	LANCASTER PA 17601–	(717)569–0477
PA0192 ROCKVALE VILLAGE INN		24 S. WILLOWDALE DR	LANCASTER PA 17602–	(717)293–9500
PA0193 SUPER 8 MOTEL		2129 LINCOLN HWY. E	LANCASTER PA 17602–	(717)393–8888
PA0194 TRAVELODGE LANCASTER		2101 COLUMBIA AVE	LANCASTER PA 17603–	(717)397–4201
PA0195 WESTFIELD MOTOR INN		2929 HEMPLAND RD	LANCASTER PA 17601–	(717)397–9300
PA0196 YOUR PLACE COUNTRY INN.		2133 LINCOLN HWY. E	LANCASTER PA 17602–	(717)393–3413

PA0197 RED ROOF INN		3100 CABOT BLVD. W	LANGHORNE PA 19047–	(215)750–6200
PA0198 SHERATON BUCKS COUNTY HOTEL.		400 OXFORD VALLEY RD	LANGHORNE PA 19047–	(215)547–4100
PA0199 HOLIDAY INN CONF CENTER.	PO BOX 22226	7736 ADRIENNE DR	LEHIGH VALLEY PA 18002–	(215)391–1001
PA0200 RADISSON HOTEL PHILADELPHIA AIRPORT.		500 STEVENS DR	LESTER PA 19113–	(215)521–5900
PA0397 COMFORT INN		6401 BRISTOL PIKE	LEVITTOWN PA 19057–	(215)547–5000
PA0201 BEST WESTERN COUNTRY CUPBOARD INN.	PO BOX 46	ROUTE 15 NORTH	LEWISBURG PA 17837–	(717)524–5500
PA0201 BEST WESTERN COUNTRY CUPBOARD INN.	PO BOX 46	RT. 15 N	LEWISBURG PA 17837–	(717)524–5500
PA0202 A B C MOTEL	PO BOX 434	RT. 30 E	LIGONIER PA 15658–	(412)238–9541
PA0204 DESMOND GREAT VALLEY		ONE LIBERTY BLVD	MALVERN PA 19355–	(215)296–9800
PA0203 GENERAL WARREN INNE		9 VILLAGE WAY	MALVERN PA 19355–	(215)296–3637
PA0205 MCINTOSH INN		ONE MOREHALL RD	MALVERN PA 19355–	(610)279–6000
PA0206 COMFORT INN MANSFIELD		300 GATEWAY DR	MANSFIELD PA 16933–	(717)662–3000
PA0207 MANSFIELD MOTOR INN		26 S. MAIN ST	MANSFIELD PA 16933–	(717)662–2136
PA0208 KELLY HOTEL	PO BOX 330	102 S. FOREST ST	MARIENVILLE PA 16239–	(814)927–6652
PA0209 MARCO'S MOTOR INN	PO BOX 183	HWY. 441 & BANK ST	MARIETTA PA 17547–	(717)426–1354
PA0210 FAIRFIELD INN BY MARRIOTT.		30 SAINT FRANCIS WAY	MARS PA 16046–	(412)772–0600
PA0388 RED ROOF INN		20009 RT. 19	MARS PA 16046–	(412)776–5670
PA0211 SHERATON		910 SHERATON DR	MARS PA 16046–	(412)776–6900
PA0212 JOHNNIE'S MOTEL		709 LINCOLNWAY E	MCCONNELLSBURG PA 17233–	(717)485–3116
PA0213 SUPER 8 MOTEL		845 CONNEAUT LAKE RD	MEADVILLE PA 16335–	(814)333–8833
PA0012 COMFORT INN WEST		6325 CARLISLE PIKE RT. 11	MECHANICSBURG PA 17055–	(717)790–0924
PA0427 MCINTOSH INN		US RT. 1 & RT. 352 S	MEDIA PA 19063–	(610)565–5800
PA0214 FAIRVILLE INN	PO BOX 219	RT. 52 KENNETT PIKE	MENDENHALL PA 19357–	(215)388–5900
PA0215 MENDENHALL HOTEL		RT. 52	MENDENHALL PA 19357–	(215)388–1181
PA0216 HOWARD JOHNSON		RT. 19 & I–80 RD. #6	MERCER PA 16137–	(412)748–3308
PA0217 DAYS INN AIRPORT HARRISBURG.		815 EISENHOWER BLVD	MIDDLETOWN PA 17057–	(717)939–1600
PA0218 RODEWAY INN AIRPORT		800 EISENHOWER BLVD	MIDDLETOWN PA 17057–	(717)939–4147
PA0234 MIFFLINBURG HOTEL MOTEL.		264 CHESTNUT ST	MIFFLINBURG PA 17844–	(717)966–3003
PA0219 ECONO LODGE	PO BOX 202		MIFFLINTOWN PA 17059–	(717)436–8941
PA0406 ECONO LODGE		US 322/22 AND PA 35	MIFFLINTOWN PA 17059–0202	(717)436–5981
PA0220 SUPER 8 MOTEL	PO BOX E	I–80 EXIT 37	MIFFLINVILLE PA 18631–	(717)752–2452
PA0221 CLIFF PARK INN	PO BOX 7200	CLIFF PARK RD	MILFORD PA 18337–	(717)296–6491
PA0222 HILLTOP MOTEL	PO BOX 576	RT. 6	MILFORD PA 18337–	(717)296–9444
PA0223 A COUNTRY INN		330 E. WYOMISSING AVE	MOHNTON PA 19540–	(215)484–4242
PA0224 RED ROOF INN		2729 MOSSIDE BLVD	MONROEVILLE PA 15146–	(412)856–4738
PA0225 BEST WESTERN MONTGOMERYVILLE.		969 BETHLEHEM PIKE	MONTGOMERYVILLE PA 18936–	(215)699–8800
PA0226 COMFORT INN MONTGOMERYVILLE.		678 BETHLEHEM PIKE	MONTGOMERYVILLE PA 18936–	(215)361–3600
PA0227 SUPER 8 MOTEL		2815 OLD MONTOURSVILLE RD	MONTOURSVILLE PA 17754–	(717)368–8111
PA0228 INN AMERICA	PO BOX D	GROW AVE	MONTROSE PA 18801–	(717)278–9284
PA0229 HOLIDAY INN		EXIT 22 PA TNPK	MORGANTOWN PA 19543–	(215)286–3000
PA0230 PENN HOTEL	PO BOX 75		MORRIS PA 16938–	(717)724–2478
PA0231 COUNTRY HOUSE MOTEL		US RT. 1 S	MORRISVILLE PA 19067–	(215)295–7331
PA0232 PINE BURR INN		RT. 61 ATLAS	MT CARMEL PA 17851–	(717)339–3870
PA0233 VISINTAINER'S MOTEL		50 W. FOURTH ST	MT CARMEL PA 17851–	(717)339–1262
PA0235 LANTERN MOTOR LODGE		RT. 209 & RT. 93	NESQUEHONING PA 18240–	(717)669–9433
PA0236 COMFORT INN		1740 NEW BUTLER RD	NEW CASTLE PA 16101–	(412)658–7700
PA0237 COMFORT INN NEW COLUMBIA.	PO BOX 62	I–80 AT US 15	NEW COLUMBIA PA 17856–	(717)568–8000
PA0238 DAYS INN		353 LEWISBERRY RD	NEW CUMBERLAND PA 17070–	(717)774–4156
PA0239 FAIRFIELD INN MARRIOTT		175 BEACON HILL BLVD	NEW CUMBERLAND PA 17070–	(717)774–6200
PA0413 HARRISBURG SOUTH KNIGHTS INN.		300 COMMERCE DR	NEW CUMBERLAND PA 17070–2400	(717)774–5990
PA0240 MCINTOSH INN		130 LIMEKILN RD	NEW CUMBERLAND PA 17070–	(717)774–8888
PA0241 MOTEL 6		200 COMMERCE AVE	NEW CUMBERLAND PA 17070–	(717)774–8910
PA0398 COMFORT INN		624 W. MAIN ST	NEW HOLLAND PA 17557–	(717)355–9900
PA0242 DAYS INN NEW STANTON		127 W. BYERS AVE	NEW STANTON PA 15672–	(412)925–3591
PA0243 HOWARD JOHNSON	PO BOX 214	112 W. BYERS AVE	NEW STANTON PA 15672–	(412)925–3511
PA0244 KNIGHTS COURT	PO BOX 747	110 N. MAIN ST	NEW STANTON PA 15672–	(412)925–6755
PA0245 SUMMERSON'S FOUR SEASONS.	PO BOX 73	RT. 120	NORTH BEND PA 17760–	(717)923–1398
PA0246 COMFORT INN		7011 STEUBENVILLE PIKE	OAKDALE PA 15071–	(412)787–2600
PA0247 HOWARD JOHNSON		2101 MONTOUR CHURCH RD	OAKDALE PA 15071–	(412)923–2244
PA0248 PALMYRA MOTEL		1071 E. MAIN ST	PALMYRA PA 17078–	(717)838–1324
PA0249 KEYSTONE MOTEL	PO BOX 325	RT. 30 RD. 2	PARKESBURG PA 19365–	(717)442–8800
PA0250 ATOP THE BELLEVUE		1415 CHANCELLOR CT	PHILADELPHIA PA 19102–	(215)893–1776
PA0260 BEST WESTERM INDEPENDENCE PARK HOTEL.		235 CHESTNUT ST	PHILADELPHIA PA 19106–	(215)922–4443
PA0251 BEST WESTERN HOTEL PHILADELPHIA NE.		11580 ROOSEVELT BLVD	PHILADELPHIA PA 19116–	(215)464–9500
PA0260 BEST WESTERN INDEPENDENCE PARK HOTEL.		235 CHESTNUT ST	PHILADELPHIA PA 19106–	(215)922–4443
PA0009 CHESTNUT HILL HOTEL		8229 GERMANTOWN AVE	PHILADELPHIA PA 19118–	(215)242–5905
PA0252 COMFORT INN PENN'S LANDING.		100 N. CHRISTOPHER COLUMBUS BL.	PHILADELPHIA PA 19106–	(215)627–7900

PA0253 COURTYARD PHILADELPHIA.		8900 BARTRAM AVE	PHILADELPHIA PA 19153–	(215)365–2200
PA0254 DAYS INN		4200 ROOSEVELT BLVD	PHILADELPHIA PA 19124–	(215)289–9200
PA0266 DOUBLETREE HOTEL		BROAD & LOCUST ST	PHILADELPHIA PA 19107–	(215)893–1600
PA0255 EMBASSY SUITES HOTEL		9000 BARTRAM AVE	PHILADELPHIA PA 19153–	(215)365–4500
PA0256 FOUR SEASON'S HOTEL		1810–34 RACE ST	PHILADELPHIA PA 19103–	(215)963–1500
PA0257 GUEST QUARTERS SUITE HOTEL.		4101 ISLAND AVE	PHILADELPHIA PA 19153–	(215)365–6600
PA0258 HOLIDAY INN		440 ARCH ST	PHILADELPHIA PA 19106–	(215)923–8660
PA0393 HOLIDAY INN CITY CENTRE		1800 MARKET ST	PHILADELPHIA PA 19103–	(215)561–7500
PA0391 HOLIDAY INN CITY LINE—PHILADELPHIA.		4100 PRESIDENTIAL BLVD	PHILADELPHIA PA 19131–	(215)477–0200
PA0259 HOLIDAY INN INDEPENDENCE MALL.		400 ARCH ST	PHILADELPHIA PA 19106–	(215)923–8660
PA0265 HOLIDAY INN PHILADELPHIA STADIUM.		10TH ST. & PACKER AVE	PHILADELPHIA PA 19148–	(215)755–9500
PA0261 KORMAN SUITES HOTEL		2001 HAMILTON ST	PHILADELPHIA PA 19130–	(215)569–7000
PA0262 OMNI HOTEL		401 CHESTNUT ST	PHILADELPHIA PA 19106–	(215)925–0000
PA0263 PENN'S VIEW INN		14 N. FRONT ST	PHILADELPHIA PA 19106–	(215)922–7600
PA0264 PHILADELPHIA AIRPORT HILTON.		4509 ISLAND AVE	PHILADELPHIA PA 19153–	(215)365–4150
PA0267 QUALITY INN		1010 RACE ST	PHILADELPHIA PA 19107–	(215)922–1730
PA0390 RESIDENCE INN BY MARRIOTT—PHILA AIRPORT.		4630 ISLAND AVENUE	PHILADELPHIA PA 19153–	(215)492–1611
PA0390 RESIDENCE INN BY MARRIOTT—PHILA AIRPORT.		4630 ISLAND AVE	PHILADELPHIA PA 19153–	(215)492–1611
PA0268 RITZ CARLTON HOTEL		17TH & CHESTNUT	PHILADELPHIA PA 19103–	(215)563–8215
PA0269 SHERATON INN NORTHEAST.		9461 ROOSEVELT BLVD	PHILADELPHIA PA 19114–	(215)671–9600
PA0270 SHERATON SOCIETY HILL HOTEL.		ONE DOCK ST	PHILADELPHIA PA 19106–	(215)238–6000
PA0271 SHERATON UNIVERSITY CITY.		36TH & CHESTNUT ST	PHILADELPHIA PA 19104–	(215)387–8000
PA0272 THE HUB MOTOR LODGE INC.		7605 ROOSEVELT BLVD	PHILADELPHIA PA 19152–	(215)332–4300
PA0273 THE RITTENHOUSE		210 W. RITTENHOUSE SQUARE	PHILADELPHIA PA 19103–	(215)546–9000
PA0274 WYNDHAM FRANKLIN PLAZA.		TWO FRANKLIN PLAZA	PHILADELPHIA PA 19103–	(215)448–2000
PA0429 EMBASSY SUITES		1776 BENJAMIN FRANKLIN PKWY	PHILADELPHIA PA 19103–	(215)561–1776
PA0275 COLONY PARK MOTOR INN	PO BOX 585	R D #1	PINE GROVE PA 17963–	(717)345–8095
PA0010 COMFORT INN		I–81 RR 443	PINE GROVE PA 17963–	(717)345–8031
PA0276 ECONO LODGE	PO BOX 581	RR 1	PINE GROVE PA 17963–	(717)345–4099
PA0277 FORGE B&B	PO BOX 438	RR 1	PINE GROVE PA 17963–	(717)345–8349
PA0278 AVALON MOTEL	RT. 65	512 OHIO RIVER BLVD	PITTSBURGH PA 15202–	(412)761–4212
PA0279 CLUBHOUSE INN		5311 CAMPBELLS RUN RD	PITTSBURGH PA 15205–	(412)788–8400
PA0280 DAYS INN		SIX LANDINGS DR	PITTSBURGH PA 15238–	(412)828–5400
PA0281 DAYS INN PITTSBURGH		100 KISOW DR	PITTSBURGH PA 15205–	( ) –
PA0282 HARLEY HOTEL OF PITTSBURGH.		699 RODI RD	PITTSBURGH PA 15235–	(412)244–1600
PA0019 HAWTHORN SUITES HOTEL		700 MANSFIELD AVE	PITTSBURGH PA 15205–	(412)279–6300
PA0283 HOLIDAY INN		100 LYTTON AVE	PITTSBURGH PA 15213–	(412)682–6200
PA0284 MOTEL 6		211 BEECHAM DR	PITTSBURGH PA 15205–	(412)922–9400
PA0285 PARKWAY CENTER INN		875 GREENTREE RD	PITTSBURGH PA 15220–	(412)992–7070
PA0286 PITTSBURGH HILTON & TOWERS.		600 COMMONWEALTH PL	PITTSBURGH PA 15230–	(412)594–5141
PA0287 PITTSBURGH MOTEL		4270 STEUBENVILLE PIKE	PITTSBURGH PA 15205–	(412)922–1618
PA0409 PITTSBURGH WEST ECONO LODGE.		4800 STEUBENVILLE PIKE	PITTSBURGH PA 15205–	(412)922–6900
PA0288 RED ROOF INN		6404 STEUBENVILLE PIKE	PITTSBURGH PA 15205–	(412)787–7870
PA0289 SHERATON HOTEL		7 STATION SQUARE DR	PITTSBURGH PA 15219–	(412)261–2000
PA0290 SHERATON SOUTH HILLS		164 FORT COUCH RD	PITTSBURGH PA 15241–	(412)343–4600
PA0291 VISTA HOTEL PITTSBURGH		1000 PENN AVE	PITTSBURGH PA 15222–	(412)281–3700
PA0292 HOWARD JOHNSON		5300 CLAIRTON BLVD	PLEASANT HILLS PA 15236–	(412)884–6000
PA0293 GUEST QUARTER'S HOTEL		640 W. GERMANTOWN PIKE	PLYMOUTH MEETING PA 19462–	(215)834–8300
PA0294 PARKWAY MOTEL	PO BOX 516	R D 1	PORTAGE PA 15946–	(814)736–3378
PA0011 COMFORT INN		RT. 100 & SHOEMAKER RD	POTTSTOWN PA 19464–	(215)326–5000
PA0295 HOLIDAY INN EXPRESS		1600 INDUSTRIAL HWY	POTTSTOWN PA 19464–	(215)970–7863
PA0296 RAMADA INN		RT. 100 & KING ST	POTTSTOWN PA 19464–	(215)326–6545
PA0375 PATIO COURT MOTEL		720 N. WESTEND BLVD	QUAKERTOWN PA 18951–	(215)536–7000
PA0297 QUAKERTOWN MOTEL		1920 RT. 663	QUAKERTOWN PA 18951–	(215)536–7600
PA0298 COMFORT INN		2200 STACY DR	READING PA 19605–	(215)371–0500
PA0299 DUTCH COLONY MOTOR INN.		4635 PERKIOMEN AVE	READING PA 19606–	(215)799–2345
PA0407 ECONO LODGE		2310 FRAVER DR	READING PA 19605–	(215)378–1145
PA0300 HOLIDAY INN		2545 N. 5TH ST. HWY	READING PA 19605–	(215)929–4741
PA0301 INN AT READING		1040 PARK RD	READING PA 19610–	(215)372–7811
PA0302 RIVEREDGE INCORPORATED.		2017 BERNVILLE RD	READING PA 19601–	(215)376–6711
PA0387 WELLESLEY INN READING		910 WOODLAND AVE	READING PA 19610–	(215)374–1500
PA0303 KEYSTONE HOTEL		400 ERIE AVE	RENOVO PA 17764–	(717)923–2329
PA0304 SPORTSMAN HOTEL		FARWELL AVE	RENOVO PA 17764–	(717)923–9968
PA0305 CHERRY LANE MOTOR INN		84 N. RONKS RD	RONKS PA 17572–	(717)687–7646
PA0306 HERSHEY FARM MOTOR INN.	PO BOX 89	240 HARTMAN BRIDGE RD	RONKS PA 17579–	(717)687–8635
PA0307 OLDE AMISH INN		33 E. BROOK RD	RONKS PA 17572–	(717)393–3100

PA0308 BEST WESTERN GUTHRIE INN.	PO BOX 400	255 SPRING ST	SAYRE PA 18840–	(717)888–7711
PA0309 LACKAWANNA STATION HOTEL.		700 LACKAWANNA AVE	SCRANTON PA 18503–	(717)342–8300
PA0310 APPLEBUTTER INN		152 APPLEWOOD LN	SLIPPER ROCK PA 16057–	(412)794–1844
PA0311 DAYS INN		200 WATERWORKS RD	SOMERSET PA 15501–	(814)445–9200
PA0312 HIGHLANDER MOTEL		799 N. CENTER AVE	SOMERSET PA 15501–	(814)445–7988
PA0313 KNIGHTS INN		I–70 76 AT EXIT 10	SOMERSET PA 15501–	(814)445–8933
PA0314 R & W MOTEL OF SOMERSET.	PO BOX 191	202 SHAFFER ST	SOMERSET PA 15501–	(814)445–9611
PA0315 ALPINE INN MOTOR LODGE		650 BALTIMORE PIKE	SPRINGFIELD PA 19064–	(215)544–4700
PA0316 EXECUTIVE MOTOR INN		675 BALTIMORE PIKE	SPRINGFIELD PA 19064–	(215)543–0555
PA0414 RADNOR HOTEL		591 E. LANCASTER AVE	ST. DAVIDS PA 19087–	(610)688–5800
PA0008 ATHERTON HILTON		125 S. ATHERTON ST	STATE COLLEGE PA 16801–	(814)231–2100
PA0415 BEST WESTERN STATE COLLEGE INN.		1663 S. ATHERTON ST	STATE COLLEGE PA 16801–	(814)237–8005
PA0317 HAMPTON INN		1101 E. COLLEGE AVE	STATE COLLEGE PA 16801–	(814)231–1590
PA0318 NITTANY BUDGET MOTEL		1274 N. ATHERTON ST	STATE COLLEGE PA 16803–	(814)237–7638
PA0319 TOFTREES HOTEL RESORT		ONE COUNTRY CLUB LN	STATE COLLEGE PA 16803–	(814)234–8000
PA0396 SHANNON INN	RR5 BOX 5202	I–80 EXIT 52	STROUDSBURG PA 18301–	(717)424–1951
PA0320 SHERATON POCONO INN		1220 W. MAIN ST	STROUDSBURG PA 18360–	(717)424–1930
PA0321 HOJO INN POCONO		RT. 715	TANNERSVILLE PA 18372–	(717)629–4100
PA0322 CROSS CREEK RESORT	PO BOX 432	RT. 8 S	TITUSVILLE PA 16354–	(814)827–9611
PA0323 LOPSIDED INN		RT. 196	TOBYHANNA PA 18466–	(717)839–8421
PA0324 HOLIDAY INN BUCKS COUNTY.		4700 STREET RD	TREVOSE PA 19053–	(215)364–2000
PA0325 HOWARD JOHNSON		2779 RT. 1 N	TREVOSE PA 19053–	(215)638–4554
PA0326 PENN MOTEL		2921 LINCOLN HWY	TREVOSE PA 19047–	(215)639–5200
PA0327 RAMADA HOTEL & CONF CENTER.		2400 OLD LINCOLN HWY	TREVOSE PA 19053–	(215)638–8300
PA0328 RED ROOF INN		3100 LINCOLN HWY	TREVOSE PA 19053–	(215)244–9422
PA0329 FOREST INN	PO BOX 98	HC 64	TROUT RUN PA 17771–	(717)995–9330
PA0330 SHADOWBROOK RESORT	PO BOX 133	RT. 6 E	TUNKHANNOCK PA 18657–	(717)836–5417
PA0331 CANADOHTA LAKE MOTEL	PO BOX 2554	R.D. 2	UNION CITY PA 16438–	(814)694–3219
PA0017 HOLIDAY INN		700 W. MAIN ST	UNIONTOWN PA 15401–	(412)437–2816
PA0332 M G MOTEL	PO BOX 130	RD 6	UNIONTOWN PA 15401–	(412)437–0506
PA0333 BRIDGETON HOUSE	PO BOX 167	RIVER RD	UPPER BLACK EDDY PA 18972–	(215)982–5856
PA0334 DAYS INN		RD #2	WARFORDSBURG PA 17267–	(814)735–4347
PA0335 REGENCY 265 MOTOR INN		265 E. STREET RD	WARMINSTER PA 18974–	(215)674–2200
PA0336 PENN LAUREL INN		706 PENN AVE. W	WARREN PA 16365–	(814)723–8300
PA0337 SUPER 8 MOTEL		204 STRUTHERS ST	WARREN PA 16365–	(814)723–8881
PA0338 DAYS INN		909 SHERATON DR	WARRENDALE PA 15086–	(412)772–2700
PA0339 WARRINGTON MOTOR LODGE.		701 EASTON RD	WARRINGTON PA 18976–	(215)343–0373
PA0340 INTERSTATE HOTEL		1396 W. CHESTNUT ST	WASHINGTON PA 15301–	(412)225–9900
PA0341 RED ROOF INN		1399 W. CHESTNUT ST	WASHINGTON PA 15301–	(412)228–5750
PA0342 PINE CREEK VALLEY LODGE.	PO BOX 123	RT. 44 N	WATERVILLE PA 17776–	(717)753–3254
PA0343 WATSON INN		100 MAIN ST	WATSONTOWN PA 17777–	(717)538–1832
PA0344 COURTYARD BY MARRIOTT		1100 DRUMMERS LN	WAYNE PA 19087–	(215)687–6700
PA0345 DEVON COURTYARD BY MARRIOTT.		762 W. LANCASTER AVE	WAYNE PA 19087–	(215)687–6633
PA0346 GUEST QUARTER'S HOTEL		888 CHESTERBROOK BLVD	WAYNE PA 19087–	(215)647–6700
PA0347 BEST WESTERN INN		239 W. MAIN ST	WAYNESBORO PA 17268–	(717)762–9113
PA0348 ECONO LODGE OF WAYNESBURG.		350 MILLER LN	WAYNESBURG PA 15370–	(412)627–5544
PA0349 TRIANGLE HOTEL		120 BILL GEORGE DR	WAYNESBURG PA 15370–	(412)627–3150
PA0350 CANYON MOTEL		18 E. AVE	WELLSBORO PA 16901–	(717)724–1681
PA0351 PENN WELLS HOTEL		62 MAIN ST	WELLSBORO PA 16901–	(717)724–2111
PA0352 PENN WELLS LODGE		FOUR MAIN ST	WELLSBORO PA 16901–	(717)724–2111
PA0353 SHERWOOD MOTEL		2 MAIN ST	WELLSBORO PA 16901–	(717)724–3424
PA0354 WEST CHESTER INN		943 S. HIGH ST	WEST CHESTER PA 19382–	(215)692–1900
PA0355 PHILADELPHIA MARRIOTT WEST.		111 CRAWFORD AVE	WEST CONSHOHOCKEN PA 19428–	(215)941–5600
PA0356 COMFORT INN	PO BOX 301	RT. 93 & KIWANIS BLVD. RR #1	WEST HAZLETON PA 18201–	(717)455–9300
PA0357 PENN VIEW MOTEL		250 PENN AVE	WEST READING PA 19611–	(215)376–8011
PA0358 BUCKTAIL LODGE	PO BOX 83	RT. 120 W	WESTPORT PA 17778–	(717)923–2472
PA0359 ECONO LODGE		107 VIP DR	WEXFORD PA 15090–	(412)935–1000
PA0360 MOUNTAIN LAUREL RESORT EAST.	PO BOX 126	I–80 AND PA TNPK	WHITE HAVEN PA 18661–	(717)443–8411
PA0361 MOUNTAIN LAUREL RESORT WEST.	PO BOX 126	I–80 & PA TNPK	WHITE HAVEN PA 18661–	(717)443–8411
PA0362 RAMADA INN		1500 MACARTHUR RD	WHITEHALL PA 18052–	(215)439–1037
PA0363 BEST WESTERN EAST MOUNTAIN INN.		2400 E. END BLVD	WILKES-BARRE PA 18702–	(717)822–1011
PA0364 FOX RIDGE INN		1145 RT. 315	WILKES-BARRE PA 18702–	(717)825–3477
PA0365 HAMPTON INN WILKES-BARRE.		1063 HWY. 315	WILKES-BARRE PA 18702–	(717)825–3838
PA0392 RAMADA HOTEL ON THE SQUARE.		20 PUBLIC SQUARE	WILKES-BARRE PA 18702–	(717)824–7100
PA0366 RED ROOF INN		1035 HWY. 315	WILKES-BARRE PA 18702–	(717)829–6422
PA0367 COLONIAL MOTOR LODGE		1959 E. THIRD ST	WILLIAMSPORT PA 17701–	(717)322–6161
PA0368 FARR'S MOTEL		2295 LYCOMING CREEK RD	WILLIAMSPORT PA 17701–	(717)323–8591
PA0018 QUALITY INN		234 ROUTE 15	WILLIAMSPORT PA 17701–	(717)323–9801
PA0018 QUALITY INN		234 RT. 15	WILLIAMSPORT PA 17701–	(717)323–9801

PA0369 RIDGEMONT MOTEL	PO BOX 536	RD 4	WILLIAMSPORT PA 17701–	(717)321–5300
PA0370 SHERATON INN		100 PINE ST	WILLIAMSPORT PA 17701–	(717)327–8231
PA0371 COURTYARD BY MARRIOTT	RT. 611	2350 EASTON RD	WILLOW GROVE PA 19090–	(215)830–0550
PA0001 FIESTA MOTOR INN		1130 N. EASTON RD	WILLOW GROVE PA 19090–	(215)659–9300
PA0372 HAMPTON INN WILLOW GROVE.		1500 EASTON RD	WILLOW GROVE PA 19090–	(215)659–3535
PA0373 VICKI & HANK'S HOTEL		1412 GRAHAM AVE	WINDBER PA 15963–	(814)467–7859
PA0374 TRAVEL INN OF WINDY GAP.	PO BOX 163	RT. 33 & RT. 512	WINDGAP PA 18091–	(215)863–4146
PA0376 SHERATON		VAN REED & WOODLAND RD	WYOMISSING PA 19610–	(215)376–3811
PA0377 CHATEAU MOTEL		3951 E. MARKET ST	YORK PA 17402–	(717)757–1714
PA0402 COMFORT INN OF YORK		140 LEADER HEIGHTS RD	YORK PA 17403–	(717)741–1000
PA0378 DAYS INN		1415 KENNETH RD	YORK PA 17404–	(717)767–6931
PA0006 HOLIDAY INN		334 ARSENAL RD	YORK PA 17402–	(717)845–5671
PA0379 HOLIDAY INN		2000 LOUCKS RD	YORK PA 17404–	(717)846–9500
PA0380 HOLIDAY INN EAST MARKET.		2600 E. MARKET ST	YORK PA 17402–	(717)755–1966
PA0381 HOWARD JOHNSON	I–83 & US 30	ARSENAL RD	YORK PA 17402–	(717)843–9971
PA0382 RED ROOF INN		323 ARSENAL RD	YORK PA 17402–	(717)843–8181
PA0383 SPIRIT OF 76 MOTEL		1162 HAINES RD	YORK PA 17402–	(717)755–1068
PA0384 SUPER 8 MOTEL		40 ARSENAL RD	YORK PA 17404–	(717)852–8686
PA0385 YORK TRAVELODGE MOTEL.		132–140 N. GEORGE ST	YORK PA 17401–	(717)843–8974
PR0016 HOTEL PLAZA	PO BOX 2210	DE DIEGO AVE	ARECIBO PR 00613–	(809)878–2295
PR0029 ADAMARIS APARTMENTS	PO BOX 588	DE DIEGO & GIL BOUGET	BOQUERON PR 00622–	(809)851–6860
PR0019 EDWIN'S HOTEL	PO BOX 849	RD. 101 INT.BALNEARIO BOQUERON	CABO ROJO PR 00623–	(809)851–7110
PR0014 HOTEL LA BAHIA	HC 02–21118	RD. 101 KM. 17 HM. 1	CABO ROJO PR 00680–	(809)832–0499
PR0008 HOLIDAY INN CROWNE PLAZA.	PO BOX 38079	RD. 187 KM. 1 HM. 5	CAROLINA PR 00937–8079	(809)253–2929
PR0006 SANDS HOTEL & CASINO	PO BOX 6676	RD. 187 ISLA VERDE	CAROLINA PR 00914–	(809)791–6100
PR0003 HOTEL PARADOR BANOS DE COAMO.	PO BOX 540	RT. 546 KM. 1 HM. 6	COAMO PR 00769–	(809)825–2239
PR0013 HYATT REGENCY CERROMAR.		RD. 693	DORADO PR 00646–	(809)796–1234
PR0015 THE HYATT DORADO BEACH.	RT. 693		DORADO PR 00646–	(809)796–1234
PR0009 POSADA GUAYAMA	PO BOX 2393	RD. 3 KM. 138.5 SECTOR VIVES	GUAYAMA PR 00785–	(809)866–1515
PR0017 PICHIS HOTEL & CONVENTION CENTER.	PO BOX 115	RD. 2 KM. 204 HM. 6	GUAYANILLA PR 00656–	(809)835–3335

4. On the same page, in the table, in the second entry, insert ''PR0021'' before ''PAN AMERICAN MOTEL, INC''.

BILLING CODE 1505–01–D

federal register

Monday
February 27, 1995

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Medical Waste Incinerators; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL–5150–9]

RIN 2060–AC62

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Medical Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed standards and guidelines, and notice of public hearing.

SUMMARY: Today, EPA is proposing standards and guidelines for new and existing medical waste incinerators (MWI's) that will reduce air pollution from MWI's. Once implemented, these standards and guidelines will protect public health by reducing exposure to air pollution.

This proposal would add subparts Ec and Cc to 40 CFR part 60. Subpart Ec would limit emissions from new and modified MWI's. The proposed standards would implement sections 111(b) and 129 of the Clean Air Act (Act) as amended in 1990, and would require new MWI's to control emissions of air pollutants to levels that reflect the degree of emission reduction based on maximum achievable control technology (MACT). In addition, this notice includes proposed standards for fugitive fly ash/bottom ash emissions, MWI operator training and qualification, siting, and permitting.

Subpart Cc would establish emission guidelines and compliance schedules for use by States in developing State regulations to control emissions from existing MWI's. The proposed emission guidelines implement sections 111(d) and 129 of the Act, and would initiate State action to develop State regulations. These State regulations would control air pollutant emissions from existing MWI's to levels that reflect the degree of emission reduction based on MACT. In addition, this notice includes proposed guidelines for fugitive fly ash/bottom ash emissions, equipment inspections, training and qualification of MWI operators and permitting.

DATES: Comments. Comments must be received on or before April 28, 1995.

Public Hearing. The EPA will hold at least one public hearing in Washington, D.C. in mid- to late-March 1995. Additional hearings may also be held. A Federal Register notice will be published within the next 2 weeks to announce the details of the hearing(s) and to confirm the date(s) and location(s) for the hearing(s).

ADDRESSES: *Comments.* Comments on the proposal should be submitted (in duplicate, if possible) to: The Air and Radiation Docket and Information Center, ATTN: Docket No. A–91–61, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Commenters wishing to submit proprietary information for consideration should clearly distinguish such information from other comments, and clearly label it ''Confidential Business Information.'' Submissions containing such proprietary information should be sent directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Rick Copland, c/o Ms. Melva Toomer, U.S. EPA Confidential Business Manager, 411 W. Chapel Hill Street, Room 944, Durham, North Carolina 27701. Information covered by such a claim of confidentiality will be disclosed by the EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the submission may be made available to the public without further notice to the commenter.

Background Information Documents. Two ''Fact Sheets'' are available that succinctly summarize the proposed standards and guidelines. The Fact Sheets are suggested reading for persons requiring an overview of the proposal. The Fact Sheets can be obtained by (1) calling Ms. Julia Latta at (919) 541–5578 or (2) accessing the EPA's Technology Transfer Network (TTN) electronic bulletin board. See SUPPLEMENTARY INFORMATION for instructions on accessing the TTN (electronic bulletin board). The background information documents (BID's) for the proposed standards and guidelines may be obtained from the docket; from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777; or from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number (703) 487–4650. See **SUPPLEMENTARY INFORMATION** for a listing of these documents.

Docket. Docket No. A–91–61, containing supporting information used in developing the proposed standards and guidelines, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 260–7548, fax (202) 260–4000. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Copland at (919) 541–5265 or Mr. Fred Porter at (919) 541–5251, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: Incineration is a common method of medical waste disposal in the United States and around the world. However, while it is a very effective method of medical waste treatment with regard to rendering waste non-infectious, incineration results in the production of air pollutants. The EPA estimates that there are about 3,700 MWI's currently in operation in the United States. While these incinerators are small in size relative to municipal waste combustors, their large number makes MWI's a significant source of air pollution. The EPA recently released a draft report reassessing the health effects of exposure to dioxin. In the draft report, currently undergoing public review, MWI's are identified as a significant source of dioxin emissions. In addition, MWI's emit substantial quantities of hydrogen chloride (HCl), lead (Pb), cadmium (Cd), and mercury (Hg).

Today's proposed standards and guidelines will result in greater than 95 percent reduction in air pollution from MWI's. Once implemented, these standards and guidelines will protect public health by reducing exposure to air pollution.

The EPA, the Sierra Club, and the Natural Resources Defense Council (NRDC) have filed a consent decree with the U.S. District Court for the Eastern District of New York (Nos. CV–92–2093 and CV–93–0284) that requires the EPA Administrator to sign a notice of proposed rulemaking not later than February 1, 1995 and a notice of final rulemaking not later than April 15, 1996.

The EPA will hold at least one public hearing to provide interested parties an opportunity for oral presentation of data, views, or arguments concerning the proposal. Additional hearings may also be held (see discussion of public hearing above).

The EPA seeks full public participation in arriving at its final decisions and strongly encourages comments on all aspects of this proposal from all interested parties. Whenever applicable, full supporting data and detailed analysis should accompany all

comments to allow the EPA to adequately respond to the comments.

The key documents used to develop the proposed standards and guidelines include:

1. ''Medical Waste Incinerators—Background Information for Proposed Standards and Guidelines: Industry Profile Report for New and Existing Facilities,'' EPA–453/R–94–042a, July 1994;

2. ''Medical Waste Incinerators—Background Information for Proposed Standards and Guidelines: Process Description Report for New and Existing Facilities,'' EPA–453/R–94–043a, July 1994;

3. ''Medical Waste Incinerators—Background Information for Proposed Standards and Guidelines: Control Technology Performance Report for New and Existing Facilities,'' EPA–453/R–94–044a, July 1994;

4. ''Medical Waste Incinerators—Background Information for Proposed Standards and Guidelines: Model Plant Description and Cost Report for New and Existing Facilities,'' EPA–453/R–94–045a, July 1994;

5. ''Medical Waste Incinerators—Background Information for Proposed Standards and Guidelines: Environmental Impacts Report for New and Existing Facilities,'' EPA–453/R–94–046a, July 1994;

6. ''Medical Waste Incinerators—Background Information for Proposed Standards and Guidelines: Analysis of Economic Impacts for New Sources,'' EPA–453/R–94–047a, July 1994 (see also item 9 below);

7. ''Medical Waste Incinerators—Background Information for Proposed Standards and Guidelines: Analysis of Economic Impacts for Existing Sources,'' EPA–453/R–94–048a, July 1994 (see also item 9 below);

8. ''Medical Waste Incinerators—Background Information for Proposed Standards and Guidelines: Regulatory Impact Analysis for New and Existing Facilities, EPA–453/R–94–063a, July 1994 (see also item 9 below); and

9. B. Strong and S. Shoraka-Blair, MRI, to R. Copland, EPA/ESD. January 30, 1995. Regulatory Impacts of the Proposed New Source Performance Standard (NSPS) and Emission Guidelines (EG) for Medical Waste Incinerators (MWI's). Docket A–91–61, II–B–108.

An electronic copy of the items listed below are available from the EPA's TTN electronic bulletin board. The TTN is accessible 24 hours per day, 7 days per week, except Monday morning from 8:00 a.m. to 12:00 p.m. EST, when the system is updated. The TTN contains 12 electronic bulletin boards, and information relating to this proposal is contained in the Clean Air Act Amendments (CAAA) bulletin board. Instructions for accessing the TTN can be obtained by calling (919) 541–5384.

MWI Items in the Electronic Bulletin Board (TTN/CAAA)

1. Fact Sheet—Proposed subpart Ec Emission Standards for New MWI's.

2. Fact Sheet—Proposed subpart Cc Emission Guidelines for Existing MWI's.

3. This Federal Register notice (preamble).

4. Proposed subpart Ec Emission Standards.

5. Proposed subpart Cc Emission Guidelines.

Other technical documents, including the key documents listed under the **SUPPLEMENTARY INFORMATION** section, are contained in Docket No. A–91–61.

The following outline is provided to aid in locating information in this notice (the preamble to the proposed standards and guidelines):

I. Introduction
A. Overview of this Preamble
B. New Source Performance Standards (NSPS)—General
C. NSPS Decision Scheme
D. Emission Guidelines—General Goals
E. Additional Requirements Under Section 129
II. Summary of the Standards and Guidelines
A. Source Category to be Regulated
B. Pollutants to be Regulated
C. Affected Facility and Designated Facility
D. Proposed Standards and Guidelines
E. Operator Training and Qualification Requirements
F. Siting Requirements—New MWI's
G. Inspection Requirements—Existing MWI's
H. Compliance and Performance Test Methods and Monitoring Requirements
I. Reporting and Recordkeeping—New MWI's
J. Reporting and Recordkeeping—Existing MWI's
K. Compliance Times
L. Permit Requirements
III. Impacts of the Proposed Standards for New MWI's
A. Air Impacts
B. Water and Solid Waste Impacts
C. Energy Impacts
D. Control Cost Impacts
E. Economic Impacts
IV. Impacts of the Proposed Guidelines for Existing MWI's
A. Air Impacts
B. Water and Solid Waste Impacts
C. Energy Impacts
D. Control Cost Impacts
E. Economic Impacts
V. Rationale for the Proposed Standards and Guidelines
A. Background
B. Selection of Source Category
C. Modification of Existing MWI's
D. Selection of Pollutants
E. Selection of Affected and Designated Facilities
F. Selection of Format for the Proposed Standards and Emission Guidelines
G. Selection of Classes, Types, and Sizes
H. Performance of Technology
I. MACT Floor and MACT for New MWI's
J. MACT Floor and MACT for Existing MWI's
K. Selection of Fugitive Fly Ash/Bottom Ash Standards and Guidelines
L. Operator Training and Qualification Requirements
M. Siting Requirements—New MWI's
N. Inspection Requirements—Existing MWI's
O. Compliance and Performance Test Methods and Monitoring Requirements
P. Reporting and Recordkeeping—New MWI's
Q. Reporting and Recordkeeping—Existing MWI's
R. Compliance Times
S. Permit Requirements
VI. Request for Comment
A. Procedure to Determine MACT
B. Alternatives to Onsite Incineration
C. Definition of Medical Waste
VII. Administrative Requirements
A. Public Hearing
B. Docket
C. Clean Air Act Procedural Requirements
D. Office of Management and Budget Reviews
E. Regulatory Flexibility Act Compliance

I. Introduction

A. Overview of This Preamble

The 1990 Clean Air Act Amendments reflect growing public concern about the large volume of toxic air pollutants released from numerous categories of emission sources. Title III of the Amendments specifically enumerated 189 hazardous air pollutants and instructed EPA to protect public health by reducing emissions of these pollutants from the sources that release them. The EPA's standards are to be issued in two phases. The first phase standards are designed to bring all sources up to the level of emissions control achieved by those that are already well-controlled, using pollution prevention measures as well as ''end-of-pipe'' methods. The second phase standards, due approximately a decade later, are to require further emission reductions in any case in which the first phase measures were not by themselves sufficient to fully protect the public health.

In this context, the 1990 Amendments singled out waste incineration for special attention. Congress recognized both a high level of public concern about the incineration of municipal, medical and other wastes, and a number of special management concerns for these types of sources. Consequently, section 129 of the Act directs EPA to apply the two-phase control approach of Title III to various categories of waste incinerators, including medical waste

incinerators. Today's action proposes standards and guidelines for new and existing MWI's under section 129.

Current methods of medical waste incineration cause the release of a wide array of air pollutants, including several pollutants of particular public health concern. In September of 1994, EPA released a review draft of a report reassessing the health effects associated with dioxin, which suggests that dioxin exposure can result in a number of cancer and noncancer health effects in humans. In the report, MWI's are identified as the largest known source of dioxin emissions, emitting more than municipal waste combustors, hazardous waste incinerators, and cement kilns. Because of this, the reduction of dioxin emissions from all sources is one of the Administrator's highest air quality protection priorities. Consequently, the development of MWI regulations has received increased attention.

In addition to dioxin, MWI's also emit significant quantities of heavy metals including lead, cadmium, and mercury. Once again, MWI's have been identified as the largest known source of mercury emissions, emitting more than municipal waste combustors and coal-fired electric utility boilers. The MWI's also emit nitrogen oxides (a contributor to ozone smog), particulate matter, sulfur dioxide, and other acid gases.

Several States, including New York, California, and Texas, have adopted relatively stringent regulations in the past few years limiting emissions from MWI's. The implementation of these regulations has brought about very large reductions in MWI emissions and the associated risk to public health in those States. It has also significantly reshaped how medical waste is managed in those States. Many facilities have responded to the State regulations by switching to other medical waste treatment and disposal options to avoid the high cost of add-on air pollution control equipment. The two most commonly chosen alternatives have been off-site contract disposal in larger, commercial incinerators dedicated to medical waste, and on-site treatment by other means (e.g., steam autoclaving). Other alternatives include chemical treatment and microwave irradiation. The availability of alternatives to onsite incineration has mitigated the economic impacts that might have been associated with the State regulations.

Today EPA proposes nationally applicable emission standards and guidelines for MWI's that build on the experience of these leading States. Like the State regulations, the standards and guidelines proposed today are based on the use of add-on air pollution control systems.

These standards and guidelines will implement the first phase requirements of section 129, described above.

The commercial medical waste disposal industry has indicated that sufficient commercial medical waste disposal capacity is available to handle the amount of waste that would no longer be treated onsite. In addition, as mentioned earlier, onsite alternatives are available for facilities that choose to treat their medical waste onsite. In fact, even in the absence of Federal regulations, most facilities that generate medical waste do not operate onsite MWI's. This indicates that there currently are viable alternatives to onsite incineration.

As described in detail below, section 129, like section 112, of the Clean Air Act instructs the Agency to set performance standards that challenge industry to meet or exceed the pollution control standards established by better controlled similar facilities. In this way, the overall state of environmental practice is raised for large segments of industry, a basic level of health protection is provided to all communities, situations in which uncertainty about total risk and hazard result in no protection for the exposed public are avoided, and yet the cost of pollution control to industry is constrained to levels already absorbed by similar operations. Eight years later, in a second phase, EPA must evaluate whether the residual public health risk warrants additional control.

For new MWI's, the proposed emissions standards would reduce nationwide emissions of dioxins/furans by 99 percent; PM, CO, HCl, Pb, and Cd by greater than 95 percent; and Hg by 92 percent. In addition, the standards would achieve an emission reduction of about 25 percent for SO_2 and NO_x. Because wastewater, solid waste, and energy requirements associated with implementation of the proposed standards are not significant, adverse water, solid waste, or energy impacts are not anticipated.

The nationwide annual costs associated with the proposed standards for new MWI's will increase by approximately $74.5 million/yr from the regulatory baseline cost of $63.3 million/yr. This results in an increase in the cost of waste incineration per unit of waste treated of approximately $177/Mg ($161/ton) compared to the regulatory baseline cost of $150/Mg ($136/ton).

The results of the economic impacts analyses for new MWI's indicate that no medical waste-generating industry would need to be significantly reconstructed (e.g., through closures or consolidations) as a result of the proposed standards. The market price increase resulting from the standards is relatively small for each industry. The corresponding decreases in output, employment, and revenue were also low, never exceeding 0.05 percent.

With regard to existing MWI's, an estimated 3.4 million tons of waste are produced annually by medical waste generators in the United States. The EPA believes that approximately 3,700 MWI's are currently burning waste generated at health care facilities. The proposed guidelines for existing MWI's would reduce nationwide emissions of dioxins/furans and Pb by 99 percent; PM, CO, and HCl by 98 percent; Cd by 97 percent; and Hg by 94 percent. The guidelines would also achieve an overall emission reduction of 37 percent for both SO_2 and NO_x. Because wastewater, solid waste, and energy requirements associated with implementation of the proposed guidelines are not significant, adverse water, solid waste, or energy impacts are not anticipated.

The nationwide annual costs associated with the proposed guidelines for existing MWI's will increase by approximately $351 million/yr from the regulatory baseline cost of $265 million/yr. This results in an increase in the cost of waste incineration per unit of waste treated of approximately $245/Mg ($222/ton) compared to the regulatory baseline cost of $185/Mg ($168/ton).

The results of the economic impacts analyses for existing MWI's indicate that no medical waste-generating industry would need to be significantly restructured (e.g., through closures or consolidations) as a result of the proposed emission guidelines. The market price increase resulting from the emission guidelines is relatively small for each industry. The corresponding decreases in output, employment, and revenue were also low, never exceeding 1 percent.

Considering the benefits to be gained from the reduction of air pollution from MWI's along with the availability of alternative treatment methods and the clear Congressional intent, these proposed standards and guidelines are considered reasonable.

This preamble will:

1. Summarize the important features of the proposed standards and guidelines;

2. Describe the environmental, energy, and economic impacts of these standards and guidelines;

3. Present a rationale for each of the decisions made regarding the proposed standards and guidelines;

4. Request public comment on specific issues; and

5. Discuss administrative requirements relevant to this action.

B. New Source Performance Standards—General

The proposed new source performance standards (NSPS, or standard(s)) for MWI's would implement section 111(b) of the Act. The NSPS are issued for categories of sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare. They apply to new stationary sources of emissions (i.e., sources whose construction or modification begins after a standard is proposed). An NSPS requires these sources to control emissions to the level achievable by the best system of continuous emission reduction, considering costs and other impacts.

C. NSPS Decision Scheme

An NSPS is the end product of a series of decisions related to certain key elements for the source category being considered for regulation. The elements in this decision are generally the following:

1. Source category to be regulated—usually an emission source category, but can be a process or group of processes within an industry.

2. Affected facility—the pieces or groups of equipment that comprise the sources to which the standards will apply.

3. Pollutants to be regulated—the particular substances emitted by the affected facility that the standards control.

4. Best system of continuous emission reduction—the technology on which the standards will be based, i.e., application of the best system of continuous emission reduction that (taking into consideration the cost of achieving such emission reduction and any nonair-quality health and environmental impacts and energy requirements) the Administrator determines has been adequately demonstrated (section 111(a)(1)).

5. Format for the standards—the form in which the standards are expressed, i.e., as pollutant concentration emission limits, as a percent reduction in emissions, or as equipment or work practice standards.

6. Actual standards—generally, emission limits based on the level of reduction that the best demonstrated technology (BDT) can achieve. Only in unusual cases do standards require that a specific technology be used. In general, the source owner or operator may select any method for complying with the standards.

7. Other considerations—(in addition to emission limits) NSPS usually include: standards for visible emissions, modification provisions, monitoring requirements, performance test methods and compliance procedures, and reporting and recordkeeping requirements.

D. Emission Guidelines—General Goals

The Act requires the promulgation of standards of performance under section 111(b) for categories of new sources that may contribute to the endangerment of public health or welfare. When standards of performance are promulgated under section 111(b) for a designated pollutant, the Act requires States under section 111(d) to submit plans that: (1) establish emission standards for this designated pollutant from existing sources and (2) provide for implementation and enforcement of these emission standards. In most cases, this means that control under section 111(d) is appropriate when the pollutant may cause or contribute to endangerment of public health or welfare but is not known to be ''hazardous'' within the meaning of section 112 and is not controlled under sections 108 through 110 because, for example, it is not emitted from ''numerous or diverse'' sources as required by section 108.

As specified in 40 CFR part 60.23, States are required to adopt and submit to the Administrator a plan implementing the section 111(d) guidelines within 1 year after the promulgation of the guidelines. The Act further requires that the procedure for State submission of a plan shall be similar to the procedure for submission of State implementation plans (SIP's) under section 110. The Act also provides that the EPA shall prescribe a plan according to procedures similar to those in section 110(c) if a State fails to submit a ''satisfactory plan.''

E. Additional Requirements Under Section 129

The Amendments of 1990 added section 129, which includes specific requirements for solid waste combustion units. Section 129 requires the EPA, under § 111(b), to establish new source performance standards (NSPS) for new MWI's and, under § 111(d), to establish emission guidelines for existing MWI's.

1. *New Sources* The NSPS must specify numerical emission limitations for the following: Particulate matter (PM), opacity, sulfur dioxide (SO_2), hydrogen chloride (HCl), oxides of nitrogen (NO_X), carbon monoxide (CO), lead (Pb), cadmium (Cd), mercury (Hg), and dioxins/furans (CDD/CDF). Section 129 also includes requirements for operator training as well as siting requirements for new MWI's.

Section 129 requires that emission standards reflect the maximum degree of reduction in air emissions that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair-quality health and environmental impacts and energy requirements, determines is achievable. This requirement is referred to as maximum achievable control technology (MACT). The degree of reduction in emissions that is deemed achievable for new MWI's may not be less stringent than the emissions control that is achieved in practice by the best controlled similar unit. This requirement that the standards must be no less stringent than certain levels of emission control currently achieved is referred to as the ''MACT floor'' for new MWI's.

For NSPS, the control technology used to achieve the standards is not specified. Only the emission limits achievable by MACT are included in the standards. Any control technology that can comply with these emission limits may be used.

2. *Existing Sources* Notwithstanding the limitations of setting guidelines for existing sources under section 111(d), section 129 directs EPA to issue guidelines for existing MWI's that specify numerical emission limitations for the same pollutants listed above for new MWI's. Section 129 also includes requirements for operator training.

Section 129 provides that the State plan for existing MWI's be at least as protective as the guidelines.

Section 129 also provides that emission guidelines for existing MWI's reflect MACT, as described above. However, while the guidelines for existing MWI's may be less stringent than the standards for new MWI's, the guidelines may be no less stringent than the average emission limitation achieved by the best performing 12 percent of units in the category. This requirement that the guidelines must be no less stringent than certain levels of emission control currently achieved is referred to as the ''MACT floor'' for existing MWI's.

For emission guidelines (EG), the control technology used for compliance is not specified. Only the emission limits achievable by MACT are included in the guidelines. Any control

technology that can comply with these emission limits may be used.

Under section 129, States are required to submit to the Administrator a plan implementing the emission guidelines within 1 year after promulgation of the guidelines. Section 129 also requires that a State plan shall provide that each unit subject to the guidelines shall be in compliance with all requirements of the proposed guidelines within 3 years after the State plan is approved by the Administrator but in no case later that 5 years after promulgation of these guidelines. The compliance schedule in today's proposed emission guidelines would supersede and is more comprehensive than the compliance schedule and timetable specified in section 129.

The proposal requires that a State plan shall provide that each source subject to the guidelines shall be in compliance with all requirements of the guidelines within 1 year after the State plan is approved by the Administrator. The proposal allows two exceptions to this compliance schedule: extensions for facilities planning to install the necessary air pollution equipment and extensions under a petition process for other reasons. State plans that include such provisions may allow designated facilities up to 3 years after the State plan is approved by the Administrator (but no more than 5 years after promulgation of the guidelines) to achieve compliance. The only exception to these compliance times involves the operator training and qualification requirements and the maintenance inspection requirement. The proposed emission guidelines require that a State plan provide that each designated facility shall be in compliance with the operator training and qualification requirements and the maintenance inspection requirements within 1 year after the State plan is approved by the Administrator.

Section 129 specifies that the EPA, in reviewing State plans for any variation from the emission guidelines, must ensure that State plans and their resulting MWI control requirements are at least as protective as the EPA emission guidelines, including incorporation of the compliance schedule requirements established by the guidelines.

II. Summary of the Standards and Guidelines

A. Source Category To Be Regulated

The proposed standards for new MWI's would limit emissions of air pollutants from each MWI for which construction is commenced after today's date, or for which modification is commenced after the effective date of the standards. The effective date of the proposed standards is specified in the Act as the date 6 months after promulgation of the standards. The proposed guidelines for existing MWI's would require States to develop emission standards limiting emissions of air pollutants from each MWI for which construction was commenced on or before today's date. Changes made to an existing MWI solely for the purpose of complying with the emission guidelines would not bring an existing MWI under the NSPS for new MWI's.

The proposed standards and guidelines would require facilities that employ technologies such as pyrolysis/gasification in medical waste destruction to meet the emission limits and all other requirements in today's proposal. The pyrolysis/gasification industry does not object to be covered under today's proposed MWI standards and guidelines and believes that they can meet and exceed the proposed emission limitations. However, the pyrolysis/gasification industry believes that their process is unique enough to warrant a separate category for the purpose of regulations. The agency is requesting comment on whether these units should be regulated as MWI's or as a separate source category. Also, comment is requested on the definitions of medical waste incineration and medical waste pyrolysis/gasification that would differentiate these two categories of waste destruction for the purpose of regulation.

An MWI is defined as any device used to burn medical waste, with or without other fuels or types of waste, including the heat recovery device, if one is present. Medical waste is defined as any solid waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in production or testing of biologicals. Biologicals refer to preparations made from living organisms and their products, including vaccines, cultures, etc., intended for use in diagnosing, treating, or immunizing humans or animals or in research pertaining thereto. Medical waste includes materials such as sharps, fabrics, plastics, paper, waste chemicals/drugs that are not RCRA hazardous waste, and pathological waste. Medical waste does not include household waste, hazardous waste, or human and animal remains not generated as medical waste.

Most MWI's burn a diverse mixture of medical waste (referred to in this preamble as general medical waste), that may include some pathological waste (human and animal body parts and/or tissue). However, larger amounts of pathological waste require special operating conditions for combustion. Thus, some facilities maintain MWI's designed and operated to burn pathological waste exclusively.

The proposed standards and guidelines focus on regulating emissions from general medical waste incinerators and include very minor requirements for pathological MWI's. Under this proposal, pathological MWI's would only be required to submit quarterly reports of the amount and type of materials charged to the incinerator. Pathological MWI's will be considered in future regulatory action under section 129 in the source category of ''other solid waste incinerators.''

B. Pollutants To Be Regulated

Section 129 of the Act requires the EPA to establish numerical emission limits for PM, opacity, CO, CDD/CDF, HCl, SO_2, NO_x, Pb, Cd, and Hg. All pollutants to be regulated would be reported as concentrations and are corrected to 7 percent oxygen. Particulate matter and metals (Pb, Cd, and Hg) would be reported as milligrams per dry standard cubic meter (mg/dscm). For Hg, the proposed standards and guidelines would also establish an alternative percent reduction requirement. Carbon monoxide, HCl, SO_2, and NO_x would be reported as parts per million by volume (ppmv), dry basis. As an alternative, the proposed standards and guidelines for HCl would also establish a percent reduction requirement. Emissions of CDD/CDF would be reported in units of total nanograms per dry standard cubic meter (ng/dscm) or ng/dscm toxic equivalency (TEQ). Measurements of TEQ are determined by first measuring the total concentration of CDD/CDF congeners and adjusting the results to account for the varying toxicity of each congener. Opacity is reported on a percentage basis. The proposed standards and guidelines also establish fly ash/bottom ash fugitive emission limitations, reported on a percentage basis.

C. Affected Facility and Designated Facility

The affected facility to which the proposed standards applies is each individual MWI for which construction is commenced after today's date or for which modification is commenced after the effective date of these standards. The effective date of the proposed standards is specified in the Act as the date 6 months after promulgation of the standards.

The designated facility to which the proposed emission guidelines apply is each individual MWI for which construction is commenced on or before today's date.

D. Proposed Standards and Guidelines

Table 1 lists the emission limitations under the proposed standards and guidelines, Tables 2 and 3 list other requirements of the proposed standards and guidelines, and Tables 4 and 5 list the compliance times for the proposed standards and guidelines.

TABLE 1.—SUMMARY OF PROPOSED EMISSION LIMITS FOR NEW AND EXISTING MEDICAL WASTE INCINERATORS

Pollutant	Emissions limits
Particulate matter	30 mg/dscm (0.013 gr/dscf) 12-hour average.
Opacity	5 percent 6-minute average.
Carbon monoxide	50 ppmv 12-hour average.
Dioxins/furans	80 ng/dscm total CDD/CDF (35 gr/10^9 dscf) or 1.9 ng/dscm TEQ (0.83 gr/10^9 dscf) 12-hour average.
Hydrogen chloride	42 ppmv or 97% reduction 9-hour average.
Sulfur dioxide	45 ppmv 12-hour average.
Nitrogen oxides	210 ppmv 12-hour average.
Lead	0.10 mg/dscm (44 gr/10^6 dscf) 12-hour average.
Cadmium	0.05 mg/dscm (22 gr/10^9 dscf) 12-hour average.
Mercury	0.47 mg/dscm (210 gr/10^6 dscf) or 85% reduction 12-hour average.

NOTE: Tables 1 through 5 depict the major provisions of the proposed standards and guidelines and do not attempt to show all requirements. The full text of Subparts Ec and Cc should be relied upon for a full and comprehensive statement of the requirements of the proposed standards and guidelines.

TABLE 2.—SUMMARY OF ADDITIONAL REQUIREMENTS UNDER THE NSPS FOR NEW MEDICAL WASTE INCINERATORS

Additional Requirements
Operator Training and Qualification Requirements: • Complete MWI operator training course. • Qualify operators. • Develop a site-specific operating manual and update annually.
Siting Requirements: • Prepare a siting analysis. • Conduct a public meeting at which comment is accepted on the siting analysis. • Prepare responses to the comments and make them available to the public. • Include in the initial notification to construct the results of siting analysis and a letter from the State air pollution control office approving the construction and operation of the affected facility.
Compliance and Performance Testing Requirements: • Conduct an initial and annual performance test to determine compliance with the emission limitations for all pollutants and to establish operating parameters. • Facilities may conduct performance tests for CDD/CDF, PM, Cd, Pb, and Hg every third year if the previous three MWI performance tests demonstrate that the facility is in compliance with the emission limits.
Continuously monitor emissions and measure and record operating parameters. • Perform monthly fugitive testing.
Monitoring Requirements: • Install and maintain equipment to continuously monitor emissions/operating parameters as appropriate. • Obtain monitoring data at all times during MWI operation.
Reporting and Recordkeeping Requirements: • Maintain for 5 years records of results from initial performance test and all subsequent performance tests, operating parameters, and any maintenance. • Maintain for the life of the incinerator records of siting analysis and operator training and qualification. • Submit the results of the initial performance test and all subsequent performance tests. • Submit, within 30 days following the end of the quarter of occurrence, reports on emission rates or operating parameters that have not been recorded or that exceeded applicable limits. • Provide notification of intent to construct, of planned initial start-up date, and of planned waste type(s) to be combusted.

NOTE: Tables 1 and 2 depict the major provisions of the NSPS and do not attempt to show all requirements. The regulatory text of Subpart Ec should be relied upon for a full and comprehensive statement of the requirements of the proposed NSPS.

TABLE 3.—SUMMARY OF ADDITIONAL REQUIREMENTS UNDER THE EG FOR EXISTING MEDICAL WASTE INCINERATORS

Additional Requirements
Operator Training and Qualification Requirements: • Complete MWI operator training course. • Qualify operators. • Develop a site-specific operating manual and update annually.
Inspection Requirements: • Provide for an annual equipment inspection by an MWI service technician not employed by the owner or operator of the affected facility until source demonstrates compliance with emission limits.
Compliance and Performance Testing Requirements: • Conduct an initial and annual performance test to determine compliance with the emission limitations for all pollutants and to establish operating parameters.

TABLE 3.—SUMMARY OF ADDITIONAL REQUIREMENTS UNDER THE EG FOR EXISTING MEDICAL WASTE INCINERATORS—Continued

Additional Requirements
• Facilities may conduct performance tests for CDD/CDF, PM, Cd, Pb, and Hg every third year if the previous three performance tests demonstrate that the facility is in compliance with the emission limits. • Continuously monitor emissions and measure and record operating parameters. • Perform monthly fugitive testing. Monitoring Requirements: • Install and maintain equipment to continuously monitor emissions/operating parameters as appropriate. • Obtain monitoring data at all times during MWI operation. Reporting and Recordkeeping Requirements: • Maintain for 5 years records of: results from initial performance test and all subsequent performance tests, operating parameters, annual inspections, and any maintenance. • Maintain for the life of the incinerator records of operator training and qualification. • Submit the results of the initial performance test and all subsequent performance tests. • Submit, within 30 days following the end of the quarter of occurrence, reports on emission rates or operating parameters that have not been recorded or which exceeded applicable limits.

NOTE: Tables 1 and 3 depict the major provisions of the emission guidelines (EG) and do not attempt to show all requirements. The regulatory text of Subpart Cc should be relied upon for a full and comprehensive statement of the requirements of the proposed guidelines.

TABLE 4.—COMPLIANCE TIMES FOR NEW MWI'S NEW SOURCE PERFORMANCE STANDARDS

Requirement	Compliance Time
Effective date	6 months after promulgation of NSPS.
Operator training and qualification requirements.	On effective date or upon initial start up, whichever is later.
Initial compliance test	On effective date or within 180 days of initial start up, whichever is later.
Performance test	Within 12 months following initial compliance test and annually thereafter.
CEMS and parameter monitoring	Continuously, upon completion of initial compliance test.
Recordkeeping	Continuously, upon completion of initial compliance test.
Reporting	Quarterly, upon completion of initial compliance test.

TABLE 5.—COMPLIANCE TIMES FOR EXISTING MWI'S EMISSION GUIDELINES

Requirement	Compliance Time
State Plan submittal	Within 1 year after promulgation of EPA emission guidelines.
Effective date	Within 1 year after EPA approval of State Plan.
Operator training and qualification requirements.	Within 1 year after EPA approval of State Plan.
Recordkeeping	Continuously, upon completion of initial compliance test.
Initial compliance test	Within 1 year after EPA approval of State plan or up to 3 years after EPA approval of State plan if the source is granted an extension.
Performance test	Within 12 months following initial compliance test and annually thereafter.
CEMS and parameter monitoring	Continuously, upon completion of initial compliance test.
Inspection requirements	Within 1 year after EPA approval of State Plan.
Reporting	Quarterly, upon completion of initial compliance test.

A brief discussion of the emission limitations is presented below. Further discussion of the additional requirements can be found in sections II.E through II.L of this section.

1. *Numerical Emission Limits*

The numerical emission limits in this section are corrected to 7 percent O_2.

Particulate Matter—The proposed emission limitation for PM for both new and existing MWI's is 30 milligrams per dry standard cubic meter (mg/dscm).

Opacity—The proposed emission limitation for stack opacity for both new and existing MWI's is 5 percent (6-minute average).

Carbon Monoxide—The proposed emission limitation for CO for both new and existing MWI's is 50 parts per million by volume (ppmv), dry basis.

Dioxins/Furans—The proposed emission limitation for CDD/CDF for both new and existing MWI's is 80 ng/dscm total CDD/CDF or 1.9 ng/dscm TEQ. This limit would be measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans as determined by Reference Method 23 and converted to TEQ's using the toxic equivalency factors (TEF's) shown in Table 6.

TABLE 6.—TOXIC EQUIVALENCY FACTORS

CDD/CDF congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
octachlorinated dibenzo-p-dioxin	0.001

TABLE 6.—TOXIC EQUIVALENCY FACTORS—Continued

CDD/CDF congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.5
1,2,3,7,8-pentachlorinated dibenzofuran	0.05
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
octachlorinated dibenzofuran	0.001

Hydrogen Chloride—The proposed emission limitation for HCl for both new and existing MWI's is 42 ppmv, dry basis (or 97-percent reduction).

Sulfur Dioxide—The proposed emission limitation for SO_2 for both new and existing MWI's is 45 ppmv, dry basis.

Nitrogen Oxides—The proposed emission limitation for NO_X for both new and existing MWI's is 210 ppmv, dry basis.

Lead—The proposed emission limitation for Pb for both new and existing MWI's is 0.10 mg/dscm.

Cadmium—The proposed emission limitation for Cd for both new and existing MWI's is 0.05 mg/dscm.

Mercury—The proposed emission limitation for Hg for both new and existing MWI's is 0.47 mg/dscm (or 85-percent reduction).

2. *Fly Ash/Bottom Ash Emissions*

The proposed standards and guidelines would establish a limit of zero percent opacity of fly ash or bottom ash from any fly ash or bottom ash storage or handling area within the facility's property boundary.

E. Operator Training and Qualification Requirements

The proposed standards and guidelines include operator training and qualification requirements for each MWI operator. For new MWI's, these requirements would become effective six months after promulgation of the NSPS. For existing MWI's, these requirements would become effective one year after approval of the State plan. An acceptable training course would provide the operator with a minimum of: (1) 24 hours of classroom instruction, (2) 4 hours of hands-on training, (3) an examination developed and administered by the course instructor, and (4) a handbook or other documentation covering the subjects presented during the course. To be qualified, an operator must complete the training course and have either a minimum level of experience or satisfy comparable or more stringent criteria that are established by a national professional organization. The proposed standards and guidelines also would require that the owner or operator of the facility develop and annually update a site-specific operating manual. The manual would summarize State emissions regulations, operating procedures, and reporting and recordkeeping requirements in accordance with the proposed standards and guidelines.

F. Siting Requirements—New MWI's

Site selection criteria are being proposed for MWI's that commence construction after the date of promulgation of this rule. The proposed siting requirements would address the impact of the facility on ambient air quality, visibility, soils, vegetation, and other factors that may be relevant in determining that the benefits of the proposed facility significantly outweigh the environmental and social costs imposed as a result of its location and construction. A document presenting the results of the analyses would be prepared and submitted to EPA, State, and local officials and would be made available to the public. Provisions for a public meeting and the preparation of a comment and response document are also included in the proposed siting requirements.

G. Inspection Requirements—Existing MWI's

The proposed emission guidelines include a requirement for an initial equipment inspection of the designated facility. These requirements would become effective 1 year after the EPA approval of the State plan. The inspection must be performed by an MWI service technician not employed by the owner or operator of the designated facility. The proposed guidelines provide minimum requirements for inspection of the designated facility. Following the initial inspection and until compliance with the emission limitations has been demonstrated, facilities are required to conduct annual inspections of the MWI.

H. Compliance and Performance Test Methods and Monitoring Requirements

Testing and monitoring requirements are proposed to demonstrate compliance with the emission limits. The proposed standards and guidelines require that the owner or operator of the facility: (1) conduct initial and annual performance tests to demonstrate compliance with the emission limits and (2) demonstrate continuous compliance with the emission limits following the initial performance test.

The initial and annual performance tests would be conducted using the following EPA-approved methods:

1. Method 1 would be used to select the sampling site and number of traverse points;
2. Method 3 or 3A would be used for gas composition analysis, including measurement of oxygen;
3. Method 5 or Method 29 would be used to measure PM emissions;
4. A continuous emissions monitoring system (CEMS) would be used to measure opacity;
5. A CEMS would be used to measure CO emissions;
6. Method 23 would be used to measure CDD/CDF emissions;
7. Method 26 would be used to measure HCl emissions;
8. Method 29 would be used to measure Pb, Cd, and Hg emissions; and
9. Method 9 would be used to measure opacity of fugitive emissions.

The proposed standards and guidelines include provisions for less frequent testing if the facility consistently demonstrates compliance. These provisions are described in detail in section V of this preamble. Following the initial performance test, the owners or operators must demonstrate continuous compliance with the limits by monitoring the output of a CEMS, where a CEMS is required, and by monitoring site-specific operating parameters where a CEMS is not required. Facilities are required to:

1. Demonstrate continuous compliance with the CO emission limit based on the output from the CO CEMS;
2. Demonstrate continuous compliance with the opacity emission limit based on the output from the opacity CEMS; and
3. Demonstrate compliance with the fugitive emission limit by conducting a performance test using Method 9 at least once per calendar month when ash is removed from the incinerator and when ash is removed from the air pollution control device (APCD).

In addition, facilities equipped with a dry scrubber followed by a fabric filter are required to demonstrate compliance in the following ways:

1. Demonstrate compliance with the Hg emission limit by continuously monitoring the Hg sorbent flow rate (typically activated carbon) and continuously measuring the weight and time of each load of waste charged to the incinerator. The minimum Hg sorbent flow rate, the maximum charge weight, and the maximum hourly charge rate are to be established during the initial performance test to determine compliance with the Hg emission limit. Operation of the facility below the minimum sorbent flow rate, or above the maximum charge weight or maximum hourly charge rate would constitute a violation of the Hg emission limit.

2. Demonstrate compliance with the CDD/CDF emission limit by continuously monitoring the CDD/CDF sorbent flow rate (typically activated carbon) and the temperature measured at the inlet to the PM control device. The minimum CDD/CDF sorbent flow rate and the maximum PM control device inlet temperature are to be established during the initial performance test to determine compliance with the CDD/CDF emission limit. Operation of the facility below the minimum sorbent flow rate or above the maximum PM control device inlet temperature would constitute a violation of the CDD/CDF emission limit.

3. Demonstrate compliance with the HCl emission limit by continuously monitoring the HCl sorbent flow rate (typically hydrated lime) and continuously measuring the weight and time of each load of waste charged to the incinerator. The minimum HCl sorbent flow rate, the maximum charge weight, and the maximum hourly charge rate are to be established during the initial performance test to demonstrate compliance with the emission limit for HCl. Operation of the facility below the minimum sorbent flow rate, or above the maximum charge weight or maximum hourly charge rate would constitute a violation of the HCl emission limit.

The proposed standards and guidelines require the owner or operator of an MWI using a control device other than a dry scrubber followed by a fabric filter to petition the Administrator for other site-specific operating parameters to demonstrate continuous compliance with the emission limits for CDD/CDF, Hg, HCl, and/or opacity. These parameters would be established during the initial performance test for these pollutants and would be continuously monitored to demonstrate compliance with the emission limits. As discussed in section VI, the EPA requests comment on appropriate parameters for wet scrubbers and for other control systems that may be used to control emissions from MWI's.

I. Reporting and Recordkeeping—New MWI's

The proposed standards would require owners of affected facilities (i.e., new or modified MWI's) to submit notifications concerning construction and initial startup of the affected facility. Owners and operators are also required to maintain thorough records documenting the results of the initial and annual performance tests, records demonstrating continuous monitoring of site-specific operating parameters, and CEMS output data and quality assurance determinations. These records must be kept on file for at least 5 years.

Additional records must be kept on file for the life of the affected facility. These records are required to document compliance with the siting requirements and the operator training and qualification requirements. The records to be maintained include all documentation produced as a result of the siting requirements and records of the names of the persons who have completed the operator training requirements, the names of the persons who have been qualified as MWI operators, and the names of the persons who have completed review of the site-specific MWI operating manual. All records must also include dates associated with operator training and qualification, and dates associated with review of the operating manual.

Under the proposed standards, owners or operators of affected facilities are required to submit the results of the initial performance test and all subsequent performance tests. Also, reports on emission rates or operating parameters that have not been obtained or that exceed applicable limits must be submitted within 30 days after the end of the quarter of occurrence. If no exceedances occur during a quarter, the owner of the affected facility would be required to submit a letter stating so. All reports submitted to comply with the requirements of the proposed standards must be signed by the facilities manager.

J. Reporting and Recordkeeping—Existing MWI's

The proposed emission guidelines would require owners of designated facilities (i.e., existing MWI's) to maintain thorough records documenting the results of the initial and annual performance tests, records demonstrating continuous monitoring of site-specific operating parameters, CEMS output data and quality assurance determinations, and records of the initial and annual inspections. These records must be kept on file for at least 5 years.

Additional records must be kept on file for the life of the designated facility. These records are required to document compliance with the operator training and qualification requirements and include records of the names of the persons who have completed the operator training requirements, the names of the persons who have been qualified as MWI operators, and the names of the persons who have completed review of the site-specific MWI operating manual. All records must also include dates associated with operator training and qualification, and dates associated with review of the operating manual.

Under the proposed emission guidelines owners or operators are required to submit the results of the initial and annual maintenance inspections and the results of the initial performance test and all subsequent performance tests. Additionally, reports of data on emission rates or operating parameters that have not been obtained or that exceed applicable limits must be submitted within 30 days after the end of the quarter of occurrence. If no exceedances occur during a quarter, the owner of the designated facility would be required to submit a letter stating so. All reports submitted to comply with the requirements of the proposed emission guidelines must be signed by the facilities manager.

K. Compliance Times

1. New MWI's

The effective date of the standards for new MWI's is the date 6 months after promulgation of the standards.

2. Existing MWI's

In accordance with the proposed guidelines, for approval, a State plan must require that designated facilities comply with all requirements of the guidelines within 1 year after EPA approval of the State plan. The proposal allows two exceptions to this compliance schedule. First, State plans may allow facilities that are planning to install the necessary air pollution control equipment up to three years after EPA approval of the State plan to comply, provided the State plan specifies that the facility submit measurable and legally enforceable incremental steps of progress that will be taken to comply with the State plan. Second, State plans may include provisions for a petition process through which designated facilities could

request an extension for other reasons. The proposed guidelines specify minimum requirements to be included in State plans with such provisions. If an extension is granted, compliance must be required within 3 years after EPA approval of the State plan.

Regardless of the status of the State plans, all designated facilities must be in compliance within 5 years after promulgation of the emission guidelines. The proposed emission guidelines require the EPA to develop, implement, and enforce a plan for any State that has not submitted an approvable plan within 2 years after promulgation of the emission guidelines.

The proposed emission guidelines also require that, for approval, a State plan provide that each designated facility must be in compliance with the operator training and qualification requirements and the inspection requirements within 1 year after EPA approval of the State plan. No extension is available for training, qualification, or inspection.

L. Permit Requirements

The proposed standards and guidelines include a requirement that facilities operate pursuant to permits issued under the EPA-approved State operating permit program. Permits would be required beginning 36 months after the date of promulgation of the standards and guidelines, or on the effective date of an EPA-approved operating permit program in the State in which the facility is located, whichever date is later. The operating permit programs are developed under Title V of the Act and the implementing regulations under 40 CFR part 70.

III. Impacts of the Proposed Standards for New MWI's

This section presents a description of the air, water, solid waste, energy, control cost, and economic impacts of today's proposed standards for new MWI's. All of the impacts presented are nationwide impacts that are expected to result from the implementation of the NSPS in the fifth year after adoption. As discussed below, it is expected that as many as 80 percent of the projected number of new MWI's will not be constructed to avoid the increased costs associated with installation of control equipment. Therefore, impacts are presented assuming 80 percent of projected new MWI's are not constructed, with the waste being disposed of by other means (i.e., the ''switching scenario'').

Based on historic sales to date, in the absence of regulation, an estimated 700 new MWI's are expected to be installed over the next 5 years. However, onsite incineration is only one of several medical waste treatment and disposal options. For some MWI's, the equipment necessary to comply with the proposed regulations will make onsite incineration more expensive than other waste treatment and disposal options. Consequently, many facilities that would have chosen onsite incineration are likely to consider less expensive methods of treatment and disposal. The EPA expects that as many as 80 percent of the projected number of new MWI's will not be constructed if the standards are promulgated as proposed. This is referred to in this notice as the ''switching scenario'' because of the expectation that potential owners of MWI's will switch to another method of waste treatment and disposal.

Recent experience at the State level confirms that switching to lower cost alternatives is a likely impact of the implementation of MWI regulations that require add-on air pollution control. For example, recent regulations adopted by the State of New York require the use of add-on acid gas scrubber systems. As a result, the State estimates that as many as 90 percent of previously existing MWI's in New York have ceased operation. New York's regulations are similar to the proposed EPA standards in that they require the use of add-on air pollution control systems or use of an alternative waste disposal approach. While these State regulations have increased the cost of waste disposal, it appears that the availability of alternatives to onsite incineration has mitigated the economic impacts that might have been associated with the State regulations.

One concern that has recently been raised related to switching away from onsite incineration is the availability of alternatives to onsite incineration. Two common alternatives are offsite contract disposal (most commonly commercial medical waste incineration) and onsite autoclaving (steam treatment). Other less common alternatives include onsite chemical treatment and onsite microwave irradiation. The commercial medical waste disposal industry believes that there presently exists sufficient offsite capacity to treat the waste that would no longer be treated onsite. In addition, autoclaves and other onsite waste disposal options are available. In fact, even today in the absence of Federal regulations, most facilities that generate medical waste do not operate onsite MWI's. This indicates that there currently are viable alternatives to onsite incineration.

A second concern regrading a shift away from onsite incineration is the increased transportation and handling of untreated medical waste. However, the Department of Transportation (DOT) has promulgated regulations (49 CFR parts 171, 172, and 173) that address the safe transportation and handling of medical waste. The DOT regulations include provisions for packaging and labeling of medical waste. Also, the Occupational Safety and Health Administration (OSHA) promulgated regulations on December 5, 1991 (29 CFR part 1910) that address occupational exposure to bloodborne pathogens. Using a combination of engineering and work practice controls, personal protective clothing and equipment, training, medical follow-up of exposure incidents, vaccinations (where appropriate) and other provisions, the OSHA regulations minimize or eliminate health risk as a result of occupational exposure to bloodborne pathogens. The Agency believes these DOT and OSHA regulations will provide sufficient protection from potential increases in exposure to these wastes.

A. Air Impacts

As discussed earlier, impacts are presented assuming the more likely ''switching scenario.'' Baseline emissions and emissions under the proposed NSPS based on the switching scenario are presented in Tables 7a and 7b.

TABLE 7a.—BASELINE EMISSIONS COMPARED WITH EMISSIONS AFTER NSPS (WITH SWITCHING)

[Metric Units]

Pollutant	Units	Baseline	After NSPS with switch-ing
PM	Mg/yr	1,670	81.7
CO	Mg/yr	1,630	61.7
CDD/CDF	kg/yr	21.7	0.032
HCl	Mg/yr	10,000	230
SO_2	Mg/yr	192	144
NO_X	Mg/yr	1,240	944
Pb	Mg/yr	19.2	0.29
Cd	Mg/yr	1.38	0.042
Hg	Mg/yr	14.5	1.10

TABLE 7b.—BASELINE EMISSIONS COMPARED WITH EMISSIONS AFTER NSPS (WITH SWITCHING)

[English Units]

Pollutant	Units	Baseline	After NSPS with switching
PM	Tons/yr	1,850	90.0
CO	Tons/yr	1,790	68.0
CDD/CDF	Lb/yr	47.9	0.070
HCl	Tons/yr	11,100	254
SO_2	Tons/yr	212	159
NO_X	Tons/yr	1,370	1,040
Pb	Tons/yr	21.2	0.32
Cd	Tons/yr	1.52	0.046
Hg	Tons/yr	16.0	1.21

The proposed standards would reduce nationwide emissions of PM by 1,590 megagrams per year (Mg/yr) (1,750 tons per year (tons/yr)) from estimated emission levels under the typical existing control or the ''regulatory baseline'' of 1,670 Mg/yr (1,850 tons/yr). This reduction represents a decrease of about 95 percent from baseline PM emission levels in the absence of the proposed standards.

Nationwide emissions of CO would be reduced by 1,570 Mg/yr (1,730 tons/yr) from estimated emission levels under the regulatory baseline of 1,630 Mg/yr (1,790 tons/yr). This reduction equates to an overall control level of about 96 percent for CO emissions.

As a result of today's proposal, nationwide emissions of CDD/CDF would be reduced by 21.70 kilograms per year (kg/yr) (47.8 pounds per year (lb/yr)) from estimated emission levels under the regulatory baseline of 21.73 kg/yr (47.9 lb/yr). The CDD/CDF emissions would be reduced by over 99 percent from the regulatory baseline.

The proposed standards would reduce nationwide emissions of HCl by 9,820 Mg/yr (10,800 tons/yr) from estimated emission levels under the regulatory baseline of 10,000 Mg/yr (11,100 tons/yr). This reduction represents a decrease of about 98 percent in HCl emissions.

Nationwide emissions of SO_2 and NO_X would be reduced by 48.1 Mg/yr (53.0 tons/yr) and 300 Mg/yr (331 tons/yr), respectively, from estimated emission levels under the regulatory baseline of 192 Mg/yr (212 tons/yr) for SO_2 and 1,240 Mg/yr (1,370 tons/yr) for NO_X. These reductions equate to an overall emissions decrease of about 25 percent for SO_2 and about 24 percent for NO_X.

As a result of today's proposal, the nationwide emissions of Pb, Cd, and Hg would be reduced by 18.9 Mg/yr (20.9 tons/yr), 1.34 Mg/yr (1.47 tons/yr), and 13.4 Mg/yr (14.8 tons/yr), respectively, from estimated emission levels under the regulatory baseline of 19.2 Mg/yr (21.2 tons/yr) for Pb, 1.38 Mg/yr (1.52 tons/yr) for Cd, and 14.5 Mg/yr (16.0 tons/yr) for Hg. These reductions equate to overall control levels of about 98 percent for Pb, 97 percent for Cd, and 92 percent for Hg.

B. Water and Solid Waste Impacts

Under the proposed NSPS, no significant water pollution impacts are projected because the emission control technologies on which the emission limits are based do not produce a wastewater stream. However, to the extent that wet scrubber systems could be used to comply with the proposed emission limitations, water pollution impacts could be more significant. As discussed in section VI of this preamble, the Agency solicits information regarding water pollution impacts associated with the use of wet scrubber systems.

With regard to solid waste impacts, about 421,000 Mg (464,000 tons) of medical waste are projected to be burned annually in new MWI's in the fifth year after adoption of the NSPS in the absence of Federal regulations (i.e., at the regulatory baseline). This quantity of waste burned would result in about 42,100 Mg/yr (46,400 tons/yr) of solid waste (bottom ash) disposed of in landfills. The addition of acid gas control using dry lime injection, and CDD/CDF and Hg control using activated carbon injection, would increase the quantity of solid waste for final disposal by adding baghouse ash to the amount of bottom ash already generated under the regulatory baseline. In addition, switching to onsite alternatives to incineration will result in an increase in solid waste for final disposal because the nonincineration treatment methods do not reduce the volume of waste as much as incineration.

Under the switching scenario, the amount of solid waste ultimately sent to landfills would increase by about 135,000 Mg/yr (149,000 tons/yr). This includes the increase in ash from the air pollution control devices (APCD's) and the increase in waste that is treated and landfilled without being incinerated. Compared to municipal waste, which is disposed in landfills at an annual rate of over 91 million Mg/yr (100 million tons/yr), the increase in solid waste from the implementation of the MWI standards is insignificant. Therefore, no adverse solid waste impacts are anticipated under the proposed standards.

C. Energy Impacts

The emission control technologies upon which the emission limits are based would require additional energy consumption for all new MWI's. Under the switching scenario, it is not clear whether energy consumption will increase, decrease, or remain the same. Alternatives to incineration require energy to operate. However, information is not available to estimate whether alternatives use more or less energy than MWI's. It is expected that the increase in energy consumption resulting from the switching scenario will be less than the increase under the no-switching scenario.

The estimates of energy impacts assuming all new MWI's are constructed and install air pollution control (no-switching scenario) include additional auxiliary fuel (natural gas) for combustion controls and additional electrical energy for operation of the add-on control devices. In the fifth year after adoption, the proposed standards would increase total national usage of natural gas by about 25 million cubic meters per year (MMm^3/yr) (895 million cubic feet per year (10^6 ft^3/yr)) compared to fuel consumption determined from the regulatory baseline. Total national usage of electrical energy would increase by about 41,400 megawatt hours per year (MW-hr/yr) (141 billion British thermal units per year (10^9 Btu/yr)) of electricity compared to electrical energy consumption determined from the regulatory baseline.

D. Control Cost Impacts

The control cost impacts on individual facilities will vary depending on the cost of compliance with the regulation; the cost of alternative treatment and disposal methods; and other factors such as proximity to an offsite contract disposal facility, liability issues related to the transportation and final disposal of the waste, and State and local medical waste treatment and disposal requirements. In general, facilities requiring a smaller waste treatment capacity will have a greater incentive to use a less expensive treatment and disposal option because their onsite incineration cost (per ton of waste burned) will be higher. Facilities with larger amounts of waste to be treated may have some cost advantages if they use lower cost alternatives, but these advantages are not as significant due to economies of scale.

Under the switching scenario, the nationwide annual costs associated with the NSPS will increase by about 74.5 million/yr (from a baseline cost of 63.3

million/yr). The nationwide annualized cost of waste disposal per unit of medical waste treated would increase by $177/Mg ($161/ton) from the estimated nationwide annualized cost of $150/Mg ($136/ton) under the regulatory baseline.

E. Economic Impacts

The goal of the economic impact analysis was to estimate the market response to the NSPS and to determine whether there would be adverse impacts associated with the proposed standards. The proposed standards would affect five major industry sectors (hospitals, nursing homes, veterinary facilities, commercial research laboratories, and commercial medical waste incineration facilities) within which some facilities operate an onsite MWI. In addition, the proposed standards would affect a number of other industry sectors in which facilities do not typically operate an onsite MWI (e.g., blood banks). The economic impact analysis for new MWI's examined each of these sectors as a whole to determine industrywide impacts.

To assess the industrywide impacts of control costs, the market price increase resulting from the proposed standards was estimated for each regulated industry. The market price increases, presented in Table 8, may be thought of as an average price increase across each industry required to recover control costs within each industry. Table 8 reflects the more likely switching scenario. For example, under the switching scenario, the hospital industry would have to raise prices by an average of about 0.03 percent (over current revenues of about $224 billion/yr) to cover the increased cost of waste disposal. This table shows that the price increase is relatively small for each industry. This result is mainly due to the projection that most facilities do not (or will not, within the next 5 years after adoption of the standards) operate an onsite incinerator.

TABLE 8.—MARKET PRICE INCREASES IN THE MAJOR INDUSTRY SECTORS UNDER THE NSPS—SWITCHING SCENARIO

Industry	Price increase, percent
Hospitals	0.03
Nursing Homes	0.01
Veterinary Facilities	0.01
Commercial Research Laboratories	0.03
Physicians' Offices	0
Dentists' Offices	0
Freestanding Bloodbanks	0.02
Commercial Medical Waste Incineration Facilities	[a] N/A

[a] Industrywide impacts were not calculated for commercial medical waste incineration facilities because estimates of the change in demand for commercial medical waste incineration were not available. However, this industry is expected to be able to recoup all control cost increases through price increases.

Output, employment, and revenue impacts were also estimated. As a result of the low market price increases and/or relatively inelastic demand, the corresponding decreases in output, employment, and revenue were also low, never exceeding 0.05 percent under the more likely switching scenario. This result implies that no medical waste-generating industry would need to be significantly reconstructed (e.g., through closures or consolidations) as a result of the proposed standards.

IV. Impacts of the Proposed Guidelines for Existing MWI's

This section presents a description of the air, water, solid waste, energy, control cost, and economic impacts of today's proposed guidelines. All impacts are nationwide impacts that are expected to result from the implementation of the emission guidelines. As discussed below, it is expected that as many as 80 percent of existing facilities currently using onsite incineration will switch to an alternative method of treatment and disposal to avoid the increased cost of installing air pollution control equipment. Therefore, impacts are presented assuming 80 percent of existing facilities using onsite MWI's will switch to a lower cost alternative treatment and disposal methods (i.e., the ''switching scenario'').

Onsite incineration is only one of several medical waste treatment and disposal options, and for some MWI's, the cost of the equipment necessary to comply with the proposed emission guidelines will make onsite incineration more expensive than other treatment and disposal options. Consequently, many facilities that currently operate onsite MWI's are likely to switch to a less expensive method of treatment and disposal. The EPA expects that as many as 80 percent of the existing facilities currently using onsite MWI's will switch to a lower cost alternative method of treatment and disposal if the guidelines are promulgated as proposed. This is referred to in this notice as the ''switching scenario'' because of the expectation that owners of MWI's will switch to another method of waste treatment and disposal.

Recent experience at the State level confirms that switching to lower cost alternatives is a likely impact of the implementation of MWI regulations that require add-on air pollution control. For example, recent regulations adopted by the State of New York require the use of add-on acid gas scrubber systems. As a result, the State estimates that as many as 90 percent of previously existing MWI's in New York have ceased operation. New York's regulations are similar to the proposed EPA guidelines in that they require the use of add-on air pollution control systems or use of an alternative waste disposal approach. While these State regulations have increased the cost of waste disposal, it appears that the availability of alternatives to onsite incineration has mitigated the economic impacts that might have been associated with the State regulations.

One concern that has recently been raised related to switching away from onsite incineration is the availability of alternatives to onsite incineration. Two common alternatives are offsite contract disposal (most commonly commercial medical waste incineration) and onsite autoclaving (steam treatment). Other less common alternatives include onsite chemical treatment and onsite microwave irradiation. The commercial medical waste disposal industry believes that there presently exists sufficient offsite capacity to treat the waste that would no longer be treated onsite. In addition, autoclaves and other onsite waste disposal options are available. In fact, even today in the absence of Federal regulation, most facilities that generate medical waste do not operate onsite MWI's. This indicates that there currently are viable alternatives to onsite incineration.

A second concern regarding a shift away from onsite incineration is the increased transportation and handling of untreated medical waste. However, the Department of Transportation (DOT) has promulgated regulations (49 CFR parts 171, 172, and 173) that address the safe transportation and handling of medical waste. The DOT regulations include provisions for packaging and labeling of medical waste. Also, the Occupational Safety and Health Administration (OSHA) has promulgated regulations on December 5, 1991 (29 CFR part 1910) that address occupational exposure to bloodborne

pathogens. Using a combination of engineering and work practice controls, personal protective clothing and equipment, training, medical follow-up of exposure incidents, vaccinations (where appropriate) and other provisions, the OSHA regulations minimize or eliminate health risk as a result of occupational exposure to bloodborne pathogens. The EPA believes these DOT and OSHA regulations will provide sufficient protection from potential increases in exposure to those wastes.

A. Air Impacts

As discussed earlier, impacts are presented assuming the more likely ''switching scenario.'' Baseline emissions and emissions under the proposed EG based on the switching scenario are presented in Tables 9a and 9b.

TABLE 9a.—BASELINE EMISSIONS COMPARED WITH EMISSIONS AFTER IMPLEMENTATION OF THE EMISSION GUIDELINES (WITH SWITCHING)

[Metric Units]

Pollutant	Units	Baseline	After EG with switching
PM	Mg/yr ...	11,300	272
CO	Mg/yr ...	13,100	207
CDD/ CDF.	kg/yr	285	0.11
HC1	Mg/yr ...	41,200	777
SO_2	Mg/yr ...	766	479
No_x	Mg/yr ...	5,040	3,160
Pb	Mg/yr ...	77.5	0.97
Cd	Mg/yr ...	5.62	0.14
Hg	Mg/yr ...	58.6	3.67

TABLE 9b.—BASELINE EMISSIONS COMPARED WITH EMISSIONS AFTER IMPLEMENTATION OF THE EMISSION GUIDELINES (WITH SWITCHING)

[English Units]

Pollut-ant	Units	Baseline	After EG with switching
PM	Tons/yr ...	12,400	300
CO	Tons/yr ...	14,500	228
CDD/ CDF.	Lb/yr	628	0.23
HC1 ..	Tons/yr ...	45,400	857
SO_2 ...	Tons/yr ...	844	528
NO_x ...	Tons/yr ...	5,560	3,490
Pb	Tons/yr ...	85.5	1.07
Cd	Tons/yr ...	6.20	0.16
Hg	Tons/yr ...	64.6	4.05

The proposed guidelines would reduce nationwide emissions of PM by 11,000 megagrams per year (Mg/yr) (12,100 tons per year (tons/yr)) from the estimated emission levels under the typical existing control or the ''regulatory baseline'' of 11,300 Mg/yr (12,400 tons/yr). This reduction represents an overall decrease of about 98 percent of baseline PM emission levels in the absence of the proposed emission guidelines.

Nationwide emissions of CO would be reduced by 12,900 Mg/yr (14,200 tons/yr) from the estimated emission levels under the regulatory baseline of 13,100 Mg/yr (14,500 tons/yr). This reduction represents an overall control level of about 98 percent for CO emissions.

The proposed guidelines would reduce nationwide emissions of dioxins/furans by 284.8 kilograms per year (kg/yr) (627.9 pounds per year (lb/yr)) from the estimated emission levels under the regulatory baseline of 284.9 kg/yr (628.1 lb/yr). Dioxin/furan emissions would be reduced by over 99 percent from the regulatory baseline.

Nationwide emissions of HCl would be reduced by 40,400 Mg/yr (44,600 tons/yr) from the estimated emission levels under the regulatory baseline of 41,200 Mg/yr (45,400 tons/yr). This reduction represents a decrease of about 98 percent in HCl emissions from the regulatory baseline.

Nationwide emissions of SO_2 and NO_X would be reduced by 287 Mg/yr (316 tons/yr) and 1,880 Mg/yr (2,070 tons/yr), respectively, from the estimated emission levels under the regulatory baseline of 766 Mg/yr (844 tons/yr) for SO_2 and 5,040 Mg/yr (5,560 tons/yr) for NO_X. These reductions equate to an overall emissions decrease of about 37 percent for both SO_2 and NO_X.

As a result of today's proposal, nationwide emissions of Pb, Cd, and Hg would be reduced by 76.6 Mg/yr (84.4 tons/yr), 5.48 Mg/yr (6.04 tons/yr), and 54.9 Mg/yr (60.5 tons/yr), respectively, from the estimated emission levels under the regulatory baseline of 77.5 Mg/yr (85.5 tons/yr) for Pb, 5.62 Mg/yr (6.20 tons/yr) for Cd, and 58.6 Mg/yr (64.6 tons/yr) for Hg. These reductions equate to overall control levels of about 99 percent for Pb, 97 percent for Cd, and 94 percent for Hg.

B. Water and Solid Waste Impacts

Under the proposed guidelines, no significant water pollution impacts are projected because the emission control technologies upon which the emission limits are based do not produce a wastewater stream. However, to the extent that wet scrubber systems could be used to comply with the proposed emission limitations, water pollution impacts could be more significant. As discussed in section VI of this notice, the Agency solicits information regarding water pollution impacts associated with the use of wet scrubber systems.

With regard to solid waste impacts, about 1.43 million Mg (1.58 million tons) of medical waste are burned annually in existing MWI's producing about 143,000 Mg/yr (158,000 tons/yr) of solid waste (bottom ash) disposed of in landfills. The addition of acid gas control using dry lime injection, and CDD/CDF and Hg control using activated carbon injection, would increase the quantity of solid waste for final disposal by adding baghouse ash to the amount of bottom ash already generated under the regulatory baseline. In addition, switching to onsite alternatives to incineration would result in an increase in solid waste for final disposal because the nonincineration treatment methods do not reduce the volume of waste as much as incineration.

Under the switching scenario, the amount of solid waste ultimately sent to landfills would increase by about 631,000 Mg/yr (696,000 tons/yr). This quantity includes the increase in ash from the APCD's and the increase in waste that is treated and landfilled without being incinerated. Compared to municipal waste, which is disposed in landfills at a rate of over 91 million Mg/yr (100 million tons/yr), the increase in solid waste from the implementation of the MWI emissions guidelines is insignificant. Therefore, no adverse solid waste impacts are anticipated under the proposed guidelines.

C. Energy Impacts

The emission control technologies upon which the emission limits are based would require additional energy consumption for all existing MWI's. Under the switching scenario, it is not clear whether energy consumption will increase, decrease, or remain the same. Alternatives to incineration require energy to operate. However, information is not available to estimate whether alternatives use more or less energy than MWI's. It is expected that the increase in energy consumption resulting from the switching scenario will be less than the increase under the no-switching scenario.

The estimates of energy impacts assuming all existing MWI's install air pollution control (no-switching scenario) include additional auxiliary fuel for combustion controls and additional electrical energy for operation of the add-on control devices. The proposed guidelines would increase total national usage of natural gas for combustion controls by about 100 million cubic meters per year (MMm^3/

yr) (3,490 million cubic feet per year (10^6 ft^3/yr)) compared to fuel consumption determined from the regulatory baseline. Total national usage of electrical energy for the operation of add-on control devices would increase by about 175,000 megawatt hours per year (MW-hr/yr) (599 billion British thermal units per year (10^9 Btu/yr)) of electricity compared to energy consumption determined from the regulatory baseline.

D. Control Cost Impacts

The control cost impacts on individual facilities will vary depending on the cost of compliance with the guidelines; the cost of alternative treatment and disposal methods; and other factors such as proximity to an offsite contract disposal facility, liability issues related to the transportation and final disposal of the waste, and State and local medical waste treatment and disposal requirements. In general, facilities requiring a smaller waste treatment capacity will have a greater incentive to use a less expensive treatment and disposal option because their onsite incineration cost (per ton of waste burned) will be higher. Facilities with larger amounts of waste to be treated may have some cost advantages if they use a lower cost alternative, but these advantages are not as significant due to economies of scale.

Under the switching scenario, the nationwide annual costs associated with the proposed emission guidelines will increase by about $351 million/yr. The nationwide annual cost of waste disposal per unit of medical waste treated would increase by $245/Mg ($222/ton) to a total cost of $430/Mg ($390/ton) from the estimated nationwide annualized cost of $185/Mg ($168/ton) under the regulatory baseline.

E. Economic Impacts

The goal of the economic impact analysis was to estimate the market response to the emission guidelines and determine whether there would be adverse impacts associated with the proposed guidelines. The proposed guidelines would affect five major industry sectors (hospitals, nursing homes, veterinary facilities, commercial research laboratories, and commercial medical waste incineration facilities) within which some facilities operate an onsite MWI. In addition, the proposed guidelines would affect a number of other industry sectors in which facilities do not typically operate an onsite MWI (e.g., bloodbanks). The economic impact analysis for existing MWI's examined each of these sectors as a whole to determine industry wide impacts.

To assess the industrywide impacts of control costs, the market price increase resulting from the proposed guidelines was estimated for each regulated industry. The market price increases, presented in Table 10, may be thought of as an average price increase across each industry required to recover control costs within each industry. Table 10 reflects the more likely switching scenario. For example, under the switching scenario, the hospital industry would have to raise prices by an average of about 0.1 percent (over current revenues of about $224 billion/year) to cover the increased cost of waste disposal. This table shows that the price increase is relatively small for each industry. This result is mainly due to the fact that the majority of the facilities in each industry sector do not operate an onsite incinerator.

TABLE 10.—MARKET PRICE INCREASED IN THE MAJOR INDUSTRY SECTORS UNDER THE EMISSION GUIDELINES—SWITCHING SCENARIO

Industry	Price increase, percent
Hospitals	0.1
Nursing Homes	0.1
Veterinary Facilities	0.6
Commercial Research Laboratories	0.4
Physicians' Offices	0
Dentists' Offices	0
Freestanding Bloodbanks	0.1
Commercial Medical Waste Incineration Facilities	[9] N/A

[9] Industrywide impacts were not calculated for commercial medical waste incineration facilities because estimates of the change in demand for commercial medical waste incineration were not available. However, this industry is expected to be able to recoup all control cost increases through price increases.

Output, employment, and revenue impacts were also estimated. As a result of the low market price increases and/or relatively inelastic demand, the corresponding decreases in output, employment, and revenue were also low, never exceeding 1 percent under the more likely switching scenario. This result implies that no medical waste-generating industry would need to be significantly restructured (e.g., through closures or consolidations) as a result of the proposed emission guidelines.

V. Rationale for the Proposed Standards and Guidelines

A. Background

An estimated 3.4 million tons of waste are produced annually by medical waste generators in the United States. Hospitals are the single largest generator of medical waste, producing over 70 percent of the annual total. Approximately 5,000 MWI's are believed to exist nationwide (3,700 burning general medical waste and 1,300 burning pathological waste). Over 60 percent of these MWI's are found at hospitals. Medical waste incinerators are also found at commercial medical waste disposal facilities, research laboratories, nursing homes, and veterinary facilities. Based on historic sales data, an estimated 700 new MWI's will be installed over the next 5 years.

Medical waste incinerators are subject to State and local regulations that vary widely both in format and scope. A survey in April 1990 showed that in 38 States, regulations or permit guidelines specific to MWI's were either in place or were in the planning stages. The remainder of the States regulate MWI's under general incinerator requirements, which typically are less stringent that those specific to MWI's. The most common State requirements for MWI's are limits for PM, HCl, and secondary chamber temperature and residence time. Some States also regulate metals, CDD/CDF, and CO. About one third of the States require operator training.

On November 1, 1988, the Medical Waste Tracking Act (MWTA) was signed by Congress. The MWTA required EPA to establish a 2-year demonstration program to track medical waste from its origin to its disposal. In early 1989, EPA established this program in 40 CFR 259. The program was in effect from June 22, 1989, to June 22, 1991, and applied to the States of New York, New Jersey, Connecticut, and Rhode Island, and to Puerto Rico. The MWTA required EPA to prepare a series of Reports to Congress on medical waste and the demonstration program. Now that the demonstration program has concluded, Congress will decide if a medical waste tracking program should be implemented nationwide.

The current air emissions standards development effort for MWI's was initiated in 1989. The data-gathering effort was designed to take advantage of information gathered under the auspices of the MWTA. Also, in 1989, an MWI operator training course and manual were developed with recommendations on the proper operation and maintenance of MWI's.

The Amendments of 1990 added section 129 to the Act. Section 129 specifically addresses development of standards for MWI's. Section 129 requires EPA to establish an NSPS for new MWI's and emission guidelines for existing MWI's that combust hospital

waste, medical waste, and infectious waste. The standards and guidelines must specify numerical emission limitations for the following: PM, opacity, SO_2, HCl, NO_X, CO, Pb, Cd, Hg, and CDD/CDF. Section 129 also includes requirements for operator training as well as siting requirements for new MWI's.

The standards and guidelines must reflect MACT ''* * * the maximum degree of reduction in emissions of air pollutants * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impacts and energy requirements, determines is achievable * * *'' Section 129 states that ''The degree of reduction in emissions that is deemed achievable for new units in a category shall not be less stringent than the emissions control that is achieved in practice by the best-controlled similar unit * * *'' Also section 129 requires that ''Emissions standards for existing units in a category may be less stringent than standards for new units in the same category but shall not be less stringent than the average emissions limitation achieved by the best performing 12 percent of units in the category * * *'' The standards and guidelines must be no less stringent than these levels of emission control currently achieved. These levels are referred to as the MACT floor.

B. Selection of Source Category

Section 129 of the Act directs the EPA to issue standards and guidelines pursuant to section 111 for solid waste incineration units combusting hospital waste, medical waste, and infectious waste (i.e., MWI's). An MWI is defined as any device that burns medical waste, with or without other types of waste (e.g., municipal solid waste [MSW]) and with or without heat recovery.

Medical waste is defined pursuant to the Solid Waste Disposal Act as codified in 40 CFR 259 subpart B as any solid waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. Medical waste consists of, but is not limited to, the following types of materials:

1. Sharps (e.g., hypodermic and suture needles, scalpel blades, syringes, pipettes, vials, other types of broken or unbroken glassware, etc.);

2. Fabrics (e.g., gauze, garments, bandages, swabs, etc.);

3. Plastics (e.g., trash bags, sharps containers, IV bags, tubes, specimen cups, etc.);

4. Paper (e.g., disposable gowns, sheets, etc.; premoistened towels; paper towels; etc.);

5. Waste chemicals/drugs that are not RCRA hazardous waste (e.g., lab chemicals, leftover and out-of-date drugs, disinfectants, etc.); and

6. Pathological waste (e.g., human and animal body parts and tissue).

Medical waste does not include any hazardous waste identified or listed under 40 CFR 261, or any household waste as defined in 40 CFR 261.4(b)(1). On the other hand, mixtures of medical waste with hazardous waste or household waste would be considered medical waste for the purposes of these proposed standards and guidelines. The definition of household waste includes waste generated at single and multiple residences. Nursing homes or retirement homes with a health care facility could be considered multiple residences. For the purpose of the proposed standards and guidelines, the definition of medical waste includes waste materials that meet the definition of medical waste and are generated by retirement homes/nursing homes.

Medical waste also does not include human and animal remains that are not generated as medical waste. A device that burns solely human or animal remains (and the caskets or containers carrying the remains, or the bedding included with the animal remains) for the purpose of cremation is not an MWI and, therefore, is not subject to the requirements of the standards and guidelines. For example, a facility that burns the remains of animals that have been euthanized at animal shelters and animal hospitals is not an MWI because the remains are not considered medical waste. On the other hand, a facility that burns human and/or animal remains that are generated as medical waste or a facility that burns general medical waste in addition to human and/or animal remains is an MWI and is subject to the standards and guidelines. For example, a facility that burns the remains of research laboratory rats is an MWI because the remains are considered medical waste (they are generated in research pertaining to the diagnosis, treatment, or immunization of human beings or animals or in the production or testing of biologicals).

The range of waste types included in this definition is broader than that defined in the now expired Medical Waste Tracking Act (40 CFR part 259) as Regulated Medical Waste. Regulated Medical Waste consisted of seven categories of medical waste based on potential for infection or aesthetic concerns. The definition of medical waste in this proposal classifies medical waste more broadly based on materials' composition. Consequently, the estimated amount of waste generated by medical waste generators (3.4 million tons/yr) and the estimated amount of waste burned in medical waste incinerators (1.8 million tons/yr) is greater than the Medical Waste Tracking Act estimated amount of Regulated Medical Waste generated (922,000 tons/yr). It has been suggested that EPA's definition of medical waste in this proposal is inappropriate. The EPA specifically requests comment on the definition of medical waste as applied to the regulation of medical waste incinerators.

Most MWI's burn a diverse mixture of medical waste (referred to in this preamble as general medical waste), which may include some pathological waste (human and animal body parts and/or tissue). Most of the materials that make up the general medical waste stream burn readily, and given the proper conditions, will continue to burn once they are ignited. Metal and glass sharps do not burn but also do not greatly impede combustion of other materials. Pathological waste has a very high moisture content and will not support self-sustained combustion but will burn if adequate heat is applied to drive off excess moisture. As a result, larger amounts of pathological waste require special operating conditions for combustion. Thus, some facilities maintain MWI's designed and operated to burn pathological waste exclusively.

Because of differences in waste composition and the combustion process, uncontrolled emissions from pathological MWI's contain significantly lower levels of the pollutants of concern for this source category than uncontrolled emissions from general medical waste incinerators. General medical waste typically contains more metals and chlorine than does pathological waste, resulting in higher emissions of metals and HCl from general medical waste incinerators than from pathological incinerators. For example, typical uncontrolled Hg emissions are about 3.1 mg/dscm for general medical waste incinerators and about 0.05 mg/dscm for pathological MWI's. Overall pollutant emissions from pathological MWI's represent less than 3 percent of the uncontrolled nationwide emissions from MWI's burning general medical waste.

Additionally, onsite alternatives to incineration are available for the treatment of general medical waste, while most of these technologies are not applicable to the treatment of purely pathological waste. As a result, pathological MWI's are more likely to

face adverse economic impacts associated with installation of pollution control equipment, while general medical waste incinerators could use available alternatives to incineration. For these reasons, the proposed standards and guidelines focus on regulating emissions from general medical waste incinerators and include very minor requirements for pathological MWI's. Under the proposed standards and guidelines, pathological MWI's would only be required to submit quarterly reports of the amount and type of materials charged to the incinerator.

Finally, in addition to developing standards and guidelines for medical waste incinerators, section 129 of the Act directs the EPA to develop standards and guidelines for municipal waste incinerators, commercial or industrial waste incinerators, and other categories of solid waste incinerators. The Agency intends to consider pathological incinerators (along with crematory incinerators) when evaluating the category of other solid waste incinerators for regulation.

C. Modification of Existing MWI's

Previously, the terms ''modification'' and ''reconstruction'' were defined under sections 60.14 and 60.15 of subpart A of part 60. Section 129 of the Act has specified a new definition of ''modified'' that combines and revises the previous definitions of ''modification'' and ''reconstruction.'' Specifically, ''modified'' refers to:

(1) modifications for which the

* * * cumulative costs of the modifications, over the life of the unit, exceed 50 per centum of the original cost of the construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs * * *

or (2) modification involving

* * * a physical change in or change in the method of operation of the unit which increases the amount of any air pollutant emitted by the unit for which standards have been established under [section 129] or sections 111 * * *.

A special provision has been included in the proposed NSPS and emission guidelines to address certain modifications to existing facilities. This provision states that if an existing MWI is modified for the purpose of meeting the requirements of the proposed guidelines for existing MWI's or State regulations developed to implement these guidelines, then the MWI would not be considered a ''modified'' MWI and would not be subject to the NSPS (40 CFR part 60, subpart Ec).

On the other hand, if the existing facility is modified in ways not required to meet the emission guidelines, then the facility could be considered a ''modified'' MWI and could become subject to the NSPS. For example, if an existing pathological MWI, which was not originally designed to accommodate general medical waste, begins burning general medical waste, then that MWI may be considered a modified MWI and, as a result, will be subject to the NSPS.

D. Selection of Pollutants

Section 129 of the Act requires that the standards and guidelines promulgated under sections 111 and 129 and applicable to all solid waste incineration units shall specify numerical emission limitations for the following substances or mixtures: PM (total and fine), opacity, SO_2, HCl, NO_X, CO, Pb, Cd, Hg, and CDD/CDF. For this reason, the MWI standards and guidelines specify numerical emission limits for these pollutants.

E. Selection of Affected and Designated Facilities

As required by section 129 of the Act, the affected facility to which the proposed new source performance standards apply is each individual MWI for which construction is commenced after today's date or for which modification is commenced after the effective date of these standards. The designated facility to which the proposed emission guidelines apply is each existing MWI for which construction commenced on or before today's date. A facility that burns both municipal waste and medical waste could be subject to both the municipal waste combustor standards and guidelines and the medical waste incinerator standards and guidelines.

F. Selection of Format for the Proposed Standards and Emission Guidelines

The format selected for the proposed standards and guidelines is a combination of emission limitations and percent reductions to ensure control of emissions. The specific format of the proposed standards and guidelines and the reasons for selection are discussed below.

As required by section 129 of the Act, the proposed standards and guidelines would establish numerical emission limitations for PM, CO, CDD/CDF, HCl, SO_2, NO_X, Pb, Cd, and Hg. For the purpose of regulating PM and metals (Pb, Cd, and Hg) the format selected is a numerical concentration limit in units of mg/dscm corrected to 7 percent oxygen. For the purpose of regulating Hg an alternative percent reduction is also proposed. The numerical Hg emission limit reflects the emission level that can be achieved based on a fabric filter (FF) system with activated carbon injection. Emissions of Hg can be highly variable and depend on the Hg input level. In cases where Hg levels are temporarily elevated due to variability in the waste feed, the numerical emission limit may not be consistently achievable. However, the control device is capable of achieving 85 percent reduction of elevated Hg levels.

Under the proposed standards and guidelines, CDD/CDF emissions are measured in units of total ng/dscm or ng/dscm toxic equivalency (TEQ). To arrive at the TEQ, measured emissions of each tetra- through octa-CDD and CDF congener are multiplied by the corresponding toxic equivalency factor (TEF) specified in the standards and guidelines (see Table 6). The products are then added to obtain the total concentration of CDD/CDF emitted in terms of TEQ.

For CO, SO_2, NO_X, and HCl, the proposed standards and guidelines are volume concentrations corrected to 7 percent oxygen. For HCl, an alternative percent reduction is also proposed. A percent reduction is generally appropriate for acid gases emissions from MWI's. However, in cases where inlet levels are very low and the specified percent reduction would result in concentrations below the specified volume concentration (42 ppmv, which is a 97 percent reduction from typical uncontrolled emissions), these percent reductions may not be achievable. Therefore, the proposed HCl emission limits would require either a 97 percent reduction or a 42 ppmv HCl outlet concentration, which is based on reduction from typical uncontrolled emission levels, whichever is less stringent. An alternative percent reduction is not proposed for emissions of SO_2 because at the low inlet levels associated with medical waste, EPA emission test data shows that acid gases controls are not effective in reducing SO_2 emissions and as a result, SO_2 limits are based on uncontrolled emissions.

Under the proposed standards and guidelines, emission limits for Hg and HCl include stack concentrations as well as percent reductions. The EPA is requesting comments on the appropriateness of including a percent reduction along with a stack concentration limit in the standards and guidelines for these two pollutants.

G. Selection of Classes, Types, and Sizes

Section 129 states that the Administrator may distinguish among

classes, types, and sizes of units within a category in establishing the standards and guidelines. In other words, EPA may subcategorize the MWI source category in establishing standards and guidelines. After reviewing the population of MWI's, the EPA believes that, for the purpose of regulatory development and of determining MACT, the MWI population should be divided into three subcategories: (1) continuous MWI's, (2) intermittent MWI's, and (3) batch MWI's. These three subcategories are based on differences in the design of the MWI's as discussed in the following paragraphs.

In each of the design systems, sequential combustion operations typically are carried out in two separate chambers: primary and secondary. In the primary chamber, the waste is loaded and ignited, the volatile organic components driven off, and the nonvolatile materials combusted to ash. The volatile organic components released from the primary chamber are combusted in the secondary chamber. Newer MWI's are typically designed with 1-second (1-sec) residence time secondary chambers; older MWI's were designed with smaller, 0.25-second (0.25 sec) residence time secondary chambers.

While there are similarities in the three design types of MWI's, there are also key design differences that make each type unique. The primary differences between the three design types of MWI's are the methods of charging waste to and removing ash from the primary chamber. These differences cause variations in the way the waste is burned and in the pollutant emission profile for each MWI design type.

Continuous units, which are the largest of the three types, have mechanical ram feeders and continuous ash removal systems. These features allow the unit to operate 24 hours per day for many days at a time. Continuous MWI's achieve steady-state operation in the beginning of their operating cycle and maintain this mode of operation throughout the remainder of the cycle. Waste is charged and ash is removed simultaneously (i.e., on a continuous basis). During operation, waste is burned at the same rate as it is charged into the unit, and pollutant emission rates and primary and secondary chamber temperatures tend to be relatively constant.

Most intermittent MWI's also have mechanical ram feeders that charge waste into the primary chamber at about 5- to 10-minute intervals. However, because there is no means for ash removal during the burning phase of the operating cycle, the unit can only be operated for a limited number of hours before the accumulation of ash in the primary chamber requires the unit to be shut down for ash removal. Intermittent units, which are usually much smaller than continuous units, typically operate on a daily burn cycle of 10 to 14 hours. While these units tend to approach steady-state operation during the middle of their operating cycle, waste is normally being charged faster than it is being burned. Primary chamber temperatures tend to climb throughout the operating cycle until waste is no longer charged into the unit. Because there is a significant accumulation of unburned material in the primary chamber at the end of the charging period, these units are designed with a burndown/cooldown phase. Generally, pollutant emissions continue through this phase, which can continue for several hours after charging has ceased.

The batch operating cycle consists of three phases: low-air, high-air, and cooldown. All of the waste to be burned during a complete cycle is loaded into the primary chamber before the unit begins operation. Once the unit is filled with waste and the burning cycle begins, the charging door is not opened again until the cycle is complete and the unit is cool. This cycle normally takes 1 or 2 days, depending on the size of the unit and the amount of waste charged. During the low-air phase, temperatures in the primary chamber rise slowly because combustion is occurring only on the surface of the waste pile and because combustion air is restricted. When the high-air phase begins, the temperatures climb more rapidly, more volatiles are exposed to the flame front, and the combustion process quickens. Batch MWI's tend to approach steady-state operation at the end of the low-air phase, when the primary chamber temperature reaches the design operating range. Pollutant emission rates also tend to increase in the second half of the low-air phase, then level off, and continue steadily during the high-air and cooldown phases. Pollutant concentrations during the high-air phase of batch MWI's are similar to concentrations during the charging period for continuous and intermittent units.

The differences in typical hours of operation, discussed above, affect the potential for total emissions (on a mass basis) from each MWI type. Continuous MWI's, which can accommodate waste charging for an unrestricted length of time, will have the greatest potential emissions because waste burning and subsequent emissions can occur continuously. Intermittent MWI's, designed to accept waste charges at periodic intervals for between 8 and 14 hours, will be limited in potential emissions by periods of shutdown required to remove ash from the incinerator. The hours of operation, limited by the time required to remove ash, result in less potential emissions from intermittent MWI's than from continuous MWI's. Batch MWI's are designed to burn only one load of waste at a time. The operating cycle normally takes 1 or 2 days, depending on the size of the unit and the amount of waste charged. Potential emissions from batch MWI's are lower than continuous and intermittent MWI's because of the significant difference in the total amount of waste burned over a given period of time.

Typical uncontrolled emission levels for each of the three subcategories are presented in Tables 11a and 11b. Table 11a shows uncontrolled emissions from new MWI's, while Table 11b shows uncontrolled emissions from existing MWI's. These emission levels reflect concentrations when the MWI is operating at steady-state conditions, which include the high-air phase for the batch MWI and the charging period for continuous and intermittent MWI's. As noted elsewhere, the EPA specifically solicits comment on the determination to distinguish between continuous, intermittent, and batch units.

TABLE 11a.—TYPICAL UNCONTROLLED EMISSIONS FROM NEW MWI'S

Pollutant	Continuous	Intermittent	Batch
PM, mg/dscm	300	300	300
CO, ppmv	300	300	300
CDD/CDF, ng/dscm	6,600	6,600	6,600
HCl, ppmv	1,400	1,400	1,400
SO_2, ppmv	16	16	16
NO_X, ppmv	140	140	140

TABLE 11a.—TYPICAL UNCONTROLLED EMISSIONS FROM NEW MWI'S—Continued

Pollutant	Continuous	Intermittent	Batch
Pb, mg/dscm	4.2	4.2	4.2
Cd, mg/dscm	0.29	0.29	0.29
Hg, mg/dscm	3.1	3.1	3.1

TABLE 11b.—TYPICAL UNCONTROLLED EMISSIONS FROM EXISTING MWI'S

Pollutant	Continuous (0.25-sec)	Continuous (1-sec)	Intermittent	Batch
PM, mg/dscm	570	300	570	570
CO, ppmv	690	300	690	690
CDD/CDF, ng/dscm	25,000	6,600	25,000	25,000
HCl, ppmv	1,400	1,400	1,400	1,400
SO_2, ppmv	16	16	16	16
NO_X, ppmv	140	140	140	140
Pb, mg/dscm	4.2	4.2	4.2	4.2
Cd, mg/dscm	0.29	0.29	0.29	0.29
Hg, mg/dscm	3.1	3.1	3.1	3.1

One specific approach which EPA is considering and on which EPA requests comment is that of further subcategorizing batch and intermittent MWI's by size or capacity to burn medical waste. Some have suggested, for example, that EPA examine alternatives, such as subcategorizing these categories into incinerators with capacities of 50 pounds per hour or less, 100 pounds per hour or less, 200 pounds per hour or less, etc. A number of States have already established subcategories based on size which exempt the smallest incinerators or impose less stringent requirements on such incinerators. Current State regulations, therefore, may provide a basis for further subcategorizing the categories of batch and intermittent MWI's.

To fully consider subcategorization by size within the batch and intermittent categories, however, a mechanism must be available to accurately and consistently determine the capacity of an MWI. Only if such a mechanism exists, will enforcement personnel, as well as owners and operators of MWI's, be assured that MWI's are subject to a consistent set of requirements.

The EPA believes this may be a serious problem. It appears there is no common or widely used mechanism or ''standard'' within the MWI industry for sizing or determining the capacity of an incinerator to burn medical waste. As a result, it seems that one vendor's 50 pound per hour capacity incinerator can be another vendor's 100 pound per hour capacity incinerator. It also appears the same vendor may sell one customer a 50 pound per hour capacity MWI and then sell another customer the same incinerator as a 100 pound per hour MWI. The EPA believes that a manufacturer's or vendor's ''nameplate capacity'' is not an accurate and reliable means for determining the size or capacity of an MWI.

The EPA recognizes that the composition of medical waste changes across generators, over time, and in response to changes in waste handling or recycling practices in a way that may affect the amount of medical waste a specific incinerator is able to burn. For the purposes of enforcing regulations that may vary by size or capacity, a common mechanism or ''standard'' to measure or determine the capacity of MWI's is necessary.

Consequently, EPA specifically requests comments on a mechanism or ''standard'' for accurately and consistently determining the capacity of MWI's in the enforcement of whatever regulation might be adopted. For example, the comments might outline the mechanisms or approaches used by States to ensure all MWI's of the same capacity are subject to the same requirements. Or, the comments may offer alternative measures of capacity that serve as a better basis for identifying small intermittent and/or small batch MWI's. Finally, the manufacturers may choose to develop a voluntary approach providing a consistent measure of rated capacity.

H. Performance of Technology

Medical waste incinerator emissions are mixtures of pollutants including acid gases (HCl and SO_2), NO_X, CO, PM, CDD/CDF, and metals (Pb, Cd, and Hg). There are basically two approaches to controlling these emissions: combustion control and add-on air pollution control. These approaches will be discussed in sections 1. and 2. below.

The first approach, combustion control, can be broken down into three levels that are based on the flue gas residence time in the secondary chamber. These three levels are 0.25-sec combustion, 1-sec combustion, and 2-sec combustion.

The second approach can be further broken down into various add-on control systems, including wet systems, fabric filter systems without activated carbon injection, and fabric filter systems with activated carbon injection. The control of NO_X will also be discussed under add-on control systems.

One additional area that has been suggested for consideration is waste segregation. This topic will be discussed in paragraph 3. of this section.

1. Combustion Control

Combustion control includes the proper design, construction, operation, and maintenance of an MWI to destroy or prevent the formation of air pollutants prior to their release to the atmosphere. Test data indicate that as secondary chamber residence time and temperature increase, emissions decrease. Combustion control is most effective in reducing CDD/CDF, PM, and CO emissions.

The 0.25-sec combustion level includes a minimum secondary chamber temperature of 927 °C (1700 °F) and a 0.25-sec secondary chamber residence time. These combustion conditions are typical of older MWI's.

The 1-sec combustion level includes a minimum secondary chamber temperature of 927°C (1700°F) and residence time of 1-sec. These combustion conditions are typical of newer MWI's. Compared to 0.25-sec combustion, 1-sec combustion will achieve substantial reductions in CDD/CDF and CO emissions, and will

provide some control of PM, but will not reduce emissions of acid gases (HCl and SO_2), NO_X, or metals (Pb, Cd, and Hg).

The 2-sec combustion level includes a minimum secondary chamber temperature of 1800°F and residence time of 2-sec. These combustion conditions will provide additional control of CDD/CDF, CO, and PM, but will not reduce emissions of acid gases (HCl and SO_2), NO_X, or metals (Pb, Cd, and Hg). The 2-sec combustion conditions are considered to be the best level of combustion control that is applied to MWI's.

2. Add-On Control

Add-on control refers to various add-on air pollution control systems used in addition to 2-sec combustion to capture pollutants as they leave the incinerator. Add-on controls include wet systems, fabric filter systems without activated carbon injection, and fabric filter systems with activated carbon injection. Because Pb and Cd are associated with PM in the flue gas and are removed by PM control devices, these three pollutants are considered as a group when evaluating MACT. Similarly, SO_2 and HCl are considered together because generally, they are both reduced using acid gas controls.

a. *Wet systems*. Wet systems include scrubbing systems such as a venturi scrubber (VS) or a venturi scrubber followed by a packed-bed absorber (VS/PB). Compared to combustion control, wet systems achieve substantial reductions in HCl emissions, provide some control of Pb and Cd, and further reduce PM and CDD/CDF emissions, but do not add to the control of NO_X, CO, or Hg. However, at the low SO_2 levels associated with MWI's, wet systems are not, in EPA's experience, effective in reducing SO_2 emissions. As discussed in section VI, EPA requests comment on the performance and costs of wet scrubber systems.

b. *Fabric filter systems without carbon injection*. Fabric filter systems include a fabric filter followed by a packed bed absorber (FF/PB), dry sorbent injection followed by a fabric filter (DI/FF), or a spray dryer followed by a fabric filter (SD/FF). The SD/FF and the DI/FF systems have the same performance based on EPA MWI test data. The fabric filter alone was not examined because wet systems achieve greater overall emission reduction at a lower cost.

Compared to wet systems, fabric filter systems generally provide additional control of PM, Pb, and Cd, but do not add to the control of acid gases, NO_X, CO, or Hg. The performance of the three fabric filter systems in reducing CDD/CDF emissions varies significantly. Compared to combustion control, the DI/FF and SD/FF systems provide no additional control of CDD/CDF, while formation of CDD/CDF is a potential problem with the FF/PB system.

Formation of CDD/CDF occurs when there is intimate contact between a gas stream containing CDD/CDF precursors and fly ash, which acts as a catalyst for CDD/CDF formation. The optimum temperature window for fly ash catalyzed CDD/CDF formation is between 300° and 600°F. The formation of CDD/CDF is minimized when using combustion control or wet systems because these options provide: (1) rapid cooling of the gas stream through the temperature window; and/or (2) quick dispersion (or removal in the case of wet systems) of CDD/CDF precursors and fly ash. In DI/FF and SD/FF systems, the presence of an acid gas sorbent (lime, for example) also limits the formation of CDD/CDF. The fabric filter in a FF/PB system, on the other hand, can provide those conditions conducive to CDD/CDF formation. In fact, test data have shown CDD/CDF formation in the FF/PB system.

c. *Fabric filter systems with carbon injection*. Data from a DI/FF system and a SD/FF system show that the injection of activated carbon upstream of the fabric filter results in significant reductions in CDD/CDF and Hg emissions, compared to wet systems and FF systems without carbon. Because no data are available from a FF/PB system with carbon injection, and because CDD/CDF formation occurred in a FF/PB system, it is not known exactly what CDD/CDF emission reductions can be achieved with this system. However, it is expected that the injection of carbon will improve the performance of a FF/PB system in reducing CDD/CDF emissions.

d. *Nitrogen oxides control*. During combustion, NO_X is formed through oxidation of fuel-bound nitrogen (N_2) contained in the medical waste and oxidation of atmospheric N_2 (from the combustion air). Selective noncatalytic reduction (SNCR) add-on technology has been used to control NO_X emissions from municipal waste combustors (MWC's) by reducing NO_X to N_2 without the use of catalysts. Techniques include Thermal $DeNO_X$™, which injects ammonia into the combustor as a reducing agent; the NO_XOUT™ process, which injects urea with chemical additives; and a two-stage urea/methanol injection process. Maximum emissions reduction occurs when the reducing agents are injected into a gas stream within a narrow temperature range and the gas is maintained in that range for a sufficient length of time.

A discussion of SNCR NO_X control was presented in the recent proposal preamble for the MWC NSPS (59 FR 181 page 48228). The use of SNCR at MWC's results in NO_X emission reductions of about 45 percent.

There are some concerns about the applicability of SNCR to MWI's. The SNCR technology has never been applied to MWI's, and several factors may complicate the use of SNCR and may reduce its performance level. The periodic charging of waste may cause corresponding temperature fluctuations, and the varying moisture and nonhomogeneous nature of the waste burned. When the temperature rises above the required injection temperature window, the reducing agent is oxidized to NO_X, and NO_X emissions can increase. In the event of low temperatures, unreacted ammonia (NH_3) emissions can occur.

Furthermore, uncertainties exist regarding the injection pattern necessary to achieve adequate mixing and residence time in the operating temperature window and in the design and engineering work necessary to develop equipment that could be used in applications with much smaller gas flow rates than those for MWC's. Consequently, SNCR is not considered a demonstrated control technology for MWI's.

Although SNCR is not considered a demonstrated control technology for MWI's, the EPA specifically solicits comments on the technical feasibility of applying NO_X control to MWI's. Specifically, the EPA solicits information on the performance, including control device inlet and outlet emissions data, costs, applicability, and operating experience associated with specific NO_X control technologies for MWI's.

3. *Waste segregation*. One area that has been suggested for consideration is waste segregation. It has been suggested that removal of batteries would reduce Hg emissions and that removal of chlorinated plastics would result in reductions in HCl and CDD/CDF. The EPA data indicate that these emissions vary from facility to facility which could be a result of differences in the amount of Hg and chlorine found in the waste stream. The types of materials that are sent to the incinerator will vary from facility to facility depending on facility operating practices, which are defined by purchasing decisions, waste handling procedures, and other practices that affect the types of materials incinerated. The EPA has no data on the effect of waste handling practices on emissions

of various pollutants and is requesting comments on the extent to which operating practices could influence emissions. To evaluate the effectiveness of waste segregation programs, the EPA is specifically soliciting detailed descriptions of the programs and results of performance tests conducted to demonstrate pollutant emission levels from the MWI prior to implementation of the program and subsequent to implementation of the program. This information is critical to a thorough evaluation of the effectiveness of the program. In addition, the EPA solicits comments on how such a program could be incorporated into the MWI regulations. Whenever information is submitted relative to Hg emissions, the EPA requests that, if available, Hg emissions data be broken out by various species emitted (for example mercury chloride or elemental mercury).

I. MACT Floor and MACT for New MWI's

Section 129 of the Clean Air Act requires that emission standards reflect MACT. According to section 129, the degree of reduction in emissions that is deemed achievable for new MWI's may not be less stringent than the emissions control that is achieved in practice by the best controlled similar unit. As a result, the emission limits selected to reflect MACT for new MWI's must, at a minimum, be as stringent as the emission levels achieved by the best controlled similar unit. This minimum performance level is known as the MACT floor. Beyond the MACT floor, in determining what performance level should be adopted in the standards as MACT, the Administrator is to consider the costs, any nonair-quality health and environmental impacts and energy requirements associated with such emission limits.

The basis for MACT determinations are presented for each subcategory in paragraphs I1, I2, and I3 of this section. The EPA solicits comments on whether test data are available from MWI's that are achieving better control than the systems used as the basis for the MACT determinations. If submitting Hg data, EPA specifically requests that, if available, Hg emission data be broken down by various species emitted (for example, mercury chloride and elemental mercury).

While the paragraphs that follow focus on specific control technologies in determining the MACT floor and MACT for new MWI's, the standards do not require the use of any specific technology. The Agency's assessment of the performance of specific technologies is used to develop emission limitations, which appear in the regulation. Any control technology that can comply with the emission limitations may be used.

1. MACT Floor and MACT for New Continuous MWI's

As discussed in section VI, the discussion that follows is based in part on limited test data on wet scrubber systems. The EPA requests comment on the performance and costs of wet scrubber systems.

The MACT floor for continuous MWI's consists of the emission levels that are achievable with DI/FF with carbon injection. The MACT floor is based on these emission levels because DI/FF with carbon injection achieves the lowest emission levels for all pollutants, and it is used to control emissions from at least one existing continuous MWI. While the lowest emission levels for most of the pollutants are achieved by several different control technologies (including DI/FF with carbon injection), the lowest Hg and CDD/CDF emission levels for continuous MWI's are achieved only with DI/FF with carbon injection.

Because the MACT floor is the most effective level of control for continuous units, there are no alternatives beyond the MACT floor to consider. The level of emission control achieved by a DI/FF system with carbon injection is considered MACT for continuous MWI's.

As discussed earlier, NO_X control has not been demonstrated on MWI's and acid gas controls are not effective in reducing SO_2 emissions from MWI's. Therefore, MACT reflects no control of NO_X and SO_2. However, because the Act requires EPA to set numerical emission limits for NO_X and SO_2, the limits are proposed at 210 ppmv for NO_X and 45 ppmv for SO_2, the highest uncontrolled NO_X and SO_2 emission rates measured during the EPA test program. The EPA specifically solicits comments on the emission limits of 45 ppmv set for SO_2 and 210 ppmv set for NO_X and whether these levels accurately reflect uncontrolled emissions of NO_X and SO_2 at MWI's.

2. MACT Floor and MACT for New Intermittent MWI's

As discussed in section VI, the discussion that follows is based in part on limited test data on wet scrubber systems. The EPA requests comment on the performance and costs of wet scrubber systems.

The MACT floor for intermittent MWI's is based on the emission levels that are achievable with a combination of two control technologies. The VS/PB and DI/FF without carbon injection technologies are each used to control emissions from at least one intermittent MWI. The MACT floor is based on both of these technologies because VS/PB achieves the lowest CDD/CDF emissions, but DI/FF without carbon injection achieves the lowest PM, Pb, and Cd emissions. The MACT floor emission levels for the other pollutants can be achieved with either technology. Therefore, one way to achieve all of the MACT floor emission levels for intermittent MWI's would be to use a combination of both VS/PB and DI/FF without carbon injection.

Another approach, which is less complex and less costly than the above combination of controls, could also be used to achieve the MACT floor emission levels. As noted in the discussion of the MACT floor for continuous MWI's, the CDD/CDF emission levels achievable with the DI/FF with carbon injection are even lower than those achievable with the VS/PB system. Even though this technology is not known to be used with existing intermittent MWI's, it could achieve better performance for a much lower cost than the combination of controls described above, and therefore the MACT floor for new intermittent MWI's is based on these emission levels.

Because the MACT floor is the most effective level of control for intermittent units, there are no alternatives beyond the MACT floor to consider. The level of emission control achieved by a DI/FF system with carbon injection is considered MACT for intermittent MWI's.

As discussed earlier, NO_X control has not been demonstrated on MWI's and acid gas controls are not effective in reducing SO_2 emissions from MWI's. Therefore, MACT reflects no control of NO_X and SO_2. However, because the Act requires EPA to set numerical emission limits for NO_X and SO_2, the limits are proposed at 210 ppmv for NO_X and 45 ppmv for SO_2, the highest uncontrolled NO_X and SO_2 emission rates measured during the EPA test program. The EPA specifically solicits comments on the emission limits of 45 ppmv set for SO_2 and 210 ppmv set for NO_X and whether these levels accurately reflect uncontrolled emissions of NO_X and SO_2 at MWI's.

3. MACT Floor and MACT for New Batch MWI's

As discussed in section VI, the discussion that follows is based in part on limited test data on wet scrubber systems. The EPA requests comment on the performance and costs of wet scrubber systems.

Like the MACT floor for intermittent MWI's, the MACT floor for new batch MWI's consists of the emission levels that are achieved with a combination of two control technologies. The 2-sec combustion control is used to control emissions from many existing batch MWI's, and FF/PB is used to control emissions from at least one batch MWI; no other add-on control technologies have been identified on batch units. The FF/PB achieves lower PM, Pb, Cd, and HCl emissions than 2-sec combustion control, but because CDD/CDF formation can occur in a FF/PB system, 2-sec combustion control alone achieves lower CDD/CDF emissions. Equivalent emission levels for other pollutants are achieved with both technologies. The MACT floor for all pollutants can be achieved with the use of another technology: DI/FF without carbon injection. Except for CDD/CDF, this technology achieves the same emission levels as FF/PB, and the CDD/CDF emissions are the same as those for 2-sec combustion control alone. Therefore, the MACT floor for new batch MWI's consists of the emission levels that are achievable with DI/FF without carbon injection.

Unlike continuous and intermittent MWI's, there is a level of control more effective than the MACT floor for batch MWI's. This level of control is achieved by adding carbon to the DI/FF system. The result is further reduction in CDD/CDF emissions along with significant Hg control. The incremental national annual cost of this option is about $740,000, or about $170/ton of waste burned nationwide. The national annual costs increase by only about 3 percent. Therefore, the level of control achieved by the DI/FF system with carbon injection is considered MACT for batch MWI's.

As discussed earlier, NO_X control has not been demonstrated on MWI's and acid gas controls are not effective in reducing SO_2 emissions from MWI's. Therefore, MACT reflects no control of NO_X and SO_2. However, because the Act requires EPA to set numerical emission limits for NO_X and SO_2, the limits are proposed at 210 ppmv for NO_X and 45 ppmv for SO_2, the highest uncontrolled NO_X and SO_2 emission rates measured during the EPA test program. The EPA specifically solicits comments on the emission limits of 45 ppmv set for SO_2 and 210 ppmv set for NO_X and whether these levels accurately reflect uncontrolled emissions of NO_X and SO_2 at MWI's.

J. MACT Floor and MACT for Existing MWI's

1. MACT Floor for Existing MWI's

Section 129 of the Act requires that emission guidelines reflect MACT. According to section 129, the degree of reduction in emissions that is deemed achievable for existing MWI's must not be less stringent than the average emission limitation achieved by the best performing 12 percent of units in the category. In setting MACT standards, the EPA must establish the MACT floor for a source category because the Act specifies that each standard must be at least as stringent as the floor for the relevant source category. For the MWI source category, the EPA did not have sufficient emissions data to determine the MACT floor. Data was only available from 7 MWI facilities (8 emissions tests), to represent 3,700 existing MWI's. As a result, the EPA examined air quality permits and State regulations to determine the emission limitations achieved by the best-performing 12 percent of units in each subcategory.

Emission limitations were determined for the estimated total MWI population by examining air quality permits where available and by assuming that the estimated population of MWI's for which permits were not available are subject to emission limitations specified by State regulations. It was assumed that all MWI's are either achieving their permit limits or are achieving their State regulatory emission limits.

For each subcategory, the emission limitations for each pollutant were ranked from most stringent to least stringent and the MACT floors for each pollutant were determined by averaging the emission limitations of the top 12 percent of units in that subcategory. In some cases, the number of MWI's subject to specific emission limitations did not comprise 12 percent of the population in a subcategory. Where this occurred, numerical emission limits were established for the MACT floor by including uncontrolled emission values for the additional number of MWI's necessary to make up 12 percent of the existing population.

The MACT floors define the minimum level of emissions control. Beyond these levels, in determining what performance levels should be adopted in the guidelines as MACT, the Administrator is to consider the costs, any nonair-quality health and environmental impacts, and energy requirements associated with such emission limits.

An estimated 338 continuous, 3,018 intermittent, and 336 batch MWI's exist nationwide. For each of these subcategories, the MACT floor emission levels for each pollutant are calculated as the averages of the emission limitations reported by the top 12 percent of units in that subcategory. The top 12 percent of units in each subcategory is represented by the 41 continuous, 363 intermittent, and 41 batch MWI's with the most stringent permit or state regulation limitations. The MACT floor emission levels for each pollutant in each subcategory are presented in Table 12.

TABLE 12.—MACT FLOOR EMISSION LEVELS FOR EXISTING MWI'S

Pollutant	MWI type		
	Continuous	Intermittent	Batch
PM, mg/dscm	46	69	69
CO, ppmv	76	90	91
CDD/CDF, ng/dscm	1,619	12,906	14,606
HC1, ppmv	43	115	911
SO_2, ppmv	284	414	1,166
NO_X, ppmv	257	216	220
Pb, mg/dscm	8.7	11.8	23.1
Cd, mg/dscm	0.56	1.8	3.4
Hg, mg/dscm	4.0	15.6	18.5

As noted above, EPA is also considering further subcategorizing batch and intermittent MWI's by size or capacity to burn medical waste. Specifically, some have suggested EPA consider alternatives, such as subcategorizing these categories into incinerators with capacities of 50 pounds per hour or less, 100 pounds per hour or less, 200 pounds per hour or less, etc. A number of States have regulations which exempt the smallest medical waste incinerators or impose less stringent requirements on such incinerators.

Subcategorization of the batch and intermittent MWI categories could find that the MACT floor for small intermittent and/or small batch incinerators is less stringent than the MACT floor for larger incinerators in these categories. The MACT floor for small intermittent and/or small batch MWI's within these categories, for example, could be much less stringent than the MACT floor of 69 mg/dscm identified above for both batch and intermittent incinerators.

2. MACT for Existing Continuous MWI's

As discussed in section VI, the discussion that follows is based on limited test data on wet scrubber systems. The EPA requests comment on the performance and costs of wet scrubber systems. Also, while the paragraphs that follow focus on specific control technologies in determining MACT for existing continuous MWI's, the guidelines do not require the use of any specific technology. The Agency's assessment of the performance of specific technologies is used to develop emission limitations, which appear in the guidelines. Any control technology that can comply with the emission limitations may be used.

a. *MACT for PM, Pb, and Cd.* Uncontrolled PM emissions typically are 570 mg/dscm for MWI's with 0.25-sec combustion and 300 mg/dscm for MWI's with 1-sec combustion. The MACT floor for PM is 46 mg/dscm. A fabric filter system is necessary to meet the MACT floor level. The FF system is capable of achieving PM emission levels of as low as 30 mg/dscm.

Typical uncontrolled Pb and Cd emission are 4.2 mg/dscm and 0.29 mg/dscm, respectively. The MACT floors for Pb and Cd are 8.65 mg/dscm and 0.56 mg/dscm, respectively. Although no control is necessary to achieve the MACT floor levels for Pb and Cd, the fabric filter system that would be needed to meet the MACT floor emission level for PM, would reduce Pb and Cd emissions to 0.10 mg/dscm and 0.05 mg/dscm, respectively. Because this system is already necessary to meet the MACT floor level for PM, there is no cost associated with reducing emissions of Pb and Cd from the uncontrolled MACT floor levels to the level of control achieved by the FF system. Additional control beyond the FF system has not been demonstrated for any of these pollutants. As a result, the proposed MACT for PM, Pb, and Cd for continuous MWI's are the levels achievable with the FF system: 30 mg/dscm for PM, 0.10 mg/dscm for Pb, and 0.05 mg/dscm for Cd.

b. *MACT for Carbon Monoxide.* Typical uncontrolled emissions of CO at continuous MWI's are 690 ppmv for units with 0.25-sec combustion and 300 ppmv for units with 1-sec combustion. As discussed earlier, the MACT floor for CO is 76 ppmv. Two-second combustion control is necessary to meet the MACT floor level for CO and is capable of achieving CO levels as low as 50 ppmv at no additional cost. Further reduction of CO emissions has not been demonstrated. Therefore, the proposed MACT for CO is 50 ppmv, the level achievable by 2-sec combustion.

c. *MACT for Dioxins and Furans.* Typical uncontrolled emissions of dioxins and furans (CDD/CDF) are 25,000 ng/dscm for MWI's with 0.25-sec combustion and 6,600 ng/dscm for MWI's with 1-sec combustion. The MACT floor for CDD/CDF is 1,619 ng/dscm. Two-second combustion control is necessary to meet the MACT floor level for CDD/CDF and is capable of achieving CDD/CDF levels of 1,500 ng/dscm, at no additional cost.

As discussed earlier, an FF system is needed to achieve the MACT floor for PM. Control of CDD/CDF beyond the level of emissions achievable with 2-sec combustion control can be attained either by adding a wet system or by injecting activated carbon into the FF system. Although the wet system is capable of reducing CDD/CDF emissions, the less expensive approach would be to inject carbon into the FF system because the FF system is already needed to meet the MACT floor level for PM. By injecting carbon into the FF system, CDD/CDF emissions could be reduced to about 80 ng/dscm and Hg emissions could substantially be reduced. The nationwide incremental annual cost of carbon injection is about $9.4 million/yr, or about $12/ton of waste burned in continuous MWI's. This incremental cost represents an increase of only about 5.8 percent over the cost of the FF system without carbon injection. As a result, MACT for CDD/CDF is the level of control achievable with an FF system with carbon injection, 80 ng/dscm total CDD/CDF, or 1.9 ng/dscm TEQ. To arrive at the TEQ, measured emissions of each tetra- through octa- CDD and CDF congener are multiplied by the corresponding toxic equivalency factor (TEF) specified in § 60.36c of the proposed emission guidelines. The products are then added to obtain the concentration of CDD/CDF emitted in terms of TEQ.

d. *MACT for Mercury.* Typical uncontrolled Hg emissions are 3.1 mg/dscm. The MACT floor for Hg is 4.04 mg/dscm. No control of Hg is necessary to meet the MACT floor emission level.

The only control system capable of consistently reducing Hg emissions is the FF system with carbon injection, which can achieve emissions of 0.47 mg/dscm Hg or 85 percent reduction from uncontrolled emissions. The FF system without carbon injection is necessary to meet the MACT floor for PM and the injection of carbon is necessary to meet the proposed MACT emission level for CDD/CDF. As mentioned above in the discussion on CDD/CDF, the nationwide incremental annual cost of injecting carbon is about $9.4 million/yr, or about $12/ton of waste burned. This additional cost represents an increase of only about 5.8 percent over the cost of the FF system without carbon injection. Therefore, the proposed MACT for Hg is 0.47 mg/dscm or 85 percent reduction.

e. *MACT for acid gases (HCl and SO_2).* Typical uncontrolled emissions of HCl and SO_2 from continuous MWI's are 1,400 ppmv for HCl and 16 ppmv for SO_2. In general, acid gases controls are capable of reducing emissions of both HCl and SO_2. However, in EPA's experience, acid gases controls are not effective in reducing emissions of SO_2 from MWI's because of the low SO_2 inlet levels associated with the incineration of medical waste. The emissions of HCl from MWI's, on the other hand, are reduced by acid gas controls. As discussed earlier, the MACT floor for HCl is 43 ppmv. A reduction of 97 percent from uncontrolled levels is necessary to achieve the MACT floor for HCl. Wet systems and FF systems are each capable of reducing HCl emissions to 42 ppmv or by 97 percent from uncontrolled levels. Therefore, MACT for HCl is 42 ppmv or 97 percent reduction.

Typical uncontrolled emissions of SO_2 are 16 ppmv, but can range as high as 45 ppmv. The MACT floor for SO_2 is 284 ppmv, and can be achieved at uncontrolled levels. Consequently, the MACT floor requires no control of SO_2. As discussed earlier, acid gas controls are not effective in reducing SO_2 emissions from MWI's. Therefore, MACT also reflects no control of SO_2.

However, because the Act requires the EPA to set a numerical emission limit for SO_2, the limit is proposed at 45 ppmv, the highest SO_2 emission rate measured during the EPA test program. The EPA specifically solicits comments on the emission limit of 45 ppmv set for SO_2 and whether this level accurately reflects uncontrolled emissions of SO_2 at MWI's.

f. *MACT for Nitrogen Oxides.* Typical uncontrolled emissions of NO_X are 140 ppmv but range as high as 210 ppmv. The MACT floor for NO_X is 257 ppmv, and can be achieved at uncontrolled levels. As discussed earlier, NO_X control has not been demonstrated on MWI's. Therefore, MACT also reflects no control of NO_X. However, because the Act requires the EPA to establish a numerical emission limit for NO_X, the limit is proposed as 210 ppmv, the highest NO_X emission rate measured during the EPA test program. The EPA specifically solicits comments on the emission limit of 210 ppmv set for NO_X and whether this level accurately reflects uncontrolled emissions of NO_X at MWI's.

3. MACT for Existing Intermittent MWI's

As discussed in section VI, the discussion that follows is based on limited test data on wet scrubber systems. The EPA requests comment on the performance and costs of wet scrubber systems. Also, while the paragraphs that follow focus on specific control technologies in determining MACT for existing intermittent MWI's, the guidelines do not require the use of any specific technology. The Agency's assessment of the performance of specific technologies is used to develop emission limitations, which appear in the guidelines. Any control technology that can comply with the emission limitations may be used.

a. *MACT for PM, Pb, and Cd.* Typical uncontrolled emissions of PM from intermittent MWI's are about 570 mg/dscm. The MACT floor for PM emissions from intermittent MWI's is 69 mg/dscm. A fabric filter system is necessary to meet the MACT floor level. In fact, the FF system can reduce PM emissions even further, to 30 mg/dscm, at no additional cost.

Uncontrolled emissions of Pb and Cd are 4.2 mg/dscm and 0.29 mg/dscm, respectively. The MACT floors for Pb and Cd are 11.78 mg/dscm and 1.76 mg/dscm, respectively. Although no control is necessary to achieve the MACT floor levels for Pb and Cd, the FF system necessary to meet the MACT floor level for PM would also reduce emissions of Pb and Cd to 0.10 mg/dscm and 0.05 mg/dscm, respectively. Because this system is already necessary to meet the MACT floor level for PM, there is no cost associated with reducing emissions of Pb and Cd from the uncontrolled MACT floor levels to the level of control achieved by the FF system. Further reduction of Pb and Cd has not been demonstrated. Therefore, the proposed MACT for intermittent MWI's is the level of control achievable with the FF system: 30 mg/dscm for PM, 0.10 mg/dscm for Pb, and 0.05 mg/dscm for Cd.

b. *MACT for Carbon Monoxide.* Typical uncontrolled emissions of CO at intermittent MWI's are about 690 ppmv. The MACT floor is 90 ppmv. Two-second combustion control is necessary to meet the MACT floor level and is capable of achieving CO levels as low as 50 ppmv at no additional cost. Further reduction of CO emissions has not been demonstrated. Therefore, the proposed MACT for CO is 50 ppmv, the level achievable with 2-sec combustion.

c. *MACT for Dioxins and Furans.* Uncontrolled levels of dioxins and furans (CDD/CDF) are typically about 25,000 ng/dscm. The MACT floor for CDD/CDF is 12,906 ng/dscm. One-second combustion control is necessary to achieve the MACT floor emission level and is capable of reducing CDD/CDF emissions to 7,000 ng/dscm. However, 2-second combustion control is already needed to achieve the MACT floor emission level for CO and would reduce CDD/CDF emissions even further, to about 1,500 ng/dscm, at no additional cost.

The level of control associated with the FF system is already needed to meet the MACT floor for PM. Further reduction in CDD/CDF emissions beyond the level of emissions achievable with 2-sec combustion control can be attained either by adding a wet system or by injecting carbon into the FF system. Although the wet system is capable of reducing CDD/CDF emissions, the less expensive approach would be to inject carbon into the FF system that is already needed to meet the MACT floor level for PM. An FF system with carbon injection can reduce CDD/CDF emissions to about 80 ng/dscm and can substantially reduce Hg emissions. The nationwide incremental annual cost of carbon injection is about $24.4 million/yr, or about $31/ton of waste burned in intermittent MWI's. This incremental cost represents an increase of only about 3.6 percent over the cost of the FF system without carbon injection. As a result, MACT for CDD/CDF is the level of control achievable with an FF system with carbon injection, 80 ng/dscm total CDD/CDF, or 1.9 ng/dscm TEQ.

d. *MACT for Mercury.* Typical uncontrolled Hg emissions are about 3.1 mg/dscm. The MACT floor for Hg is 15.56 mg/dscm, and can be achieved at uncontrolled levels. The only control system capable of consistently reducing Hg emissions is the FF system with activated carbon injection, which can achieve emissions of 0.47 mg/dscm Hg or 85 percent reduction from uncontrolled emissions. The FF system without carbon injection is necessary to meet the MACT floor emission level for PM and the injection of carbon is necessary to meet the proposed MACT emission level for CDD/CDF. As mentioned above in the discussion on CDD/CDF, the nationwide incremental annual cost of injecting carbon is about $24.4 million, or about $31/ton of waste burned. This additional cost represents an increase of only about 3.6 percent over the cost of the FF system without carbon injection. Therefore, the proposed MACT for Hg is 0.47 mg/dscm or 85 percent reduction.

e. *MACT for Acid Gases (HCl and SO_2).* Uncontrolled levels of HCl and SO_2 from MWI's are 1,400 ppmv and 16 ppmv, respectively. As discussed previously, acid gases controls are not effective in reducing emissions of SO_2 from MWI's. The MACT floor for HCl is 115 ppmv and requires a reduction of 92 percent from uncontrolled levels. Wet systems and FF systems are each capable of reducing HCl emissions to 42 ppmv or by 97 percent from uncontrolled levels. The FF system is already needed to meet the MACT floor emission levels for PM. The costs associated with reducing emissions of HCl from the MACT floor level (92 percent reduction) to the level of control achievable with the FF system (97 percent reduction) include costs for additional lime and ash disposal costs. These additional costs are negligible compared to the total cost of the system. Therefore, the proposed MACT for HCl is 42 ppmv or 97 percent reduction.

The MACT floor for SO_2 is 414 ppmv and can be achieved at uncontrolled emission levels. As discussed earlier, no controls have been demonstrated to consistently reduce SO_2 emissions from MWI's. Therefore, the proposed MACT for SO_2 is also based on uncontrolled emissions. Analyses of test data from MWI's show that typical uncontrolled emissions of SO_2 are about 16 ppmv, but can range as high as 45 ppmv. Because the Act requires the EPA to set numerical emission limit for SO_2, MACT for SO_2 is set at 45 ppmv, the highest SO_2 emission rate measured during the EPA test program. The EPA specifically solicits comments on the emission limit of 45 ppmv set for SO_2

and whether this level accurately reflects uncontrolled emissions of SO_2 at MWI's.

f. *MACT for Nitrogen Oxides.* Typical uncontrolled emissions of NO_X are 140 ppmv but range as high as 210 ppmv. The MACT floor for NO_X is 216 ppmv and requires no control of NO_X. As discussed earlier, NO_X control has not been demonstrated on MWI's. Therefore, MACT is also based on no control. However, because the Act requires the EPA to set a numerical emission limit for NO_X, the NO_X limit is proposed to be 210 ppmv, the highest uncontrolled NO_X level measured during the EPA test program. The EPA specifically solicits comments on the emission limit of 210 ppmv set for NO_X and whether this level accurately reflects uncontrolled emissions of NO_X at MWI's.

4. MACT for Existing Batch MWI's

As discussed in section VI, the discussion that follows is based on limited test data on wet scrubber systems. The EPA requests comment on the performance and costs of wet scrubber systems. Also, while the paragraphs that follow focus on specific control technologies in determining MACT for existing batch MWI's, the guidelines do not require the use of any specific technology. The Agency's assessment of the performance of specific technologies is used to develop emission limitations, which appear in the guidelines. Any control technology that can comply with the emission limitations may be used.

a. *MACT for PM, Pb, and Cd.* Typical uncontrolled PM emissions from batch MWI's are about 570 mg/dscm. The MACT floor for PM emissions from batch MWI's is 69 mg/dscm. A fabric filter system is necessary to meet the MACT floor level. In fact, the FF system can reduce PM emissions even further, to 30 mg/dscm, at no additional cost.

Uncontrolled emissions of Pb and Cd from batch MWI's are about 4.2 mg/dscm and 0.29 mg/dscm, respectively. The MACT floor emission levels for Pb and Cd are 23.10 mg/dscm and 3.44 mg/dscm, respectively. Although no control is necessary to achieve the MACT floor levels for Pb and Cd, the FF system necessary to meet the MACT floor level for PM would also reduce emissions of Pb and Cd to 0.10 mg/dscm and 0.05 mg/dscm, respectively. Because this system is already necessary to meet the MACT floor level for PM, there is no cost associated with reducing emissions of Pb and Cd from the uncontrolled MACT floor levels to the level of control achieved by the FF system. Further reduction of Pb and Cd has not been demonstrated. Therefore, the proposed MACT for batch MWI's is the level of control achievable with the FF system: 30 mg/dscm for PM, 0.10 mg/dscm for Pb, and 0.05 mg/dscm for Cd.

b. *MACT for Carbon Monoxide.* Typical uncontrolled emissions of CO at batch MWI's are about 690 ppmv. The MACT floor is 91 ppmv. Two-second combustion control is necessary to meet the MACT floor level and is capable of achieving CO levels as low as 50 ppmv at no additional cost. Further reduction of CO emissions has not been demonstrated. Therefore, the proposed MACT for CO is 50 ppmv, the level achievable with 2-sec combustion.

c. *MACT for Dioxins and Furans.* Uncontrolled levels of dioxins and furans (CDD/CDF) are typically about 25,000 ng/dscm. The MACT floor for CDD/CDF is 14,606 ng/dscm. One-second combustion control is necessary to achieve the MACT floor emission level and is capable of reducing CDD/CDF emissions to 7,000 ng/dscm. However, 2-second combustion control is already needed to achieve the MACT floor emission level for CO and would reduce CDD/CDF emissions even further, to about 1,500 ng/dscm, at no additional cost.

The level of control associated with the FF system is already needed to meet the MACT floor for PM. Further reduction in CDD/CDF emissions beyond the level of emissions achievable with 2-sec combustion control can be attained either by adding a wet system or by injecting carbon into the FF system. Although the wet system is capable of reducing CDD/CDF emissions, the less expensive approach would be to inject carbon into the FF system that is already needed to meet the MACT floor level for PM. An FF system with carbon injection can reduce CDD/CDF emissions to about 80 ng/dscm and can substantially reduce Hg emissions. The nationwide incremental annual cost of carbon injection is about $1.5 million/yr, or about $170/ton of waste burned in batch MWI's. This incremental cost represents an increase of only about 2.7 percent over the cost of the FF system without carbon injection. As a result, MACT for CDD/CDF is the level of control achievable with an FF system with carbon injection, 80 ng/dscm, or 1.9 ng/dscm TEQ.

d. *MACT for Mercury.* Typical uncontrolled Hg emissions are about 3.1 mg/dscm. The MACT floor for Hg is 18.54 mg/dscm, and can be achieved at uncontrolled levels. The only control system capable of consistently reducing Hg emissions is the FF system with carbon injection, which can achieve emissions of 0.47 mg/dscm Hg or 85 percent reduction from uncontrolled emissions. The FF system without carbon injection is necessary to meet the MACT floor emission level for PM and the injection of carbon is necessary to meet the proposed MACT emission level for CDD/CDF. As mentioned above in the discussion on CDD/CDF, the nationwide incremental annual cost of injecting carbon is about $1.5 million/yr, or about $170/ton of waste burned. This additional cost represents an increase of only about 2.7 percent over the cost of the FF system without carbon injection. Therefore, the proposed MACT for Hg is 0.47 mg/dscm or 85 percent reduction.

e. *MACT for Acid Gases (HCl and SO_2).* Uncontrolled levels of HCl and SO_2 from MWI's are 1,400 ppmv and 16 ppmv, respectively. As discussed earlier, acid gases controls are not effective in reducing emissions of SO_2 from MWI's. The MACT floor for HCl is 911 ppmv and requires a reduction of 35 percent from uncontrolled levels. Wet systems and FF systems are each capable of reducing HCl emissions to 42 ppmv or by 97 percent from uncontrolled levels. The FF system is already needed to meet the MACT floor emission levels for PM. The costs associated with reducing emissions of HCl from the MACT floor level (35 percent reduction) to the level of control achievable with the FF system (97 percent reduction) include costs for additional lime and ash disposal costs. These additional costs are negligible compared to the total cost of the system. Therefore, the proposed MACT for HCl is 42 ppmv or 97 percent reduction.

The MACT floor for SO_2 is 1,166 ppmv and can be achieved at uncontrolled emission levels. As discussed earlier, no controls have been demonstrated to consistently reduce SO_2 emissions from MWI's. Therefore, the proposed MACT for SO_2 is also based on uncontrolled emissions. Analyses of test data from MWI's show that typical uncontrolled emissions of SO_2 are about 16 ppmv, but can range as high as 45 ppmv. Because the Act requires the EPA to set numerical emission limit for SO_2, MACT for SO_2 is set at 45 ppmv, the highest SO_2 emission rate measured during the EPA test program. The EPA specifically solicits comments on the emission limit of 45 ppmv set for SO_2 and whether this level accurately reflects uncontrolled emissions of SO_2 at MWI's.

f. *MACT for Nitrogen Oxides.* Typical uncontrolled emissions of NO_X are 140 ppmv but range as high as 210 ppmv. The MACT floor for NO_X is 220 ppmv and can be achieved at uncontrolled

emission levels. As discussed earlier, NO_X control has not been demonstrated on MWI's. Therefore, MACT is also based on no control. However, because the Act requires the EPA to set a numerical emission limit for NO_X, the NO_X limit is proposed to be 210 ppmv, the highest uncontrolled NO_X level measured during the EPA test program. The EPA specifically solicits comments on the emission limit of 210 ppmv set for NO_X and whether this level accurately reflects uncontrolled emissions of NO_X at MWI's.

K. Selection of Fugitive Fly Ash/Bottom Ash Standards and Guidelines

Combusting medical waste in an incinerator creates noncombustible ash in the primary chamber of the incinerator. This ''bottom'' ash is removed from the primary chamber either periodically (intermittent and batch MWI's) or continuously (continuous MWI's). While removing ash, airborne fugitive emissions may be created.

Another potential source of fugitive emissions from MWI's is the collected fly ash that is removed from the exhaust gas stream by fabric filters. Facilities that use fabric filters as part of an air pollution control system must remove the collected fly ash periodically. Fugitive emissions of this fly ash can occur during the removal and disposal process.

While there is a potential for fugitive emissions from MWI's, precautions can be taken that virtually eliminate these emissions. The proposed 0 percent opacity limit can be achieved by employing measures such as wetting or covering the dry ash, providing covers for ash containers, and providing wind screens around outdoor sites. The following sections describe the different types of MWI operations that may release fugitive emissions.

1. *Continuous MWI's.* For an MWI to operate continuously, the combustor must be designed so that accumulated bottom ash can be removed while the unit operates. All designs incorporate a stepped, solid grate with internal ash rams or a moving hearth to move ash toward the discharge point at the end of the primary chamber opposite the waste charging door. At the discharge point, the ash falls off the hearth into a wet sump or a dry collection hopper. Because these units either quench the bottom ash (in a wet sump) or confine the ash in a close-fitting hopper (dry collection), there is virtually no potential for fugitive emissions during normal operation. With the wet sump arrangement, there are no fugitive emissions when the ash is conveyed to the disposal container, usually a dumpster. With dry ash, the transfer from the collection hopper to the dumpster may be a source of fugitive emissions, but normal precautions such as covering the ash or wetting it down can effectively eliminate fugitive emissions.

2. *Intermittent and Batch MWI's.* Intermittent and batch MWI's are allowed to cool before the bottom ash is removed, usually on a daily basis. Few of these units use any automated mechanism to assist in the removal of bottom ash. The ash is simply shoveled or raked from the primary chamber manually through the ash door.

Some larger units have an ash ram that is used to push bottom ash toward the ash door. With this type of system, the ash may be allowed to fall from the primary chamber into a collection bin as the ram pushes it out of the unit. Mechanical rams are usually somewhat ineffective at removing the ash because the ram face is considerably narrower than the primary chamber. Ash that is not in the path of the ram must be raked or shoveled out manually.

Removing the bottom ash from these MWI's is a potential source of fugitive emissions. Applying a water spray to the ash as it is removed from the MWI, reducing the distance the ash falls or is conveyed, and providing wind screens for outdoor sites are ways in which fugitive emissions may be eliminated.

3. *Collected Fly Ash from Control Devices.* Facilities utilizing fabric filters as part of their air pollution control system must use precautions to avoid fugitive emissions resulting from the removal of collected fly ash from the fabric filter collection hopper. In most cases, the collection hopper discharges from the bottom directly into a disposal bin. By including a flexible ''sleeve'' to connect the collection hopper to the disposal bin (often a 55-gallon drum) and a close-fitting cover over the disposal bin, fugitive emissions can be eliminated. Likewise, a wind screen around this operation is helpful for outdoor installations. Once the disposal bin is filled, it should be sealed for transport to the ultimate disposal site. If the disposal bin is emptied onsite into a dumpster, the transfer must be performed in a manner to avoid creating fugitive emissions. Wetting the fly ash in the disposal bin prior to dumping it or performing the transfer in a covered enclosure are effective ways to eliminate fugitive emissions.

L. Operator Training and Qualification Requirements

Section 129 of the Act requires the EPA to develop and promote a model program for the training and qualification of MWI operators. Section 129 specifies that ''any person with control over processes affecting emissions from a unit * * *'' must successfully complete an acceptable training program. For new MWI's, the proposed standards require that an affected facility be operated by a trained and qualified operator or by an individual under the direct supervision of a trained and qualified operator. For existing MWI's, the proposed emission guidelines would require that 1 year after approval of the State plan, designated facilities be operated by a trained and qualified operator or by an individual under the direct supervision of a trained and qualified operator. The 3-year option for complying with all other requirements of the emission guidelines is not provided for the training and qualification requirements. The accelerated compliance schedule proposed for the operator training and qualification requirements will assist in preparing the operators to properly operate the MWI and associated air pollution control equipment before the initial compliance test.

The proposed standards and guidelines also would require that each owner or operator of an MWI develop and update, on an annual basis, a site-specific operating manual to be reviewed by all qualified operators annually. The standards and guidelines include minimum criteria for the training course, the qualification program, and the contents of the manual.

1. Training Requirements

The owner or operator of an MWI would be responsible for ensuring that one or more operators receive training by an instructor not employed by the owner or operator that provides, at a minimum, the following: (1) 24 hours of classroom instruction, (2) 4 hours of hands-on training, (3) an examination developed and administered by the course instructor, and (4) a handbook or other documentation covering the subjects presented during the course.

The classroom training would be required to cover, at a minimum, the following subjects:

1. Environmental concerns, including pathogen destruction and types of emissions;
2. Basic combustion principles, including products of combustion;
3. Types of incinerator designs and components of MWI's;
4. Incinerator operation, including startup and shutdown procedures;
5. Combustion controls and monitoring;

6. Types of air pollution control equipment;
7. Operation of air pollution control equipment and factors affecting performance;
8. Methods to monitor pollutants (CEM's) and equipment calibration procedures;
9. Inspection and maintenance of the MWI, APCD, and CEM's;
10. Actions to correct malfunctions or upsets;
11. Bottom and fly ash characteristics and handling procedures;
12. Applicable Federal, State, and local regulations; and
13. Work safety procedures.

Hands-on training would be required on either an intermittent or continuous MWI that is similar, but not necessarily identical, to the unit(s) that the operator(s) would be operating. The MWI used in hands-on training also must have an APCD. Material to be covered during the hands-on training must include: (1) prestartup inspections, (2) proper startup, waste charging, and shutdown procedures; (3) monitoring operating conditions (visually and with automated equipment), (4) responses to upset conditions, and (5) recordkeeping. The instruction also must identify differences between the MWI used for the hands-on training and other types of MWI's (i.e., batch, intermittent, and continuous) and APCD's (i.e., wet scrubbers and dry scrubbers).

An examination would be required for the operator to demonstrate an understanding of the material presented. A handbook covering the subjects discussed during the course would give the operator a reference to supplement more detailed literature from the manufacturer that is specific for the equipment being operated at the facility.

2. Qualification Procedures

The owner or operator of an MWI would be responsible for ensuring that one or more operators at the facility are qualified. Under the proposed standards and guidelines, operators would be qualified by one of two methods, designated option 1 and option 2.

a. *Option 1.* To be qualified under option 1, operators would be required to complete a training course that satisfies the criteria described above and have one of the following levels of experience: (1) at least 6 months experience (1,040 hours) as an MWI operator, (2) at least 6 months experience as the direct supervisor of MWI operators, or (3) experience performing a minimum of two burn cycles under the observation of two qualified operators. The experience must be on either the MWI at the operator's facility or an MWI of the same type (i.e., batch, intermittent, or continuous).

Qualification would be valid from the date the training examination is passed or the date on which the experience requirements are met, whichever is later. The owner or operator of the MWI would be required to demonstrate to enforcement personnel that the operator has the necessary training and experience.

To maintain qualification, the operator would be required to complete an annual review or refresher course administered by an instructor not employed by the owner or operator and pass the examination administered by the instructor at the end of the course. An acceptable review course would provide at least 4 hours of classroom training and cover, at a minimum, the following subjects: (1) update of regulations; (2) incinerator operation, including startup and shutdown procedures; (3) inspection and maintenance; (4) responses to upset conditions; and (5) discussion of operating problems encountered by the attendees.

A lapsed qualification may be renewed by one of two methods, depending on the length of the lapse. For a lapse of less than 3 years, the operator would be required to complete and pass a standard review course, as described above in this section. For a lapse of 3 years or more, the operator would be required to complete and pass a training course that meets the criteria described earlier.

b. *Option 2.* Option 2 would allow qualification by national professional organizations. The same initial and annual training described under option 1 would be required. National organizations would be able to specify criteria that are at least as stringent as those under option 1. Qualification programs developed by national organizations also would specify procedures to maintain and renew qualifications.

3. Operating Manual

The proposed standards and guidelines also would require that each owner or operator of an MWI develop and update, on an annual basis, a site-specific operating manual to be reviewed by all qualified operators annually. The manual would summarize State regulations, operating procedures, and reporting and recordkeeping requirements in accordance with the proposed standards and guidelines.

4. Request for Comments

The EPA solicits comments on whether and to what extent EPA should allow States or certain specific national professional organizations (e.g., the American Hospital Association or the American Society of Mechanical Engineers) to pre-approve training courses and qualification programs that meet the above criteria. Commenters should identify by name any national organizations that they believe should be granted this authority.

An advantage of allowing States or national organizations to preapprove courses is that the burden of demonstrating that the course is in compliance with the criteria would be removed from the owner or operator. An additional advantage of allowing national organizations to pre-approve courses is that the training would be valid in all States, whereas a State-approved course would only be valid in the State that approved it. As a result, all operators in a company with facilities in several States could take the same course, and operators would not need to take another training course if they move from one State to another.

M. Siting Requirements—New MWI's

Section 129 of the Act states that performance standards for MWI's must incorporate siting requirements that minimize, on a site-specific basis and to the maximum extent practicable, potential risks to public health or the environment. In accordance with section 129, site selection criteria are being proposed for MWI's that commence construction after the date of promulgation of this rule. The siting requirements would not apply to existing or modified MWI's.

1. Options Considered for Siting Requirements

The EPA considered three approaches in the development of proposed siting requirements. These approaches are summarized below.

The first approach would be a regulatory review approach. Under this approach, the MWI owner/operator would prepare a document listing all current Federal, State, and local regulatory requirements and permit conditions that apply to the proposed MWI, along with a discussion of the equipment, construction practices, operating practices, and other conditions used to comply with each requirement. The document would be submitted to the EPA and to State and local officials and would be made available to the public. This approach also includes provisions for a public

meeting and the preparation of a comment/response document that would be made available to the public. This approach addresses relevant siting issues and would not require duplicate analyses of health or environmental impacts that may already be required under other authorities (e.g., New Source Review (NSR) air permits; National Pollution Discharge Elimination System [NPDES] water discharge permits; stormwater permits; wetland permits; State solid waste permits; or local zoning permits).

The second approach would require that an environmental assessment (EA) be conducted, patterned after requirements under the National Environmental Policy Act (NEPA). This approach would require an examination of impacts in all media (i.e., air, water, solid waste, energy, and land use). Also, a description of alternatives to the proposed project, including alternative sites, technologies, or designs necessary to determine a finding of no significant impact (FNSI) would be required. The EA and the description of alternatives to the proposed project would be documented and submitted to the EPA and to State and local officials and would be made available to the public.

The third approach sets forth general siting requirements patterned after the Prevention of Significant Deterioration (PSD) requirements within the New Source Review (NSR) program. This approach requires comprehensive air quality analyses in regard to National Ambient Air Quality Standards (NAAQS) and PSD increments. An impacts analysis, which studies the potential effect of air, solid waste, and water pollution on visibility, soils, and vegetation also would be required. This approach also includes provisions for a public meeting and the preparation of a comment/response document that would be made available to the public.

2. Proposed Siting Requirements

The third approach is being proposed as the basis for the siting requirements for MWI's. Under the proposed approach, MWI owners would be required to conduct analyses of the impacts of the proposed facility on ambient air quality, visibility, soils, and vegetation. A document presenting the results of the analyses would be prepared and submitted to the EPA and State and local officials. This document would also be made available to the public. The proposed siting requirements include provisions for a public meeting (chaired by EPA or a delegated enforcement agency) where comments on the proposed MWI siting analyses would be accepted. At least 30 days prior to the public meeting, the owner of the affected facility is required to announce the public meeting in newspapers of general circulation that serve the communities located within the area where the affected facility is to be located. The public meeting would be conducted in the county in which the affected facility is to be located and would be scheduled to occur 30 days or more after making the siting analyses available to the public. A comment/response document, summarizing and responding to the comments received at the public meeting, would then be prepared and would be made available to attendees of the public meeting, the State air pollution control board, and the EPA.

The siting requirements would apply to any MWI that commences construction after the date of promulgation of this rule. The siting requirements would not apply to existing or modified MWI's. The siting information required above would be submitted to EPA sufficiently in advance of the intent to commence construction of the facility. Construction would be allowed to commence only after approval by EPA and the appropriate State/local agency. The Agency invites comments regarding the proposed siting requirements, including suggestions of alternative approaches.

N. Inspection Requirements—Existing MWI's

The proposed emission guidelines include a requirement for an initial equipment inspection of the designated facility. The purpose of the equipment inspection is to ensure that the MWI is in good working order until emission control equipment is installed and compliance with emission limits is demonstrated. A poorly maintained MWI will likely have higher emissions than a well-maintained MWI.

These requirements would become effective 1 year after approval of the State plan. Installation of air pollution control equipment may take up to 3 years (as discussed elsewhere in today's notice). Until the time that the source demonstrates compliance with the emission limits, the facility would be required to perform the equipment inspection annually. The inspection service would have to be performed by an MWI service technician not employed by the owner or operator of the designated facility.

The minimum requirements for an inspection include:

1. Inspecting all burners, pilot assemblies, and pilot sensing devices for proper operation and cleaning as necessary;
2. Adjusting primary and secondary chamber combustion air;
3. Inspecting hinges and door latches;
4. Inspecting dampers, fans, and blowers for proper operation;
5. Inspecting door and door gaskets for proper sealing;
6. Inspecting motors for proper operation;
7. Inspecting primary chamber refractory lining and cleaning/repairing as necessary;
8. Inspecting incinerator shell for corrosion and/or hot spots;
9. Inspecting secondary/tertiary chamber and stack and cleaning as necessary;
10. Inspecting mechanical loader, if applicable;
11. Visually inspecting waste bed, as appropriate;
12. Test burning the incinerator with typical waste to make any necessary adjustments;
13. Inspecting air pollution control devices for proper operation, if applicable; and
14. Generally ensuring that the equipment is maintained in proper operating condition.

If any problems that affect emissions are uncovered during the inspection, the owner or operator of the designated facility would be required to take corrective action within 10 operating days. All records of any inspection services and any subsequent maintenance services would have to be maintained at the facility for a period of at least 5 years.

O. Compliance and Performance Test Methods and Monitoring Requirements

Section 129(c) of the Act requires the Administrator to promulgate regulations that include monitoring requirements as necessary to protect public health and the environment. The regulations must also include provisions for recordkeeping and reporting of such monitoring. This section discusses the proposed requirements to satisfy section 129(c).

As discussed in section VI, the requirements of the proposed standards and guidelines are based primarily on the use of dry scrubber systems to comply with the proposed emission limitations. As a result, the proposed testing and monitoring requirements discussed below are structured around the use of dry scrubber systems. To accommodate MWI's using an APCD other than a dry scrubber system, the proposed standards and guidelines include provisions for petitioning the Administrator to allow monitoring of alternative operating parameters to demonstrate continuous compliance

with the emission limits. Petitions for alternative operating parameter monitoring would be approved on a case-by-case basis. This procedure could become an awkward and lengthy one. To the extent that wet scrubber systems could be used to comply with the proposed emission limitations, the Agency is soliciting information from wet scrubber vendors regarding the operation of wet scrubber systems. Specifically, the Agency solicits information on a set of operating parameters that could be included as a means of demonstrating continuous compliance with the emission limitations for PM, CDD/CDF, HCl, opacity, and metals, including information on how the proposed parameters to be monitored would be established. The EPA envisions the final standards and guidelines would be structured in such a way to provide specific operating parameter monitoring requirements for wet scrubber systems as well as for dry scrubber systems directly in the regulation. To accommodate MWI's using an APCD other than a dry scrubber system or a wet scrubber system, provisions would be included for petitioning the Administrator to allow monitoring of alternative operating parameters to demonstrate continuous compliance with the emission limits.

The performance testing and monitoring requirements included in the proposed standards and guidelines would apply to all MWI's subject to the standards and guidelines. As stated in the part 60 general provisions (40 CFR 60.8), performance tests must, unless otherwise specified in the regulation, consist of three separate valid runs using the applicable test method, and the arithmetic mean of the three runs shall be used to determine compliance. All emission limits for MWI's are corrected to 7 percent oxygen (dry basis).

Testing and monitoring requirements are proposed to demonstrate compliance with the emission limits. The proposed standards and guidelines require that the owner or operator of an MWI conduct initial and annual performance tests to demonstrate compliance with the emission limits. Also, following the initial performance test, the owner or operator of each MWI is required to demonstrate continuous compliance with the emission limits.

1. Initial and Annual Performance Testing

To demonstrate initial compliance with the emission limits for each pollutant, all facilities must conduct an initial performance test. Except as noted below, the minimum sample time for each test run would be 4 hours. This minimum time is required to allow enough sample to be collected and to account for the heterogeneity of medical waste. The following test methods and procedures would be used to measure pollutant emissions.

Particulate Matter—The performance test for PM would be conducted in accordance with Method 5. Method 1 would be used to determine the number and location of sampling points. Method 3 or 3A would be used simultaneously with each Method 5 run for flue gas analysis.

Opacity—A CEMS would be used to measure opacity;

Carbon Monoxide—A CEMS would be used to measure CO emissions;

Dioxins/Furans—Method 23 would be used to measure dioxin/furan emissions;

Hydrogen Chloride—Method 26 would be used to measure HCl emissions;

Metals (lead, cadmium, and mercury)—The performance test to determine compliance with the emission limits for Pb, Cd, and Hg would be conducted in accordance with Method 29. Method 3 or 3A would be used simultaneously with each Method 5 run for flue gas analysis.

Fugitive emissions—Method 9 would be used to measure the opacity of fugitive emissions.

Following the initial performance tests for all pollutants, subsequent annual performance tests would be required to demonstrate compliance with the emission limits. The test methods and procedures used for the annual testing are identical to those proposed for the initial tests.

Under the proposed standards and guidelines, if three consecutive annual compliance tests indicate compliance with the emission limit for a pollutant, the owner of the MWI would be allowed to wait 3 years before retesting for that pollutant. If the next test conducted in the third year shows compliance with the emission limit for the pollutant, then the facility could again wait 3 years to test for that pollutant. If noncompliance with the emission limit for the pollutant occurs, corrective action would be required and the annual testing requirement would resume until 3 consecutive years of compliance with the emission limit is demonstrated. At a minimum, performance tests for all pollutants must be conducted once every 3 years (no more than 36 months following the date of the previous performance test). This provision is included to minimize costs while still retaining periodic testing to ensure compliance.

2. Methods to Demonstrate Continuous Compliance

Following the initial performance test, the owners or operators of MWI's are required to demonstrate continuous compliance with the emission limitations. Section 702(b) of the Clean Air Act Amendments of 1990 added section 114(a)(3) to the Act, which states:

> The Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications. Compliance certifications shall include (A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent, (E) such other facts as the Administrator may require. Compliance certifications and monitoring data shall be subject to subsection (c) of this section. Submission of a compliance certification shall in no way limit the Administrator's authorities to investigate or otherwise implement this Act.

Section 114(a)(3) requires enhanced monitoring and compliance certifications of all major stationary sources. The annual compliance certifications must state whether compliance has been continuous or intermittent. Enhanced monitoring shall be capable of detecting deviations from each applicable emissions limitation or standard with sufficient representativeness, accuracy, precision, reliability, frequency, and timeliness to determine if compliance is continuous during a reporting period. The monitoring requirements in these proposed standards and guidelines satisfy the requirements of enhanced monitoring, except as noted below.

The most direct means of ensuring compliance with the emission limits on a continuous basis is the use of a CEMS to measure emissions of each pollutant. However, a CEMS for specific pollutants is not always available because of technology constraints. Where a CEMS for specific pollutants is not available, the next best option is to use a CEMS to measure surrogate pollutants whose emission profiles closely parallel those of the pollutants of concern. Continuous emissions monitoring systems for surrogate pollutants are also not always available. Where a CEMS is not available for surrogate pollutants, the next best option is to monitor MWI and/or APCD operating parameters that affect emissions of the pollutants of concern.

Where a CEMS is not available and a correlation has been demonstrated

between MWI and/or APCD operating parameters and emissions, the proposed standards and guidelines include MWI and/or APCD operating parameters to be monitored. Maximum or, in some cases, minimum values for these parameters are established during the initial performance test to demonstrate compliance with the emission limits. Once these values are established, a facility operating outside of these values is considered to be in violation of the emission limits. The following paragraphs discuss methods available to demonstrate continuous compliance with emission limits for each pollutant.

a. *HCl, CO, Opacity.* Continuous emission monitoring systems measuring HCl, CO, and opacity are available to determine continuous compliance with the emission limits for these pollutants. Opacity and CO CEMS's are widely used. On the other hand, a CEMS for HCl is not widely used and has not been commercially proven to be economically and technically feasible for MWI's. Also, Federal performance specifications for a HCl CEMS have not been established to date. The EPA test data from facilities equipped with a dry scrubber system followed by a fabric filter show a direct relationship between HCl sorbent (lime) flow rate and HCl removal efficiency. A decrease in the sorbent flow rate results in a decrease in HCl removal efficiency and therefore higher HCl emissions. Also, for a given amount of chlorine content in the waste stream, the amount of waste charged to the incinerator could be directly related to the amount of HCl emitted. An increase in the amount of waste charged would result in higher HCl emissions. For facilities equipped with a dry scrubber followed by a fabric filter, the minimum HCl sorbent flow rate, the maximum charge weight, and the maximum hourly charge rate would be established during the initial performance test for HCl and would be monitored to demonstrate continuous compliance with the emission limit for HCl.

While the proposed standards and guidelines do not require a CEMS for monitoring HCl emissions, the EPA specifically solicits further information on the availability, reliability, accuracy, status of development, and costs for continuous HCl monitors.

b. *Dioxins and Furans.* Currently CDD/CDF emissions cannot be measured using a CEMS. While CO is occasionally mentioned as a surrogate for CDD/CDF emissions, it is not a precise indicator of CDD/CDF emissions. However, good combustion conditions minimize CDD/CDF formation and lower CO emissions indicate that good combustion is occurring. Therefore, continuous compliance with the emission limit for CO based on the CO CEMS output would ensure good combustion conditions and minimized CDD/CDF formation.

As discussed elsewhere, the proposed standards and guidelines for CDD/CDF are based on add-on air pollution control, which reduces CDD/CDF emissions even more than good combustion. Air pollution control system operating parameters have been correlated with CDD/CDF emissions. For MWI's using a dry scrubber system followed by a fabric filter, the operating parameters correlated with CDD/CDF emissions are CDD/CDF sorbent flow rate and temperature measured at the inlet to the PM control device. The EPA test data on a DI/FF system with carbon injection show a direct relationship between carbon flow rate and CDD/CDF removal efficiency. A decrease in the sorbent flow rate results in a decrease in CDD/CDF removal efficiency and therefore higher CDD/CDF emissions. It has been shown that the optimum temperature window for fly ash catalyzed CDD/CDF formation is between 300° and 600°F. Available data indicate that cooling flue gases and operating the PM control device below the temperature window where formation may occur minimizes formation of CDD/CDF in the flue gas. A minimum value for the CDD/CDF sorbent flow rate and a maximum value for the temperature measured at the inlet to the PM control device would be established during the initial performance test for CDD/CDF and would be monitored to demonstrate continuous compliance with the emission limit for CDD/CDF.

c. *Mercury.* Mercury emissions cannot be measured using a CEMS. The EPA test data from facilities equipped with a dry scrubber followed by a fabric filter show a direct relationship between Hg sorbent (activated carbon) flow rate and Hg removal efficiency. A decrease in the sorbent flow rate results in a decrease in Hg removal efficiency and therefore higher Hg emissions. Also, depending on the presence of Hg in the waste stream, the amount of waste charged could be directly related to the amount of Hg emitted. An increase in the amount of waste charged could result in higher Hg emissions. For facilities equipped with a dry scrubber followed by a fabric filter, the minimum Hg sorbent flow rate, the maximum charge weight, and the maximum hourly charge rate would be established during the initial performance test for Hg and monitored to demonstrate continuous compliance with the emission limit for Hg.

While the proposed standards and guidelines do not require a CEMS for monitoring Hg emissions, the EPA specifically solicits further information on the availability, reliability, accuracy, status of development, and costs for continuous Hg monitors. The EPA is requesting data that could be used to determine whether Hg monitors measure all Hg or just certain species of Hg and if only certain species of Hg are measured, how such a monitor could be used in determining compliance with the Hg emission limit.

d. *PM, Pb, and Cd.* Particulate matter, Pb, and Cd emissions cannot currently be measured using a CEMS. The EPA has not, to date, identified surrogate pollutants or MWI/APCD operating parameters that could be monitored to measure compliance. The Agency is currently working to develop applicable MWI/APCD operating parameters for lead, cadmium, and PM that are sufficiently representative, accurate, precise, reliable, frequent, and timely to determine whether a deviation from the proposed emission limits has occurred, thus enabling owners and operators to certify whether compliance with the proposed emission limits is continuous or intermittent. The Agency will include operating parameters for the pollutants lead, cadmium, and PM in the final rule. Today the Agency is requesting comment on appropriate operating parameters for lead, cadmium, and PM that will satisfy the requirements of enhanced monitoring and also requests any associated supporting data.

e. SO_2 and NO_X. No monitoring requirements are proposed for SO_2 and NO_X because the emission limits are based on uncontrolled emission levels.

f. *Fugitive Emissions.* Continuous compliance with the emission limits for fugitive emissions would be demonstrated by conducting a performance test using Method 9 at least once per month when bottom ash is removed from the incinerator and when fly ash is removed from the add-on air pollution control device.

g. *Other Air Pollution Control Systems.* To accommodate MWI's using an APCD other than a dry scrubber followed by a fabric filter, provisions are included in the standards and guidelines for petitioning the Administrator to allow monitoring of alternative operating parameters to demonstrate continuous compliance with the emission limits for CDD/CDF, Hg, HCl, and/or opacity. The petition must include a discussion illustrating the relationship between the alternative operating parameters and emissions of

CDD/CDF, Hg, HCl, and/or opacity. The petition must also describe by what means and how often the parameters would be monitored and must specify the recommended minimum/maximum values of the parameters that are not to be exceeded. Petitions for alternative operating parameter monitoring would be approved on a case-by-case basis.

3. Continuous Compliance Requirements

To demonstrate continuous compliance following the initial performance test, facilities are required to:

a. Demonstrate compliance with the CO emission limit based on the output from the CO CEMS;

b. Demonstrate compliance with the opacity emission limit based on the output from the opacity CEMS; and

c. Demonstrate compliance with the fugitive emission limit by conducting a performance test using Method 9 at least once per calendar month when ash is removed from the incinerator and when ash is removed from the APCD.

In addition, facilities equipped with a dry scrubber followed by a fabric filter are required to:

d. Demonstrate compliance with the Hg emission limit by continuously monitoring the Hg sorbent flow rate, the charge weight, and the hourly charge rate. The minimum Hg sorbent flow rate, the maximum charge weight, and the maximum hourly charge rate are to be established during the initial performance test to determine compliance with the Hg emission limit. Operation of the MWI below the minimum sorbent flow rate, or above the maximum charge weight or maximum hourly charge rate would constitute a violation of the Hg emission limit.

e. Demonstrate compliance with the CDD/CDF emission limit by continuously monitoring the CDD/CDF sorbent flow rate and the temperature measured at the inlet to the PM control device. The minimum CDD/CDF sorbent flow rate and the maximum PM control device inlet temperature are to be established during the initial performance test to determine compliance with the CDD/CDF emission limit. Operation of the MWI below the minimum sorbent flow rate or above the maximum PM control device inlet temperature would constitute a violation of the CDD/CDF emission limit.

f. Demonstrate compliance with the HCl emission limit by continuously monitoring the HCl sorbent flow rate and continuously measuring the weight and time of each load of waste charged to the incinerator. The minimum HCl sorbent flow rate, the maximum charge weight, and the maximum hourly charge rate are to be established during the initial performance test to demonstrate compliance with the emission limit for HCl. Operation of the MWI below the minimum sorbent flow rate, or above the maximum charge weight or maximum hourly charge rate would constitute a violation of the HCl emission limit.

The proposed standards and guidelines require the owner or operator of an MWI using a control device other than a dry scrubber followed by a fabric filter to petition the Administrator for other site-specific operating parameters to demonstrate continuous compliance with the emission limits for CDD/CDF, Hg, HCl, and/or opacity. These parameters would be established during the initial performance test for these pollutants and would be continuously monitored to demonstrate compliance with the emission limits.

P. Reporting and Recordkeeping—New MWI's

The proposed standards would require owners of affected facilities to submit notifications concerning construction and initial startup of the affected facility. The information to be submitted includes: (1) a statement of intent to construct along with the date of commencement of construction, (2) the anticipated date of startup, (3) a statement of the type of waste to be burned, (4) the letter from the State air pollution agency approving the construction and operation of the affected facility, and (5) all documentation produced as a result of the siting requirements.

The proposed standards also require that the owner or operator of an affected facility maintain the following information for a period of at least 5 years: (1) the results of the initial, annual, and any subsequent performance tests; (2) data demonstrating continuous monitoring of site-specific operating parameters; (3) CEMS output data; and (4) results of CEMS quality assurance determinations.

Additional records must be kept on file for the life of the facility. These records include: (1) all documentation produced as a result of the siting requirements, (2) the letter from the State air pollution agency approving the construction and operation of the affected facility, (3) records showing the names of the persons who have completed the requirements for MWI operator training and dates of training (along with documentation of the training program completed), (4) records showing the names of those who have completed review of the site-specific MWI operating manual and dates of review, and (5) records showing the names of the qualified MWI operators and dates of qualification.

The proposed standards require that certain documentation be submitted to the Administrator. Owners or operators are required to submit the results of the initial performance test and all subsequent performance tests. Also, reports on emission rates or operating parameters that have not been obtained or that exceed applicable limits must be submitted within 30 days after the end of the quarter of occurrence. If no exceedances occur during a quarter, the owner of the affected facility is required to submit a letter stating so. All reports submitted to comply with the requirements of the proposed standards must be signed by the facilities manager—the individual responsible for purchasing, maintaining, and, in many cases, operating the MWI. This individual is likely to have different titles at different facilities, for example, director of facilities or vice president of support services.

The reporting and recordkeeping requirements in the proposed standards are necessary to inform enforcement personnel of the compliance status of new MWI's. In addition, they would provide the data and information necessary to ensure continued compliance of these MWI's with the proposed standards. At the same time, these requirements would not impose an unreasonable burden on MWI owners or operators.

Q. Reporting and Recordkeeping—Existing MWI's

The proposed emission guidelines would require owners or operators of MWI's to maintain the following information for a period of at least 5 years: (1) the results of the initial and annual performance tests, (2) data demonstrating continuous monitoring of site-specific operating parameters, (3) CEMS output data, (4) results of CEMS quality assurance determinations, and (5) results of the initial and annual inspections.

Additional records must be kept on file for the life of the facility. These records include: (1) records showing the names of the persons who have completed the requirements for MWI operator training and dates of training (along with documentation that the training program was completed), (2) records showing the names of those who have completed review of the site-specific MWI operating manual and dates of review, and (3) records showing

the names of the qualified MWI operators and dates of qualification.

Under the proposed emission guidelines owners or operators are required to submit the results of the initial maintenance inspection and any subsequent inspections completed prior to demonstrating initial compliance with the emission limits. This documentation must include a discussion of any repairs performed in response to the inspection and when the repairs occurred. Additionally, MWI owners or operators are required to submit to the Administrator the results of the initial performance test and all subsequent performance tests. Also, reports on emission rates or operating parameters that have not been obtained or that exceed applicable limits must be submitted within 30 days after the end of the quarter of occurrence. If no exceedances occur during a quarter, the owner of the designated facility is required to submit a letter stating so. All reports submitted to comply with the requirements of the emission guidelines must be signed by the facilities manager—the individual responsible for purchasing, maintaining, and, in many cases, operating the MWI. This individual is likely to have different titles at different facilities, for example, director of facilities or vice president of support services.

The reporting and recordkeeping requirements in the proposed guidelines are necessary to inform enforcement personnel of the compliance status of existing MWI's. In addition, they would provide the data and information necessary to ensure continued compliance of these MWI's with the proposed guidelines. At the same time, these requirements would not impose an unreasonable burden on MWI owners or operators.

R. Compliance Times

1. New MWI's

As stated in section 129, the effective date of standards for new MWI's is to be the date 6 months after promulgation of the standards. Consequently, while any MWI for which construction is commenced after today's date will be subject to the standards, they will not be subject to the standards until the effective date of the standards.

2. Existing MWI's

Under section 129, States are required to submit to the Administrator a plan implementing the emission guidelines within 1 year after promulgation of the guidelines. Section 129 also requires that a State plan shall provide that each unit subject to the guidelines shall be in compliance with all requirements of the proposed guidelines within 3 years after the State plan is approved by the EPA but in no case later than 5 years after promulgation of the emission guidelines. The compliance schedule in today's proposal would supersede and is more comprehensive than the compliance schedule specified in section 129.

The proposal requires that a State plan shall provide that each source subject to the emission guidelines shall be in compliance with all requirements of the guidelines within 1 year after EPA approval of the State plan. The proposal allows two exceptions to this compliance schedule. First, State plans may allow facilities that are planning to install the necessary air pollution control equipment up to three years after EPA approval of the State plan (but not later than 5 years after promulgation of the guidelines) to comply if the State plan specifies that the facility submit measurable and legally enforceable incremental steps of progress towards compliance. Suggested incremental steps of progress to be included in the State plans are specified in the emission guidelines.

Second, State plans may include provisions allowing designated facilities to petition the State for extensions for compliance. Under the proposed emission guidelines, State plans that include such provisions must require that the designated facility requesting an extension submit information to assist the State in deciding whether to grant or deny the extension. The schedule for submittal of this information must allow the State sufficient time to grant or deny the extension within one year after EPA approval of the State plan.

This information must include documentation of the analyses undertaken to support the need for an extension, including an explanation of why up to 3 years after EPA approval of the State plan is sufficient time to comply with the State plan while one year after EPA approval of the State plan is not sufficient time to comply. The documentation must also include an evaluation of the option to send the waste offsite to a commercial medical waste treatment and disposal facility, either in the interim, while the facility is taking steps towards achieving compliance, or on a permanent basis.

State plans that allow extensions must also include procedures for granting or denying an extension. Under the proposed guidelines, if an extension is granted, compliance shall be required within 3 years after EPA approval of the State plan, but not later than 5 years after the date of promulgation of the emission guidelines.

While the EPA expects that States will grant extensions for facilities planning to install the necessary air pollution control equipment, the Agency does not expect many extensions will be granted for facilities planning to switch to an alternative method of treatment and disposal. Alternatives to onsite incineration include either offsite contract treatment and disposal or onsite alternative treatment technologies, such as autoclaves.

It is expected that facilities choosing to switch to an alternative could do so within the 1 year following EPA approval of the State plan. The commercial waste disposal industry has indicated that sufficient excess capacity currently exists to handle the amount of waste that would no longer be treated onsite and that commercial facilities are located such that most areas could be served by this excess capacity. Also, they have indicated that short term contracts are available.

As a result, if a facility chooses to install an alternative onsite treatment technology and the installation takes longer than the time allowed for compliance, offsite contract disposal could be used as a temporary means of compliance while the alternative technology is installed and made operational. The provision for extensions is included only to address cases where absolutely no other options are available and is not intended to allow up to three years for any facility that requests an extension.

Regardless of the status of the State plans, all designated facilities must be in compliance within 5 years after promulgation of the emission guidelines. To ensure that each designated facility is in compliance with the provisions of the emission guidelines within 5 years, the EPA will develop, implement, and enforce a plan for any State that has not submitted an approvable plan within 2 years after promulgation of the emission guidelines.

The proposed emission guidelines also require that, for approval, a State plan provide that each designated facility must be in compliance with the operator training and qualification requirements and the inspection requirements within 1 year after EPA approval of the State plan. The rationale for not granting extensions for these requirements is presented in sections V.L and V.N.

S. Permit Requirements

Section 129 of the Act requires MWI's subject to the standards and guidelines

to be operated pursuant to a permit issued under the EPA-approved State operating permit program. In accordance with section 129, under the proposed standards and guidelines, a permit would be required on the date 36 months after the date of promulgation, or on the effective date of an EPA-approved operating permit program in the State in which the facility is located, whichever date is later. The operating permit programs are developed under Title V of the Act and the implementing regulations under 40 CFR part 70.

VI. Request for Comment

This section is included in this notice to request public comment on certain issues raised during the development of these proposed standards and guidelines. As mentioned at the beginning of this notice, the EPA seeks full public participation in arriving at its final decisions and strongly encourages comments on all aspects of this proposal from all interested parties.

A. Procedure To Determine MACT

Section 129 of the Act establishes specific criteria that must be analyzed in developing standards and guidelines for solid waste combustion units. In general, this involves: (1) determining appropriate subcategories within a source category; (2) determining the MACT ''floor'' for each subcategory; (3) assessing available air pollution control technology with regard to achievable emission limitations and costs; and (4) examining the cost, nonair-quality health and environmental impacts, and energy requirements associated with standards and guidelines more stringent than the MACT floor. The details of how this process was applied to the MWI source category are described in section V.

In the process of developing the proposed standards and guidelines, the EPA met with representatives from environmental groups, States, MWI and air pollution control equipment vendors, commercial waste disposal companies, and trade associations that represent owners or operators of MWI's to discuss the proposed standards and guidelines. During these discussions, various groups have called into question some of the conclusions reached in developing the proposed standards and guidelines.

Specifically, questions were raised about: (1) appropriate methods for subcategorizing the source category, (2) information and assumptions used in determining the MACT floor, (3) conclusions drawn regarding the performance of air pollution control technology, and (4) decisions made regarding MACT for MWI's. This section describes the regulatory development process in general terms and requests public comments on the information used and assumptions made in drawing conclusions. Following proposal, a reassessment of the four criteria listed above will be made that may result in the establishment of standards and guidelines that are different from this proposal.

1. Subcategorization

Section 129 of the Act enables EPA to distinguish among classes, types, and sizes within categories of new and existing sources in establishing standards and guidelines. The Agency has determined that subcategorizing the source category by type of unit is appropriate because of distinct technical differences among three types of MWI's. Therefore, three subcategories based on MWI type have been identified for the purpose of regulating MWI's: batch, intermittent, and continuous. While these subcategories were selected because of technical differences between the three types of units, as described in section V.G, they also generally follow differences in size within the source category. Typically, continuous units are large capacity MWI's and batch units are small capacity MWI's. Intermittent units tend to fall between the continuous and batch units in size. The EPA specifically solicits comment on its determination to distinguish between continuous, intermittent, and batch units.

It has been suggested that subcategories could have been identified according to size or capacity: small capacity, medium capacity, and large capacity, or that EPA might establish a subcategory of small intermittent and/or small batch MWI's in addition to establishing subcategories on the basis of continuous, intermittent, and batch units. Such a distinction by size, or tiering, is currently used by many State air pollution control agencies. Current State regulations, therefore, may provide a basis for subcategorization by size in establishing the standards and guidelines. The Agency is considering subcategorization by size and specifically solicits comment on the basis for subcategorization by size.

The EPA recognizes that there may be a relatively large number of very small incinerators within the categories of batch and intermittent. If so, further subcategorizing batch and intermittent incinerators by size or capacity could provide an alternative for consideration which might significantly reduce the cost of today's proposed standards and guidelines. If the MACT floor is less stringent for small intermittent and or small batch MWI's, the EPA could consider less stringent requirements for these incinerators. Also, if these incinerators contribute little to total national medical waste incineration capacity, adoption of less stringent requirements for them could result in little loss in the environmental benefits associated with today's proposal. This alternative, therefore, could have substantial merit and the EPA requests comment on such an approach.

To fully consider subcategorization by size, however, a mechanism must be available to accurately and consistently determine the capacity of an MWI. Only if such a mechanism exists, will enforcement personnel, as well as owners and operators of MWI's, be assured that MWI's are subject to a consistent set of requirements.

The EPA believes this may be a serious problem. It appears there is no common or widely used mechanism or ''standard'' within the MWI industry for sizing or determining the capacity of an incinerator to burn medical waste. As a result, it seems that one vendor's 50 pound per hour capacity incinerator can be another vendor's 100 pound per hour capacity incinerator. It also appears the same vendor may sell one customer a 50 pound per hour capacity MWI and then sell another customer the same incinerator as a 100 pound per hour MWI. The EPA believes that a manufacturer's or vendor's ''nameplate capacity'' is not an accurate and reliable means for determining the size or capacity of an MWI.

The EPA recognizes that the composition of medical waste changes across generators, over time, and in response to changes in waste handling or recycling practices in a way that may affect the amount of medical waste a specific incinerator is able to burn. For the purposes of enforcing regulations that may vary by size or capacity, a common mechanism or ''standard'' to measure or determine the capacity of MWI's is necessary.

Consequently, EPA specifically requests comments on a mechanism or ''standard'' for accurately and consistently determining the capacity of MWI's in the enforcement of whatever regulation might be adopted. For example, the comments might outline the mechanisms or approaches used by States to ensure all MWI's of the same capacity are subject to the same requirements. Or, the comments may offer alternative measures of capacity that serve as a better basis for identifying small intermittent and/or small batch MWI's. Finally, the

manufacturers may choose to develop a voluntary approach providing a consistent measure of rated capacity.

It has also been suggested that subcategories could be identified according to the geographic location of the MWI. Facilities located in isolated, rural areas may be different than facilities located in urban areas based on their economic environment. For example, alternatives to onsite incineration (e.g., commercial medical waste treatment services) may be more limited and/or more expensive in isolated locations. The Agency specifically solicits comment on the advantages and disadvantages of subcategorizing by geographic location.

2. MACT Floor

The MACT floor refers to the minimum level of control required by the Act. For new units, the standards must not be less stringent than the emissions control that is achieved in practice by the best controlled similar unit. The MACT floors for the proposed standards were determined by evaluating the performance of control technologies and identifying MWI's that currently use what is considered to be the best control technology for each pollutant within each subcategory, as described in section V.I. Comments are requested on the Agency's conclusions regarding the MACT floors for new MWI's in each subcategory.

For existing units, the guidelines must not be less stringent than the average emission limitation achieved by the best performing 12 percent of units. The MACT floors for the proposed guidelines were determined by examining emission limitations found in air quality permits and State regulations, as described in section V.J. Because of widely varying formats used from State to State to regulate MWI's, many assumptions are necessary to standardize the regulations to a common basis. As a result, State regulations are subject to different interpretations depending on the assumptions made in standardizing them for comparison. Comments are requested on the basis for the Agency's conclusions on the MACT floors for existing MWI's in each subcategory.

Subcategorization based on size rather than, or in addition to, MWI type (as discussed above) could result in different MACT floors. For example, the MACT floor level for particulate matter emissions for a subcategory including small intermittent and/or small batch MWI's may be much less stringent than the 69 mg/dscm MACT floor identified above for intermittent and batch MWI's. If the MACT floors are found to be significantly different than those under today's proposal, the Agency will determine if MACT levels more stringent than the MACT floors are achievable considering cost, any nonair quality health and environmental impacts, and energy requirements. The MACT floors will be reassessed following proposal.

3. Performance of Technology

While the standards and guidelines are required to reflect MACT, the Agency establishes emission limitations, rather than equipment specifications, to encourage competition and further the development of technology. Individual facilities have the flexibility of selecting the method of control used to comply with the established pollutant emission limitations. The benefits of this approach include increased competition among vendors of control devices, further development and refinement of control technologies, and lower costs, as competing control device vendors strive to meet or exceed the required performance levels at lower costs than their competitors. Competition among vendors of air pollution control equipment will ensure that the benefits of emission reduction are realized at the lowest possible costs to MWI users and to society.

In developing the proposed standards and guidelines, the EPA concluded that dry scrubbers are the only technology capable of achieving the MACT floor levels. Consequently, the proposed emission limitations have been established at levels reflecting dry scrubber performance. Once again, this does not mean that MWI's are required to use dry scrubbers. Any technology that can achieve the emission limitations may be used. On the other hand, the EPA conclusion about the performance capabilities of wet scrubbers is based on emissions data from only one MWI facility using a wet scrubber system. Vendors of wet scrubber systems believe that the wet scrubber tested by EPA is not reflective of current wet scrubber technology. They believe that current wet scrubber technologies are not only capable of achieving the MACT floor levels, but may also be capable of achieving the proposed emission limitations for all pollutants. As a result, while the preamble assumes the use of a dry scrubber system to comply with the proposed emission limits, it appears that high efficiency wet scrubber systems as well as dry scrubber systems may be capable of achieving the proposed emission limits.

In addition, vendors of wet scrubber systems believe that wet scrubber systems are able to achieve the proposed emission limitations at about half the estimated total annual costs of dry scrubber systems. Wet scrubber vendors also claim that wet scrubber systems currently not capable of complying with the proposed emission limitations could be retrofitted to do so at a reasonable cost. Users of MWI's that have already installed less efficient wet scrubber systems to comply with State and/or local regulations may be able to upgrade their existing wet scrubber system to comply with the proposed emission limits. The Agency is interested in this alternative in part because a number of facilities have installed wet scrubber controls in recent years in an effort to meet State standards. If the alternative is not available, these facilities may have to remove their wet scrubbers and replace them with more expensive dry scrubbers. The Agency is interested in data on the number of facilities that have installed wet scrubbers and the likely cost of replacing the wet scrubbers with dry scrubber technology.

While upgrading an existing wet scrubber system may result in lower total annual costs than installing a new dry scrubber system, most facilities may still find that alternative disposal options, such as offsite contract disposal or onsite autoclaving, are less expensive. Consequently, the EPA believes that the use of wet scrubber systems to comply with the proposed standards and guidelines will have essentially the same impact on shifts away from onsite incineration as the use of dry scrubber systems. In fact, the use of any add-on control system will increase the costs of onsite incineration such that alternatives to onsite incineration become more economical.

Because the issue of wet scrubber performance is important to MWI users, EPA specifically solicits further information on wet scrubber systems. The EPA is requesting emissions data that could be used to evaluate the performance of wet scrubber systems and to determine the capability of these systems in achieving the MACT floor levels and/or the proposed emission limitations. Sufficient data are available on emissions of CO, opacity, NO_X, SO_2, and HCl for use in developing the proposed standards and guidelines. The Agency specifically solicits data on PM, Pb, Cd, Hg, and CDD/CDF emissions.

If new data on wet scrubber performance shows that wet scrubbers are capable of achieving the MACT floor levels, then EPA would have to review the decision to base the emission limitations on dry scrubbers by examining the additional costs and emission reductions achieved by dry

scrubbers relative to wet scrubbers. In this case, the EPA may conclude that the additional costs associated with dry scrubber limits are unreasonable relative to the emission reductions achieved. On the other hand, if new data on wet scrubber performance shows that wet scrubbers are capable of achieving the proposed emission limitations, then it is likely that the emission limitations will remain unchanged. In this case, the emission limitations would reflect the use of either wet scrubbers or dry scrubbers.

The performance of air pollution control equipment can best be established when both APCD inlet and APCD outlet concentration data are measured and compared. Several pollutants are waste related. The EPA test program identified significant variations in the uncontrolled concentrations of these pollutants from source to source, which could be a result of differences in the types and amounts of various materials included in the waste stream. Therefore, the Agency solicits APCD inlet concentration data, to the extent available, wherever outlet concentration data are provided.

Additionally, the Agency solicits comments on the technical feasibility of injecting activated carbon into wet scrubber systems to control CDD/CDF and Hg emissions. Specifically, the Agency is requesting information on whether carbon injection is necessary to reduce CDD/CDF and Hg using wet scrubbers and if so, what problems are associated with the injection of carbon into a wet system or what other means of using the carbon adsorption mechanism are available to reduce emissions of these pollutants. If carbon injection is not necessary to reduce emissions of CDD/CDF and Hg, the EPA is soliciting information on what wet scrubber mechanisms reduce emissions of CDD/CDF and Hg. The EPA specifically requests that, if available, Hg emissions data be broken down by various species emitted (e.g., Hg chloride versus elemental Hg).

In addition to performance data, the EPA is requesting information on the costs associated with the installation of new higher efficiency wet scrubber systems and with the retrofit of existing wet scrubber systems to achieve the same performance capabilities of the higher efficiency wet scrubber systems. The Agency also solicits information on the performance and cost of dry scrubber systems, as well as information on whether there are technical limitations associated with the application of air pollution control systems to various sizes and types of MWI's.

There is some concern about the impacts on other media from the use of wet scrubber systems—specifically, the fate of metals transferred from the stack gas to the scrubber water with subsequent disposal to a sewer system. Wastewater pretreatment may be necessary to remove these metals. As a result, the Agency is soliciting information on pretreatment techniques that are, or could be, used to remove metals from the scrubber effluent prior to discharge to a sewer system and on the costs associated with these techniques. The additional costs of scrubber effluent pretreatment may increase the total annual costs associated with wet scrubber systems to a level that is more comparable to the use of a dry scrubber system. Because the Act directs the Agency to consider all media in developing regulations, the final standards and guidelines may include requirements that address the pretreatment of MWI wastewater to ensure that water quality is not compromised.

4. Determining MACT for MWI's

While section 129 of the Act requires that the standards and guidelines be no *less* stringent than the MACT floor, it does provide EPA with the authority to establish emission limitations that are *more* restrictive than the MACT floor. In deciding whether the standards and guidelines should be more restrictive than the MACT floor, section 129 requires the Administrator to consider the cost, any nonair quality health and environmental impacts, and energy requirements associated with the more restrictive standards and guidelines.

As described in section V of this notice, EPA has concluded that dry scrubbers are the only technology available to meet the MACT floor. Furthermore, dry scrubbers achieve substantially lower emissions than the MACT floor for little, if any, additional cost. Consequently, EPA was faced with two options: (1) propose more restrictive emission limitations that reflect the performance of the technology needed to meet the MACT floor (i.e., scrubber limits); or (2) propose less restrictive emission limitations that reflect the MACT floor (i.e., floor limits). On one hand, there is essentially no cost associated with the scrubber limits relative to the floor limits because the dry scrubber would be installed to meet the floor limits. On the other hand, the installation of a dry scrubber will result in the lower emissions associated with a dry scrubber. Therefore, it can be argued that there is also no environmental benefit associated with the more restrictive emission limits.

The EPA specifically requests comment on the advantages and disadvantages of MACT floor-based emission limits versus dry scrubber-based emission limits. The Agency has chosen the more restrictive dry scrubber-based emission limits for the following reasons. First, as discussed above, the EPA believes that a dry scrubber is the only technology capable of meeting the MACT floor. In addition, activated carbon can be injected into a dry scrubber to further reduce dioxin and Hg emissions for a relatively small cost. Other technologies have not been identified that are able to incorporate carbon injection for dioxin and Hg removal. Incineration of medical waste has been identified as the largest known source of dioxin and Hg emissions. The additional reduction of dioxin and Hg emissions achieved by the injection of activated carbon is discussed earlier in this preamble. The EPA believes that the benefits of activated carbon injection outweigh the costs.

Secondly, by setting emission limitations rather than control equipment specifications, EPA encourages and promotes the development of new emission control technologies that can meet the emission limits at lower costs. If the Agency proposes the MACT floor emission limits, it will promote new technologies that are only capable of meeting the floor. In this case, the use of new technologies capable of meeting the MACT floor may result in higher emissions than current technologies (i.e., dry scrubbers). The Agency believes that new technologies should be promoted and encouraged, but that the dry scrubber based emission limits are the more appropriate target for these new technologies. Therefore, today's proposal has set dry scrubber emission limits as the target for new technologies. The Agency specifically requests comment on the appropriate target emission limits for developing technologies.

As noted above, however, vendors of wet scrubbers believe that current wet scrubber technologies are not only capable of achieving the MACT floor levels, but may also be capable of achieving more stringent control levels. If EPA receives additional data that confirms this level of performance, then EPA would have to review the decision to base the emission limits on dry scrubbers. Thus, EPA would consider the potential incremental emission reductions and the potential gains from technology development with the

differential retrofit costs of these two alternative control technologies.

In addition, as noted above, EPA is considering further subcategorization by size. If EPA decides to establish a subcategory of ''very small MWI's'' in the final rule, it is possible that one or more additional control approaches (in addition to fabric filters) would be able to achieve (or exceed) the MACT floor levels for this subcategory. The Agency would then undertake a careful review of the alternative control approaches available for this category of ''very small MWI's'' by considering the incremental emission reductions of the more stringent control options with the differences in retrofit cost across alternatives.

The Agency requests comment on the appropriate emission limits under these alternative options.

B. Alternatives to Onsite Incineration

As discussed in sections III and IV of this notice, in evaluating costs associated with MACT for each MWI, it was determined that many facilities would have the option of using an alternative method of treatment and disposal that would be less expensive than onsite incineration under the proposed standards and guidelines. The most common alternatives to onsite incineration are offsite contract disposal (most commonly commercial medical waste incineration) and onsite autoclaving. While data are available to estimate costs for these two alternatives and to estimate emissions from commercial medical waste incineration, data are not available to quantify emissions or energy requirements from onsite autoclaving of medical waste. The EPA solicits emissions data, energy use data, and cost information on the use of autoclaves and other nonincineration methods to treat and dispose of medical waste.

Several concerns related to the use of alternatives to onsite incineration have been raised. One concern is the ability of alternative technology manufacturers to meet the increased demand for installations. Also, questions have been raised about the general stability in the alternative technology marketplace. Specifically, questions have been raised about whether vendors of alternative technologies will be able to service the equipment that has been installed over the life of that equipment. To respond to these concerns, the EPA solicits information on the number of companies that currently manufacture alternatives to onsite incineration, the number of U.S. installations, the number of installations the individual companies are capable of on an annual basis, and the number of years the individual companies have been in business.

Concerns about environmental impacts associated with the use of these alternatives have also been raised. Specifically, questions have been raised about air and water pollution impacts. As discussed earlier, data are not available to quantify air emissions from the use of alternative technologies. Data are also not available to quantify other environmental impacts resulting from the use of alternatives. In addition to air emissions data (requested earlier), the EPA solicits data related to other media impacts, including water pollution impacts, resulting from the use of alternative technologies.

C. Definition of Medical Waste

As discussed above, the definition of medical waste included in today's proposed regulations is very broad. Medical waste is any solid waste generated in the treatment, diagnosis, or immunization of humans or animals, or research pertaining thereto, or in the production or testing of biologicals.

Section 129 of the Clean Air Act directs the EPA to adopt regulations for solid waste incineration units burning medical waste. This section also states that ''* * * ''solid waste'' and ''medical waste'' shall have the meanings established by the Administrator pursuant to the Solid Waste Disposal Act.''

The Solid Waste Disposal Act was amended extensively and, for all practical purposes replaced, by the Resource Conservation and Recovery Act (RCRA) in 1976. The RCRA, in turn, was amended in 1984 and, as it pertains to medical waste, was amended again in 1988 by the Medical Waste Tracking Act (MWTA). The MWTA included a definition of medical waste, which was added to the RCRA. In implementing the amendments to the RCRA, this statutory definition of medical waste was adopted by the Administrator. The definition of medical waste included in today's proposal, therefore, is in EPA's opinion the definition of this term established by the Administrator pursuant to the Solid Waste Disposal Act.

As mentioned above, some have suggested the definition of medical waste included in today's proposal is inappropriate and the EPA requests comment on this definition. It appears the basis for this suggestion stems from the following concern. If the impact of today's regulation is as widespread as the EPA believes, in terms of the large number of medical waste generators who may decide to switch from the use of onsite incineration to the use of alternative waste disposal techniques, there may not be enough medical waste disposal capacity currently available to safely and properly dispose of this medical waste.

To reduce the amount of medical waste covered by today's proposed regulations, some have suggested that the EPA narrow the definition of medical waste. Various definitions have been offered, such as ''regulated medical waste'' (a term used by the EPA in implementing the MWTA amendments to the RCRA), ''red bag medical waste'', ''infectious medical waste'', etc. These wastes are included under the broad definition of medical waste, but are generally viewed as constituting only about 15 to 20 percent of the total quantity of medical waste. If today's proposal covered only these types of medical wastes, as opposed to all types of medical wastes, the amount of medical waste which might be displaced from onsite incineration at medical waste generators to alternative waste disposal techniques would be much less and, as a result, more easily handled by these alternative techniques.

It appears to the EPA, however, that there are several reasons to believe there is or would be sufficient capacity available to safely and properly treat and dispose of all the medical waste that might be displaced from onsite incineration at medical waste generators as a result of today's proposed regulations. Since this issue concerns medical waste presently being treated by onsite medical waste incinerators at medical waste generators, it concerns existing incinerators, not new incinerators. Thus, the focus of this issue is today's proposed emission guidelines, not the proposed new source performance standards.

Today's proposed emission guidelines provide time for medical waste generators currently using onsite medical waste incinerators to consider alternatives for treating and disposing of their medical waste. The guidelines will not be adopted by the EPA for at least 1 year (the EPA is under Court Order to adopt final regulations by April 15, 1996). States are provided 1 year by the Clean Air Act to adopt plans for implementing the guidelines and to submit these plans to the EPA for approval. The Act then provides EPA 180 days to review and approve these State plans. Finally, today's proposed guidelines provide 1 year following EPA approval of the State plan for existing medical waste incinerators to comply with the proposed emission limits.

Medical waste generators currently operating onsite incinerators, therefore,

have about 3½ years from today's date to consider how to treat and dispose of their medical waste in the future. In addition, today's proposed emission guidelines include provisions to permit an extension of up to 3 years following EPA approval of the state plan for individual medical waste generators currently operating medical waste incinerators to comply with the proposed emission limits. Consequently, where circumstances dictate the need for additional time, medical waste generators currently operating medical waste incinerators could have up to 5½ years from today's date to consider how to treat and dispose of their medical waste.

Turning to the alternatives, the EPA believes medical waste generators currently operating medical waste incinerators have three choices to consider. These are: (1) continued operation of their onsite incinerator and compliance with the proposed emission limits; (2) installation of an alternative medical waste treatment technology onsite, such as autoclaving, microwaving, macrowaving, chemical treatment, etc.; or (3) contracting with a commercial medical waste disposal service for offsite treatment and disposal of medical waste.

As discussed above, the EPA believes many medical waste generators currently operating onsite medical waste incinerators will select the second or third choice in response to today's proposed emission guidelines. With regard to the second choice, installation of an alternative medical waste treatment technology onsite, several manufacturers and vendors of autoclave, microwave, macrowave, and chemical treatment systems have indicated informally that 3½ to 5½ years is more than enough time to purchase and install one of these alternative treatment systems. In fact, some manufacturers and vendors have indicated informally that they could supply their equipment within months for installation.

These informal comments have led the EPA to conclude that today's proposed emission guidelines provide ample time for medical waste generators currently operating onsite medical waste incinerators, who may select the second choice, to purchase and install the appropriate equipment. The EPA, however, specifically requests manufacturers and vendors of these alternative treatment systems to comment formally on the time necessary for a medical waste generator to obtain the necessary permits to install and operate their systems, the time necessary to obtain and install their systems, and their ability to respond to increased orders for their systems over the next 3 to 6 years, as a result of today's proposal.

Based on a survey of current practices regarding landfill disposal of medical waste, the EPA believes that medical waste may be disposed of in most landfills provided it has been properly treated to destroy infectious agents and is not recognizable as medical waste. It appears the first criteria is met through the use of these alternative treatment systems. The second criteria is met by grinding and/or shredding the waste, which is common practice where these alternative treatment systems are in operation today. If this belief is correct, it would seem clear that there is more than enough landfill capacity available in the United States for disposal of medical waste treated by these alternative waste treatment disposal systems.

With regard to the third choice, contracting with a commercial medical waste disposal service, representatives and operators of these services have indicated informally that their industry is currently operating at very low capacity. They have indicated informally that the industry currently treats and disposes of about 20 percent of the medical waste generated in the United States and that the industry has the capacity today to treat and dispose of possibly as much as 40 percent of the medical waste generated. Finally, given the time frame of 3½ to 5½ years provided in the proposed emission guidelines for medical waste generators currently operating medical waste incinerators to decide how to dispose of their medical waste in the future, the commercial medical waste disposal industry has indicated informally that sufficient additional capacity could be permitted, constructed, and brought on line by the industry to service all those medical waste generators who may select this third choice.

It appears, therefore, the commercial medical waste disposal industry has a great deal of capacity today and could add substantial capacity in the near future to meet any increase in the need for their services which may result. The EPA, however, specifically requests that the representatives and operators of commercial medical waste disposal services comment formally on the capacity within their industry today to dispose of medical waste, the current utilization of this capacity, and their ability to permit, construct, and bring on line major additions to this capacity in the next 3 to 6 years.

Finally, while not related to questions of the capacity of alternatives to treat and dispose of medical waste displaced by medical waste generators which currently use onsite medical waste incinerators, there are other reasons EPA believes all medical waste should be covered by today's proposed regulations. The suggestions to narrow the applicability of today's proposal would basically narrow the proposal to cover ''red bag'' medical wastes. Testing during the EPA test program to examine differences in emissions between red-bag medical waste and general medical waste showed no significant difference in emissions of air pollutants, such as hydrogen chloride (HCl), dioxins, lead, mercury, etc.

The EPA believes, therefore, that there is no significant difference between red-bag medical waste and general medical waste in emissions of those air pollutants which section 129 of the Clean Air Act directs the EPA to regulate. In addition, there appears to be no significant difference in the applicability, performance, or cost of various technologies to reduce these emissions from medical waste incinerators burning red-bag medical waste or general medical waste. There is, therefore, no compelling reason EPA sees for narrowing the definition of medical waste included in today's proposed regulations.

VII. Administrative Requirements

A. Public Hearing

The EPA will hold at least one public hearing to provide interested parties an opportunity for oral presentation of data, views, or arguments concerning the proposal. Additional hearings may also be held. A Federal Register document will be published within the next 2 weeks to announce the details of the heading(s). At the public hearing(s), the proposed standards and guidelines will be discussed in accordance with section 307(d)(5). Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be mailed to the Air and Radiation Docket and Information Center at the address given in the *ADDRESSES* section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air and Radiation Docket and Information Center in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information

submitted to or otherwise considered in the development of the proposed standards and guidelines. The principal purposes of the docket are: (1) to allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review material [section 307(d)(7)(A)]). The docket number for this rulemaking is A–91–61.

C. Clean Air Act Procedural Requirements

1. Administrator Listing—Section 111; Section 129 of the Act

Section 129 of the Act calls for the Administrator to promulgate standards for new MWI's and guidelines for existing MWI's pursuant to section 111 and 129.

2. Periodic Review—Section 111 and Section 129 of the Act

Section 111 and section 129 of the Act require that the standards and guidelines be reviewed not later than 5 years following the initial promulgation. At that time and at 5-year intervals thereafter, the Administrator is to review the standards and guidelines and make revisions if necessary. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

3. External Participation—Section 117 of the Act

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator welcomes comments on all aspects of the proposal, including economic and technological issues.

4. Economic Impact Assessment—Section 317 of the Act

Section 317 of the Act requires the EPA to prepare an economic impact assessment for any emission standards and guidelines promulgated under section 111 of the Act. An economic impact assessment was prepared for the proposed standards and guidelines. In the manner described above under the discussions of the impacts of, and rationale for, the proposed standards and guidelines, the EPA considered all aspects of the assessment in proposing the standards and guidelines. The economic impact assessment is included in the docket listed at the beginning of today's notice under **SUPPLEMENTARY INFORMATION.**

D. Office of Management and Budget Reviews

1. Paperwork Reduction Act (PRA)

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 (ICR) document has been prepared by the EPA (ICR No. 1730.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (2136); U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or by calling (202) 260–2740.

This collection of information is estimated to have an average annual reporting burden of 0.01 person years per pathological MWI and an average of about 2.4 person years for MWI's burning general medical waste. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of 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 (2136), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for the EPA.'' The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

2. Executive Order 12866 Review

Under Executive Order (E.O.) 12866, the EPA must determine whether the proposed regulatory action is ''significant'' and therefore, subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the proposed standards and guidelines are ''significant'' because the annual effect on the economy will exceed $100 million. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

3. Executive Order 12875

Under Executive Order 12875, the EPA is required to consult with representatives of affected State, local, and tribal governments, and keep these affected parties informed about the content and effect of the proposed standards and guidelines. The following discussion provides a brief summary of the content, need for, and cost of the proposed standards and guidelines, as well as the actions that the EPA has taken to communicate and consult with the affected parties.

a. Summary of the Proposed Standards and Guidelines

The proposed standards and guidelines would establish emission limitations for new and existing MWI's. The proposed standards and guidelines do not specify which type of air pollution control equipment must be used at MWI's to meet the proposed emission limitations. However, the EPA expects that, to meet the proposed emission limitations, most MWI's would use dry scrubbing systems (DI/FF) with activated carbon injection for dioxins/furans, metals, and acid gas control. Refer to section II of this preamble for a more detailed discussion of the proposed standards and guidelines.

b. Need for the Proposed Standards and Guidelines

Under the Act Amendments of 1990, section 129 includes a schedule that requires the EPA to develop standards and guidelines for MWI's by November 1992. The EPA did not comply with that schedule and is now under court order to propose the standards and guidelines by February 1, 1995 and promulgate the standards and guidelines by April 15, 1996. As required by section 129, the proposed standards and guidelines would establish emission limitations for PM, opacity, CO, CDD/CDF, HCl, SO_2, NO_X, Pb, Cd, and Hg. See section I of

this preamble for further discussion of the regulatory history and general goals of the proposed standards and guidelines.

c. Cost of the Proposal

The nationwide annual costs associated with the proposed standards for new MWI's would increase by approximately $74.5 million/yr from the regulatory baseline cost of $63.3 million/yr. The cost of compliance with the proposed standards for an individual facility will vary depending on the method chosen to comply with the proposed emission limitations. Of the projected number of new MWI's, some will be constructed with air pollution control equipment to comply with the proposed emission limitations. However, as discussed in Section III of this preamble, the EPA expects that, to avoid the increased costs associated with the installation of control equipment, as many as 80 percent of the projected number of new MWI's will not be constructed. Instead, these facilities are likely to consider less expensive methods of treatment and disposal.

Under the proposed standards, the average annualized cost of incineration for a typical small MWI would be about $326 thousand per year. The two most common alternatives to onsite incineration include offsite contract disposal and onsite steam sterilization. Instead of installing an MWI with air pollution control equipment, the facility may choose to use offsite contract disposal at an estimated average annualized cost of $98.8 thousand per year, or onsite steam sterilization at an estimated average annualized cost of $65.6 thousand per year. Either of these alternatives is considerably less expensive than onsite incineration under the proposed standards.

Under the proposed standards, the average annualized cost of incineration for a typical large MWI would be about $520 thousand per year. The cost to dispose of the same amount of waste using offsite contract disposal is estimated at about $1.01 million per year, which is considerably higher than the costs of onsite incineration. Onsite steam sterilization of the same amount of waste would cost about $158 thousand per year. Instead of installing an MWI with air pollution control equipment, the facility may choose to use onsite steam sterilization at a much lower cost. A more complete summary of the cost and economic impacts of the proposed standards are presented in Section III of this preamble.

The nationwide annual costs associated with the proposed guidelines for existing MWI's would increase by approximately $351 million/yr from the regulatory baseline cost of $265 million/yr. As with new MWI's, the cost of compliance with the proposed guidelines for an individual facility will vary depending on the method chosen to comply with the proposed emission limitations. Some facilities may choose to keep their incinerator and install air pollution control equipment to comply with the proposed emission limitations. However, as discussed in Section IV of this preamble, the EPA expects that as many as 80 percent of existing facilities currently using onsite incineration will switch to an alterative method of treatment and disposal to avoid the increased cost of installing air pollution control equipment.

For a typical small MWI, the installation of control equipment would increase the average annualized cost of incineration to about $329 thousand per year. Instead of installing air pollution control equipment, the facility may choose to use offsite contract disposal at an estimated average annualized cost of $98.8 thousand per year, or onsite steam sterilization at an estimated average annualized cost of $65.6 thousand per year. The costs for either of these alternatives is considerably less than the costs for installing control equipment to meet the proposed emission limitations.

The average annualized cost of incineration for a typical large MWI would increase to about $533 thousand per year. The cost to dispose of the same amount of waste using offsite contract disposal is estimated at about $1.01 million per year, which is substantially higher than the estimated costs of onsite incineration. Onsite steam sterilization of the same amount of waste would cost about $158 thousand per year. Instead of installing air pollution control equipment to meet the proposed emission limitations, the facility may choose to use onsite steam sterilization at a much lower cost. A more complete summary of the cost and economic impacts of the proposed guidelines are presented in Section IV of this preamble.

d. Communication With Affected Parties

As previously mentioned, Executive Order 12875 requires the EPA to consult with representatives of affected State, local, and tribal governments, and prior to promulgation of final standards, summarize concerns of the governmental entities and respond to their comments. The EPA has already initiated consultations with numerous governmental entities including, but not limited to, the U.S. Conference of Mayors, the National Association of City and County Health Officials, the National Association of Counties, the National Association of Public Hospitals, and the National Governors Association. These groups have been informed of the content of the proposal and the estimated impacts. In drafting the proposal, the EPA has considered the concerns expressed by these groups, and discussions with these groups will continue following proposal. The EPA awaits comments from these groups on the proposal and will respond to their comments.

E. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires Federal agencies to give special consideration to the impact of regulations on small entities, which are small businesses, small organizations, and small governments. The major purpose of the RFA is to keep paperwork and regulatory requirements from getting out of proportion to the scale of the entities being regulated, without compromising the objectives of, in this case, the Act.

If a regulation is likely to have a significant economic impact on a substantial number of small entities, the EPA may give special consideration to those small entities when analyzing regulatory alternatives and drafting the regulation. In the case of the proposed standards and guidelines, the results of the economic analysis indicate that the standards and guidelines will not have a significant impact on a substantial number of small entities. Less than 20 percent of ''small'' government jurisdictions are expected to be significantly impacted. In addition, although some small medical waste generators would be significantly impacted by the regulation's control requirements, the majority of these impacts could be avoided by switching to less expensive alternatives for medical waste disposal. Therefore, it is expected that the number of facilities that are significantly impacted will not be ''substantial.''

List of Subjects in 40 CFR Part 60

Air Pollution control, Incorporation by reference, Intergovernmental relations, Medical waste, Reporting and recordkeeping.

Dated: February 1, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–3045 Filed 2–24–95; 8:45 am]

BILLING CODE 6560–50–P

federal register

Monday
February 27, 1995

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species: Southwestern Willow Flycatcher; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018 AB97

Endangered and Threatened Wildlife and Plants; Final Rule Determining Endangered Status for the Southwestern Willow Flycatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines the southwestern willow flycatcher (*Empidonax traillii extimus*) to be an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). The breeding range of this bird includes southern California, southern Nevada, southern Utah, Arizona, New Mexico, western Texas, southwestern Colorado, and extreme northwestern Mexico. Within this region, the species is restricted to dense riparian associations of willow, cottonwood, buttonbush, and other deciduous shrubs and trees. This habitat was historically rare and sparsely distributed and is currently more rare owing to extensive destruction and modification. The southwestern willow flycatcher is endangered by extensive loss of habitat, brood parasitism, and lack of adequate protective regulations. This rule implements Federal protection provided by the Act for the southwestern willow flycatcher. Designation of critical habitat for the southwestern willow flycatcher is deferred while the Service gathers further comments and reconsiders the prudence of designation and the appropriate boundaries of any area to be designated.

DATES: The listing of the southwestern willow flycatcher is effective March 29, 1995. Comments on the designation of critical habitat may be submitted until April 28, 1995.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at Ecological Services State Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021.

FOR FURTHER INFORMATION CONTACT: Sam F. Spiller or Robert M. Marshall at the above address (Telephone 602/640–2720).

SUPPLEMENTARY INFORMATION:

Background

The southwestern willow flycatcher is a small bird, approximately 15 centimeters (cm) (5.75 inches) long. It has a grayish-green back and wings, whitish throat, light grey-olive breast, and pale yellowish belly. Two wingbars are visible; the eye ring is faint or absent. The upper mandible is dark, the lower is light. The song is a sneezy ''fitz-bew'' or ''fit-za-bew,'' the call a repeated ''whitt.''

The southwestern willow flycatcher occurs in riparian habitats along rivers, streams, or other wetlands, where dense growths of willows (*Salix* sp.), *Baccharis*, arrowweed (*Pluchea* sp.), buttonbush (*Cephalanthus* sp.), tamarisk (*Tamarix* sp.), Russian olive (*Eleagnus* sp.) or other plants are present, often with a scattered overstory of cottonwood (*Populus* sp.) (Grinnell and Miller 1944, Phillips 1948, Phillips *et al.* 1964, Whitmore 1977, Hubbard 1987, Unitt 1987, Whitfield 1990, Brown and Trosset 1989, Brown 1991, Sogge *et al.* 1993, Muiznieks *et al.* 1994). Throughout the range of *E. t. extimus*, these riparian habitats tend to be rare, widely separated, small and/or linear locales, separated by vast expanses of arid lands. The southwestern willow flycatcher has experienced extensive loss and modification of this habitat and is also endangered by other factors, including brood parasitism by the brown-headed cowbird (*Molothrus ater*) (Unitt 1987, Ehrlich *et al.* 1992, Sogge *et al.* 1993, Muiznieks *et al.* 1994).

The southwestern willow flycatcher (Order Passeriformes; Family Tyrannidae) is a subspecies of one of the ten North American flycatchers in the genus *Empidonax*. The willow flycatcher and alder flycatcher (*E. alnorum*) were once considered a single species, the Traill's flycatcher (*E. traillii*). Some sources [American Ornithologists' Union (AOU) 1983, McCabe 1991] treat *E. traillii* and *E. alnorum*, and all their subspecies as a superspecies, the ''*traillii* complex''. However, the two species are distinguishable by morphology (Aldrich 1951), song type, habitat use, structure and placement of nests (Aldrich 1953), eggs (Walkinshaw 1966), ecological separation (Barlow and McGillivray 1983), and genetic distinctness (Seutin and Simon 1988). The breeding range of the alder flycatcher generally occurs north of the willow flycatcher's range.

The southwestern willow flycatcher is one of five subspecies of the willow flycatcher currently recognized (Hubbard 1987, Unitt 1987, Browning 1993) (Figure 1.). The breeding ranges of the widely distributed *E. t. traillii* and *E. t. campestris* extend across the northern United States and southern Canada, from New England and Nova Scotia west, through northern Wyoming and Montana, and into British Columbia. Hubbard (1987) and Unitt (1987) treated *E. t. campestris* as synonymous with *E. t. traillii*, but Browning (1993) considered them separate subspecies (Figure 1.). The subspecies *E. t. adastus* breeds from Colorado west of the plains, west through the Great Basin States and into the eastern portions of California, Oregon and Washington. The breeding range of *E. t. brewsteri* extends from the central California coast north, through western Oregon and Washington to Vancouver Island. The breeding range of the southwestern willow flycatcher (*E. t. extimus*) includes southern California, southern Nevada, southern Utah, Arizona, New Mexico, and western Texas (Hubbard 1987, Unitt 1987, Browning 1993). It may also breed in southwestern Colorado, but nesting records are lacking. Records of probable breeding *E. t. extimus* in Mexico are few and are restricted to extreme northern Baja California del Norte and Sonora (Unitt 1987, Wilbur 1987).

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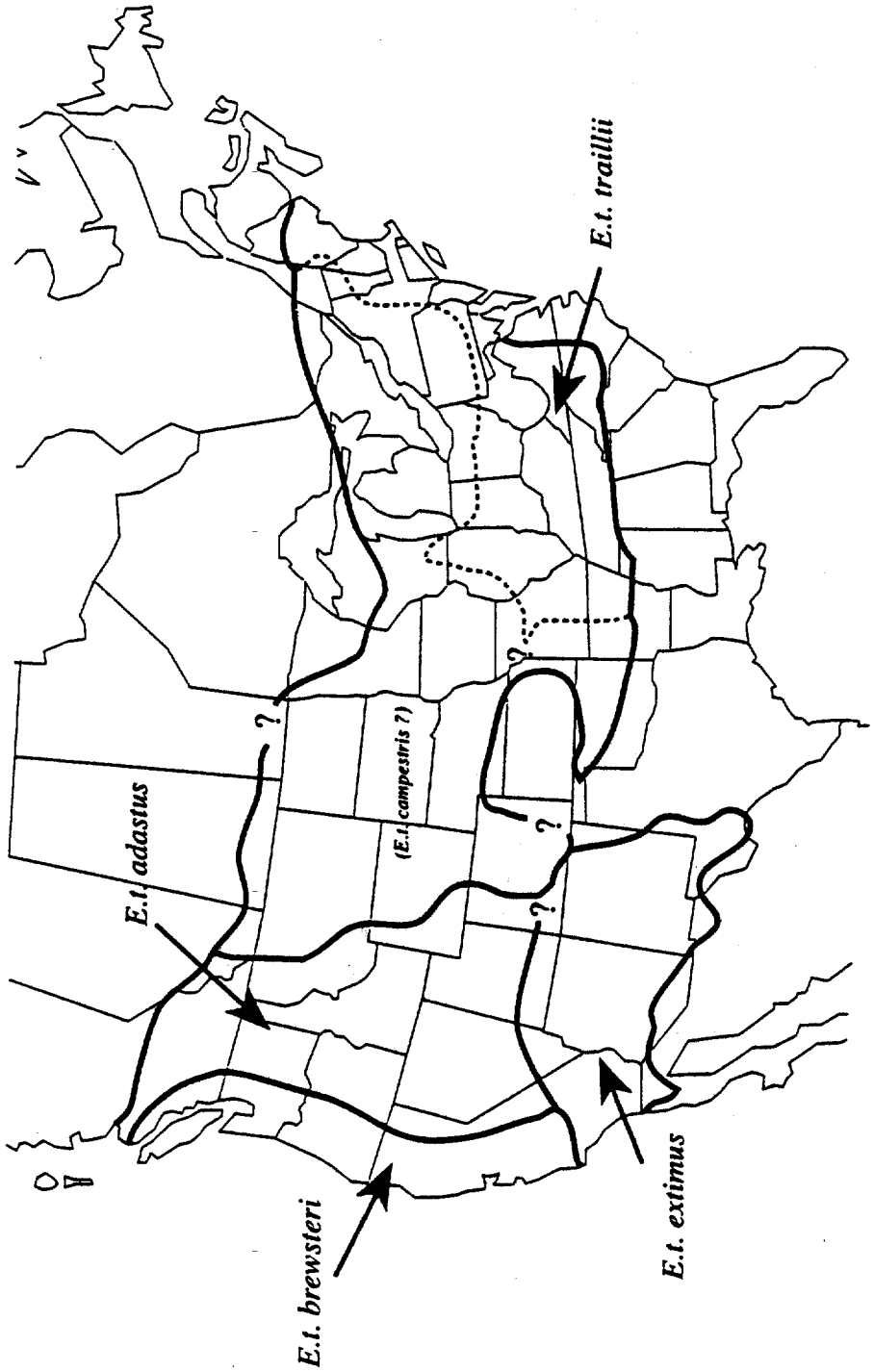

Figure 1. Approximate breeding ranges of the races of the willow flycatcher.

Adaptation of Unitt (1987) and Browning (1993), from Tibbitts et al. 1994.

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The willow flycatcher subspecies are distinguished primarily by subtle differences in color and morphology. Unitt (1987) noted that these differences ''* * * are minor, but differ little in magnitude from those distinguishing the species *E. traillii* from *E. alnorum*. In *Empidonax*, small differences in morphology may mask large differences in biology.''

The subspecies *E. t. extimus* was described by A.R. Phillips (1948) from a collection by G. Monson from the lower San Pedro River in southeastern Arizona. The taxonomy of *E. t. extimus* was critically reviewed by Hubbard (1987), Unitt (1987), and Browning (1993). Hubbard (1987) gave a qualified endorsement of the validity of *E. t. extimus*, recommending continued examination of the taxonomy. Unitt (1987) found that *E. t. extimus* was distinguishable from other willow flycatchers by color, being paler, and morphology (primarily wing formula) but not overall size. Browning (1993) also found that *E. t. extimus* was distinguishable as a more pale-colored subspecies. The song dialect of *E. t. extimus* may also be distinguishable from other willow flycatchers. Rather than the crisp, sneezy ''fitz-bew'' of the northerly subspecies, *E. t. extimus* sings a more protracted, slurred ''fit-za-bew,'' with a burry ''bew'' syllable (recordings by M. Sogge and J. Travis). The subspecies *E. t. extimus* is accepted by most authors (*e.g.*, Aldrich 1951, Behle and Higgins 1959, Phillips *et al.* 1964, Bailey and Niedrach 1965, Oberholser 1974, Monson and Phillips 1981, Harris *et al.* 1987, Schlorff 1990, Harris 1991). Section 3(15) of the Act and regulations at 50 CFR 424.02(k) defines the term ''species'' as any subspecies of fish or wildlife or plants, and any distinct population segment of any vertebrate species which interbreeds when mature. Based on the above information, the Service has determined that *E. t. extimus* is eligible for protection under the Act.

The southwestern willow flycatcher nests in thickets of trees and shrubs approximately 4–7 meters (m) (13–23 feet) or more in height, with dense foliage from approximately 0–4 m (13 feet) above ground, and often a high canopy cover percentage. The diversity of nest site plant species may be low (*e.g.*, willows) or comparatively high (*e.g.*, mixtures of willow, buttonbush, cottonwood, boxelder, Russian olive, *Baccharis*, and tamarisk). Nest site vegetation may be even- or uneven-aged, but is usually dense and structurally homogeneous (Brown 1988, Whitfield 1990, Sogge *et al.* 1993, Muiznieks *et al.* 1994). Historically, *E. t. extimus* nested primarily in willows, buttonbush, and *Baccharis*, with a scattered overstory of cottonwood (Grinnell and Miller 1944, Phillips 1948, Whitmore 1977, Unitt 1987). Following modern changes in riparian plant communities, *E. t. extimus* still nests in native vegetation where available, but has been known to nest in thickets dominated by tamarisk and Russian olive (Hubbard 1987, Brown 1988, Sogge *et al.* 1993, Muiznieks *et al.* 1994). Sedgwick and Knopf (1992) found that sites selected as song perches by male willow flycatchers (*E. t. traillii/campestris*) exhibited higher variability in shrub size than did nest sites and often included large central shrubs. Habitats not selected for either nesting or singing were narrower riparian zones, with greater distances between willow patches and individual willow plants. Nesting willow flycatchers of all subspecies generally prefer areas with surface water nearby (Bent 1960, Stafford and Valentine 1985, Harris *et al.* 1987), but *E. t. extimus* virtually always nests near surface water or saturated soil (Phillips *et al.* 1964, Muiznieks *et al.* 1994). At some nest sites surface water may be present early in the breeding season but only damp soil is present by late June or early July (Muiznieks *et al.* 1994, M. Whitfield, Kern River Research Center, *in litt.*-1993, J. and J. Griffith, Griffith Wildlife Biology, *in litt.*-1993). Ultimately, a water table close enough to the surface to support riparian vegetation is necessary.

Defining a minimum habitat patch size required to support a nesting pair of *E. t. extimus* is difficult. Throughout its range, determining the capability of habitat patches to support southwestern willow flycatchers is confused by the species' rarity, unstable populations, variations in habitat types, and other factors. However, the available information indicates that habitat patches as small as 0.5 hectare (ha) (1.23 acres) can support one or two nesting pairs. Sogge *et al.* (1993) found territorial flycatchers in habitat patches ranging from 0.5 to 1.2 ha (1.23 to 2.96 acres). Two habitat patches of 0.5 and 0.9 ha (1.23 and 2.2 acres) each supported two territories. Muiznieks *et al.* (1994) also reported groups of territorial *E. t. extimus* in habitat patches of approximately one to several hectares.

The nest is a compact cup of fiber, bark, and grass, typically with feathers on the rim, lined with a layer of grass or other fine, silky plant material, and often has plant material dangling from the bottom (Harrison 1979). It is constructed in a fork or on a horizontal branch, approximately 1–4.5 m (3.2–15 feet) above ground in a medium-sized bush or small tree, with dense vegetation above and around the nest (Brown 1988, Whitfield 1990, Muiznieks *et al.* 1994).

The southwestern willow flycatcher is present and singing on breeding territories by mid-May, although its presence and status is often confused by the migrating individuals of northern subspecies passing through *E. t. extimus* breeding habitat [D. Kreuper, Bureau of Land Management (BLM), unpubl. data]. The southwestern willow flycatcher builds nests and lays eggs in late May and early June and fledges young in early to mid-July (Willard 1912, Ligon 1961, Brown 1988, Whitfield 1990, Sogge and Tibbitts 1992, Sogge *et al.* 1993, Muiznieks *et al.* 1994). Some variation in these dates has been observed (Carothers and Johnson 1975, Brown 1988, Muiznieks *et al.* 1994) and may be related to altitude, latitude, and renesting.

The southwestern willow flycatcher is an insectivore. It forages within and above dense riparian vegetation, taking insects on the wing or gleaning them from foliage (Wheelock 1912, Bent 1960). It also forages in areas adjacent to nest sites, which may be more open (M. Sogge, National Biological Survey, pers. comm. 1993). No information is available on specific prey species.

The migration routes and wintering grounds of *E. t. extimus* are not well known. *Empidonax* flycatchers rarely sing during fall migration, so that a means of distinguishing subspecies is not available (Blake 1953, Peterson and Chalif 1973). However, willow flycatchers have been reported to sing and defend winter territories in Mexico and Central America (Gorski 1969, McCabe 1991). The southwestern willow flycatcher most likely winters in Mexico, Central America, and perhaps northern South America (Phillips 1948, Peterson 1990). However, the habitats it uses on wintering grounds are unknown. Tropical deforestation may restrict wintering habitat for this and other neotropical migratory birds (Finch 1991, Sherry and Holmes 1993).

Breeding bird survey data for 1965 through 1979 combined the willow and alder flycatchers into a ''Traill's flycatcher superspecies'', because of taxonomic uncertainty during the 15-year reporting period. These data showed fairly stable numbers in central and eastern North America but strong declines in the West, the region including the range of the southwestern willow flycatcher, and where the alder flycatcher is absent (Robbins *et al.* 1986).

Unitt (1987) reviewed historical and contemporary records of *E. t. extimus* throughout its range, determining that it had ''declined precipitously,'' and that ''although the data reveal no trend in the past few years, the population is clearly much smaller now than 50 years ago, and no change in the factors responsible for the decline seem likely.'' Data are now available that indicate continued declines, poor reproductive performance, and/or continued threats for most remaining populations (Brown 1991, Whitfield and Laymon, Kern River Research Center, *in litt.* 1993, Sogge and Tibbitts 1992, Sogge *et al.* 1993, Muiznieks *et al.* 1994).

Previous Federal Actions

The Service included the southwestern willow flycatcher on its Animal Notice of Review as a category 2 candidate species on January 6, 1989 (54 FR 554). A category 2 species is one for which listing may be appropriate but for which additional biological information is needed. After soliciting and reviewing additional information, the Service elevated *E. t. extimus* to category 1 candidate status on November 21, 1991 (56 FR 58804). A category 1 species is one for which the Service has on file substantial information to support listing, but for which a proposal to list has not been issued because it is precluded at present by other listing activity.

On January 25, 1992, a coalition of conservation organizations (Suckling *et al.* 1992) petitioned the Service, requesting listing of *E. t. extimus* as an endangered species under the Act. The petitioners also requested emergency listing and designation of critical habitat. On September 1, 1992, the Service published a finding (57 FR 39664) that the petition presented substantial information indicating that listing may be warranted and requested public comments and biological data on the species. On July 23, 1993, the Service published a proposal (58 FR 39495) to list *E. t. extimus* as endangered with critical habitat, and again requested public comments and biological data on the southwestern willow flycatcher.

Summary of Comments and Recommendations

In the July 23, 1993, proposed rule (58 FR 39495) and associated notifications, all interested parties were requested to submit comments or information that might bear on whether to list the southwestern willow flycatcher. The comment period was originally scheduled to close October 21, 1993, then was extended to November 30, 1993. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the following newspapers; In California, *Los Angeles Times*, *L.A. Watts Times*, *Kern Valley Sun*, and *San Diego Union-Tribune;* in Arizona, *Arizona Daily Sun*, *Arizona Republic*, *Tucson Daily Citizen*, *White Mountain Independent*, and *Arizona Daily Star;* in New Mexico, *Albuquerque Journal*, *Albuquerque Tribune*, *Santa Fe New Mexican*, *Carlsbad Current-Argus*, *Silver City Daily Press;* in Nevada, *Las Vegas Sun;* in Colorado, *Durango Herald;* in Utah, *Daily Spectrum;* and in Texas, *El Paso Times*. The inclusive dates of publications were August 31 through September 13, 1993, for the initial comment period and October 28 through November 5, 1993, for the public hearings and extension of public comment period.

The Service held six public hearings. Because of anticipated interest in the proposed rule, the Service announced its intention to hold at least three public hearings. In response to requests from the public, three additional hearings were scheduled. A notice of the hearing dates and locations was published in the Federal Register on October 18, 1993 (58 FR 53702). Approximately 424 people attended the hearings. About 17 people attended the hearing in Tucson, Arizona; 27 in Flagstaff, Arizona; 10 in Las Cruces, New Mexico; 12 in Albuquerque, New Mexico; 350 in Lake Isabella, California; and 8 in San Diego, California. Transcripts of these hearings are available for inspection (see **ADDRESSES**).

A total of 3,102 written comment letters were received at the Service's Ecological Services State Office in Arizona: 264 supported the proposed listing; 2,650 opposed the proposed listing; and 188 expressed neither support nor opposition, but either commented on information in the proposed rule, provided additional information, or were non-substantive or irrelevant to the proposed listing.

Oral or written comments were received from 62 parties at the hearings: 8 supported the proposed listing; 40 opposed the proposed listing; and 14 expressed neither support nor opposition but provided additional information, or were non-substantive or irrelevant to the proposed listing.

In total, oral or written comments were received from 31 Federal and State agencies and officials, 17 local officials, and 3,116 private organizations, companies, and individuals. All comments received during the comment period are addressed in the following summary. Comments of a similar nature are grouped into a number of general issues.

Issue 1: The American Ornithologists' Union (AOU) did not list *E. t. extimus* in its latest Checklist of North American Birds; Unitt (1987) could not distinguish *E. t. extimus* by color or morphology; genetic analysis is necessary to distinguish subspecies; significant disagreement exists among scientists regarding taxonomy, for example, McCabe (1991) did not recognize *E. t. extimus;* the willow flycatcher subspecies, in fact the North American *Empidonax* flycatcher species are too difficult to distinguish to make it reasonable to list subspecies of those species; hybridization of the willow flycatcher subspecies occurs; subspecies are not worth listing; *E. t. extimus* is a subspecies of a very common species; *E. t. extimus* is not worth listing because it is one of nine common species in the genus *Empidonax;* this subspecies and subspecies in general are of minor ecological value; their loss would be unimportant; there is little value in preserving rare species/subspecies; and historical taxonomic questions may confuse population trend information.

Service Response: The Service has determined that *E. t. extimus* is a valid taxon. The Service relies on the most current and authoritative data available in making decisions regarding the validity of species, subspecies, or distinct vertebrate population segments. These data include articles published in professional journals, agency reports, and other unpublished data provided by researchers. For the southwestern willow flycatcher, the Service reviewed this information and found a majority opinion that *E. t. extimus* is a valid subspecies. Authorities who critically examined the taxonomy of *E. traillii* and recognized *E. t. extimus* include Phillips (1948), Aldrich (1951), Hubbard (1987), Unitt (1987), and Browning (1993). Other authorities accepting the subspecies include Behle and Higgins (1959), Phillips *et al.* (1964), Bailey and Niedrach (1965), Oberholser (1974), Monson and Phillips (1981), Harris *et al.* (1987), Schlorff (1990), Whitfield (1990), Brown (1991), Harris (1991), Western Foundation for Vertebrate Zoology *in litt.* 1993, University of California *in litt.* 1993. The AOU (1983) did not list subspecies of any bird, including the willow flycatcher, in its 1983 Checklist of North America Birds. However, this does not indicate a lack of recognition of *E. t. extimus*, or for the concept of subspecies. The preface to the 1983 Checklist states ''The Committee

strongly endorses the concept of the subspecies * * * and we wish to make it clear that the omission of separate listings of subspecies in this edition is not a rejection of the validity or utility of this systematic category * * *.''

The Service noted McCabe's (1991) consideration of the willow and alder (*E. alnorum*) flycatchers as a single species, and his reluctance to recognize willow flycatcher subspecies. McCabe (1991) provides a thorough review of the history of *E. alnorum* and *E. traillii* taxonomy, and the questions of ecological, morphological, and song-type distinction on which this taxonomic evaluation has been based. However, the Service agrees with Sedgwick's (1993) comments and McCabe's own observation that McCabe (1991) contrasts with the majority opinion regarding taxonomy of the willow and alder flycatchers.

After examining 305 study skins, Unitt (1987) found that while four subspecies (*E. t. traillii, E. t. adastus, E. t. brewsteri,* and *E. t. extimus*) could be tentatively separated by the ''75 percent rule'' using overall size (wing and tail lengths and their ratios to one another), these criteria were not satisfactorily conclusive. However, he found that the subspecies could be satisfactorily distinguished, under the ''75 percent rule,'' using color, wing formula (relative lengths of primary wing feathers), or both. Browning (1993) examined 270 specimens and found that all four subspecies, and a fifth (*E. t. campestris*) were distinguishable by color.

The Service acknowledges that taxonomy of *E. traillii* races continues to pose questions and may be revised in the future. The Service has determined that *E. t. extimus* is a sufficiently distinct entity to be listed under the Act at the very least as a distinct vertebrate population [50 CFR § 424.02(k)]. However, the Service accepts the majority opinion that *E. t. extimus* is a valid subspecies and lists it as such.

The Service considers taxonomic distinctness in assigning priorities for species listings, but not in determining whether or not to list species. The Act authorizes listing of species, subspecies, or distinct population segments, all of which have ecological significance.

Issue 2: The southwestern willow flycatcher is not a riparian obligate species. It also occurs in open prairie woodlots, dry and brushy pastures, and brushy fields or slopes. No surveys of dry habitats have been done to prove riparian obligacy. The southwestern willow flycatcher does not ''invariably'' nest near surface water.

Service Response: The Service is unaware of any study, report, or species account that describes *E. t. extimus* as anything but a riparian obligate. No commenter provided data, studies, or reports indicating that *E. t. extimus* nests outside riparian habitats. Several commenters cited field guides which describe the willow flycatcher (all subspecies) as occurring ''* * * in drier situations (than the alder flycatcher) * * *'' (Peterson 1990), ''* * * on brushy slopes * * *'' (Robbins *et al.* 1983), and ''* * * dry, brushy upland pastures * * *'' (National Geographic Society 1990). The Service believes that field guide species accounts do not constitute the best available scientific information on biology, ecology or habitat requirements. Field guide accounts tend to be brief and generalized, and in this case represent habitat use of other willow flycatcher subspecies, which occur in more mesic regions. Similarly, Barlow and McGillivray's (1983) description of willow flycatchers *(E. t. campestris/traillii)* selecting ''* * * a more xeric upland habitat * * *'' in Ontario, Canada, is not considered relevant to habitat selection of *E. t. extimus* in the desert Southwest. In the wetter climates of the north, upper midwest, and northeast, habitat conditions of moist soil or surface water, supporting thickets of deciduous shrubs and trees, are not restricted to riparian areas. However, in the arid Southwest where *E. t. extimus* occurs, these conditions are limited to riparian areas, usually in profound contrast to the adjacent and prevailing desert conditions. Various authors (*e.g.,* King 1955) have noted that while willow flycatchers may nest away from riparian areas in the north and east, in arid regions (the ranges of *E. t. brewsteri* and *E. t. extimus* particularly) the species is restricted to riparian habitats. Regarding the presence of surface water during the breeding season, new information was provided indicating that some nest sites have surface water in close proximity early in the breeding season, which recedes underground by the end of the breeding season. At these sites, the water table remains at least high enough to sustain riparian vegetation. The Service is unaware of any surveys performed in non-riparian habitats specifically to verify the absence of nesting *E. t. extimus*. However, the Service relied on local, State, and regional species accounts of distribution and habitat use, none of which describe occurrence outside of riparian habitats.

Issue 3: The loss and modification of southwestern riparian habitat is overstated, poorly documented, and does not constitute a threat to the flycatcher; the statement that 90 percent loss of riparian habitat has occurred is inaccurate and an exaggeration; riparian habitat has not decreased, but increased as a result of diversions, irrigation, etc; habitat has increased, not decreased, in local area(s) over the past 20 years; riparian regeneration is approaching 1,000 percent in southeastern Arizona; Hastings and Turner (1965) show that cottonwood riparian habitat has increased in southeastern Arizona; the upper San Pedro River is recovered, not ''unsuitable and unoccupied'' as the Service claimed; because tamarisk has increased, and *E. t. extimus* uses tamarisk, tamarisk invasion does not constitute modification of habitat, but expansion of habitat; population declines in the past 20 years are concurrent with improved riparian habitats, so no correlation exists between trends in habitat and populations; the proposal fails to support claims that urban development, agriculture, and livestock grazing are harmful to the flycatcher.

Service Response: The Service has determined that the documentation of loss and modification of southwestern riparian habitats, cited in this final rule, is adequate. Regarding the ''90 percent loss and modification'' statement, the proposed rule stated that ''* * * *as much as* 90 percent * * *'' (emphasis added) has been lost or modified. The actual percentage lost or modified is not expected to be consistent across the region, but should vary with elevation, rainfall, geographic area, relative size of drainage system, and severity of impacts. Loss and modification may be lesser at higher elevations, where precipitation is greater and evaporation less. In most major lower elevation desert riparian systems, loss or modification may in fact be near 100 percent, *e.g.,* the lower Colorado, lower Gila, lower Rio Grande, and lower Salt Rivers. Because ''modification'' includes alterations in flow regimes, channel confinement, changes in water quality, and floristic makeup of riparian systems, the Service believes it is not a misrepresentation to state that up to 90 percent of southwestern riparian ecosystems have been lost or modified.

Commenters stating that riparian habitat has not decreased, but increased as a result of diversions and irrigation, presented no supporting information. The Service recognizes that some diversions, particularly unmaintained irrigation ditches, sometimes support riparian vegetation. However, the Service believes diversion and irrigation result in a net loss of riparian habitat.

Where riparian vegetation becomes established along irrigation systems, it is often cleared away at regular intervals. Where it is not, it is sometimes because an artificially created riparian/wetland habitat is being maintained as mitigation or compensation for loss of natural riparian habitat elsewhere.

The Service recognizes that in some local areas in recent decades, riparian habitat has been rehabilitated or increased, not decreased. However, the Service accepts the consensus of literature cited in this rule that the overall trend continues to be one of habitat loss.

Hastings and Turner (1965) and Bahre (1991) noted that riparian habitats were already significantly altered by the turn of the last century. Hastings and Turner (1965) also noted that all major watercourses in southern Arizona suffered entrenchment and became more ephemeral in flow in approximately 1890. Land use practices that had already affected riparian habitats in this Arizona-Mexico border region included livestock grazing, woodcutting, and water diversion; climatic changes may also have contributed. The differences between the historic and more recent photographs show some riparian recovery, concurrent with reductions in livestock stocking levels from their highs in the late 1800's. No data, or elaboration, were presented to support statements that riparian regeneration is approaching 1000 percent in southeastern Arizona.

As this final rules discusses, *E. t. extimus* sometimes nests in tamarisk, but does so at lower densities, and apparently at lower success rates than in native vegetation (Hunter *et al.* 1988, Sogge *et al.* 1993, Muiznieks *et al.* 1994). Therefore, tamarisk invasion likely represents replacement of native habitat with lower-quality habitat, rather than an increase in habitat availability. Only in a few unique situations does tamarisk truly represent ''new'' habitat. For example, in the Grand Canyon flycatchers nest in a ''new'' riparian habitat, dominated by tamarisk (Carothers and Brown 1991). This new riparian habitat became established in the historic flood-scour zone of the Colorado River, after construction of Glen Canyon Dam eliminated annual scouring floods. However, flycatchers nest in this area in low numbers (Brown 1991, Sogge and Tibbitts 1992, Sogge *et al.* 1993) and have low nesting success. It is noteworthy that by forming Lake Powell, Glen Canyon Dam also inundated habitat in Glen Canyon. The southwestern willow flycatcher was described as a common nester in Glen Canyon prior to inundation (Behle and Higgins 1959, Behle 1985), indicating that this historic habitat was of higher quality than the new habitat in Grand Canyon.

Issue 4: The flycatcher has always been a rare bird, so its rarity now is no change from historical situations; historical specimens are few, indicating the bird was always rare; population data are insufficient to show decline; population data are suspect, developed by parties with agendas of land control/acquisition; the flycatcher is not declining in all areas; historical taxonomic questions may confuse population trend information; accuracy or existence of population trend data for the last 50 years is questionable; population sampling techniques were not discussed; these could bias trend studies; population data are incomplete; the proposal relies on data reflecting loss of habitat rather than comprehensive population trend analysis; there are no recent collections of *E. t. extimus* from southern Arizona riparian areas.

Service Response: The Service agrees that the flycatcher has probably always been sparsely distributed, as a function of the sparse distribution of its wetland habitat in a predominantly xeric region. However, sparse distribution and rarity are not necessarily equivalent. At individual locales the flycatcher may occur in considerable numbers, as indicated by Herbert Brown's collection of 36 nests near Yuma in 1902, and the persistence of several populations of considerable numbers (30–40 pairs) in relatively small areas like the Kern River Preserve in California (Harris *et al.* 1986, Whitfield 1990). Although *E. t. extimus* habitat is rare, where it is present nesting pairs may occur in relatively high densities. This phenomenon has caused some authors to describe *E. t. extimus* as something of a colonial nester (*e.g.*, Unitt 1987).

Regarding the lack of historic or recent specimens available from various parts of the bird's range, the Service notes that specimen collection is largely a function of collecting activity, not simple presence of the subject.

The Service agrees that, as with many non-game species, population trend data are incomplete. No wide scale, and few local studies have been funded or undertaken to track this species through time. Comprehensive, long-term population data are not necessarily required for making listing determinations. Rather, these decisions often rest upon data on loss and modification of habitat and other threats, which are reasonably assumed to result in population declines. In many cases, population declines are inferred from decline in habitat availability. However, in this and other listing determinations, the Service seeks to measure such inference against whatever population trend data are available. Regarding concerns over sources of these data, the Service endeavors to verify accuracy and credibility of data. The reports published by government agencies, academic institutions, and professional journals on which this determination is based are accepted as credible. To interpret population trends in the light of changing taxonomic status, the Service considered all information for willow flycatchers in the current range of *E. t. extimus* to be relevant.

Issue 5: Livestock grazing is not a threat to *E. t. extimus* or its habitat; Montgomery *et al.* (1985) found 53 singing birds in a grazed area in New Mexico; on Marine Corps Base Camp Pendleton, *E. t. extimus* is increasing where sheep graze; nest disturbance by cattle is unsubstantiated; southwestern flora evolved with large grazing ungulates; the proposed rule lacks examples of flycatcher status improving with reduction in livestock or improved livestock management; *E. t. extimus* is not improving in areas with no grazing; the proposed rule equates any livestock grazing with overgrazing, and fails to distinguish between overgrazing and well-managed grazing; proper livestock management is compatible with healthy riparian habitat; some level of livestock grazing is compatible with/necessary for healthy riparian ecosystems; willows are brush, which cattle don't eat, but cattle are blamed for both brush encroachment and brush destruction; cattle trample stream banks, which allows water to escape, creating more riparian habitat; livestock grazing prevents urbanization of land, which would have a greater impact on riparian habitats.

Service Response: The proposed and final rules discuss overuse by livestock as a threat to *E. t. extimus*, through impacts on riparian habitat. The Service recognizes that what constitutes ''overuse'' varies with differing riparian ecosystems, elevation, type of livestock, seasonality of use, and other factors. The Service believes that some livestock grazing regimes are likely to be found compatible with rehabilitation and maintenance of *E. t. extimus* habitat.

Montgomery *et al.* (1985) did not determine whether the willow flycatchers they detected on grazed land were resident *E. t. extimus* or migrating individuals of other subspecies. Further, neither grazing intensity nor nesting

success were quantified, so that no correlations can be made. On Camp Pendleton, increases in *E. t. extimus* were concurrent with livestock (sheep) grazing but also with an extensive cowbird trapping program (Griffith and Griffith 1993). Finally, as discussed in this rule, examples exist of *E. t. extimus* (and other *E. traillii* subspecies) numbers and habitat increasing as a result of grazing reductions or other improvements in livestock management.

The Service recognizes that southwestern riparian ecosystems evolved with native grazing ungulates (*e.g.*, deer and elk). However, domestic livestock do not forage, herd or move in the same manner as native species. Further, elk occur at higher elevations of the Southwest, and are absent from the lowland river systems that constitute the majority of *E. t. extimus* habitat.

Issue 6: Timber harvesting is not a threat to the flycatcher's riparian habitat.

Service Response: The proposed rule noted that the petitioners claimed timber harvest caused watershed changes which could result in damage to riparian habitats through increasing intensity and frequency of floods. The petitioners presented no specific information on this claim. A number of experimental treatments on Southwestern forested watersheds have demonstrated increased peak and flood flows as a result of timber harvest (Tecle 1991). The degree to which timber harvesting has affected riparian habitats inhabited by the willow flycatcher, however, has not been quantified and is unknown. The Service did not implicate timber harvesting in the proposed rule as a major cause of riparian habitat loss. Rather, it pointed to that activity as one of many factors potentially responsible for riparian habitat loss and modification. Pending new information demonstrating otherwise, the Service still considers timber harvesting a potential threat to riparian habitat through loss and modification. However, the Service does not believe that this threat exists rangewide, nor does it believe that timber harvesting alone is responsible for riparian habitat loss or the endangered status of the southwestern willow flycatcher.

All causal factors will be addressed in the recovery planning process, and through the Act's section 7 consultation process, through which Federal agencies will be responsible for evaluating the effects of activities such as timber harvest on the flycatcher's riparian habitat.

Issue 7: Water impoundments have been beneficial, not detrimental; fluctuating flows below dams are not detrimental, in fact have increased riparian habitat (Glen Canyon Dam resulted in creation of riparian habitat in Grand Canyon); impoundments protect habitat by preventing catastrophic floods; the proposal had inadequate discussion of water impoundments as threat.

Service Response: As discussed elsewhere in this final rule, water impoundments have a variety of effects on riparian habitats. The Service has determined that, with respect to *E. t. extimus*, the net effect of these influences is negative. For example, Glen Canyon Dam eliminated massive annual scouring floods in the Grand Canyon. This resulted in the development of a new riparian zone dominated by tamarisk (Carothers and Brown 1991). However, flycatchers nest there in very low numbers and with low nesting success (Brown 1991, Sogge and Tibbitts 1992, Sogge *et al.* 1993). In contrast, *E. t. extimus* was described as a common nester in Glen Canyon (Behle and Higgins 1959, Behle 1985), prior to its inundation by Lake Powell.

Issue 8: Comments concerning the ecology of cowbirds and cowbird parasitism included the following: Breeding Bird Survey (BBS) data indicate that cowbirds have declined, not increased; the claim that cowbirds are associated with livestock is not supported; cowbirds are associated with deer and elk, not cows; the cowbird threat is a natural one; there is inconclusive evidence that cowbird increases are directly connected with livestock grazing; cowbird parasitism of *E. t. extimus* is known in areas without livestock grazing (*e.g.*, Grand Canyon, Kern River); there is no correlation between livestock grazing in riparian areas and cowbird parasitism; Taylor (1986) showed that cowbirds were most abundant in areas with long-term livestock exclusion; because flycatchers and cowbirds are positively associated (they tend to occur together), flycatchers can coexist with cowbirds; there is inconclusive evidence that cowbird parasitism is responsible for declines in nesting success; cowbirds have increased as a result of increases in bird feeders, campgrounds, etc. and increases in wintering food/habitat; the proposed rule cited no studies that documented cowbird parasitism of *E. t. extimus;* citations regarding parasitism of other species are irrelevant. Section 4(a)(1)(E) of the Act allows listing species because of ''* * * natural or manmade factors affecting its continued existence * * *.''

Service Response: Cowbird numbers appear to be declining only in the northeastern United States and southeastern Canada. Through the 27 years of the BBS, cowbird populations have remained fairly stable, with a small increase in the 1970's, small decrease in the 1980's, and slight increase in recent years; however, the West has experienced a marked population increase over the last five years (Wiedenfeld 1993).

The association of cowbirds with domestic livestock is detailed in the sources cited in this final rule. The Service has neither found nor been provided information indicating that cowbirds are associated with deer or elk. Other factors, including habitat fragmentation and urban/suburban feeding, are likely to have contributed to increases in cowbirds. These causal factors will be important to address in the section 7 consultation process and the development of recovery actions. However, it is the threat of parasitism, regardless of cause, that in part necessitates listing.

Where high parasitism rates are found in *E. t. extimus* nesting locations in areas with no livestock grazing at the nest site, there have been livestock nearby that provide feeding sites in close enough proximity to facilitate cowbird parasitism. Cowbirds may disperse up to 7 kilometers (km) from their daily feeding/roosting sites to areas with host species (Rothstein *et al.* 1984). At the Kern River Preserve, the riparian habitat supporting *E. t. extimus* is not grazed, but the immediately adjacent lands are. Similarly, although livestock grazing does not occur in Grand Canyon National Park, open range grazing and an introduced bison herd occur on adjacent lands. Further, cowbirds concentrate at pack animal corrals at various points within the National Park (Johnson and Sogge 1993). Thus, flycatcher habitat may be ungrazed but still be affected by cowbirds, by having livestock concentrations nearby to serve as cowbird feeding sites.

Cowbirds and *E. t. extimus* are positively associated because cowbirds require, and therefore associate with, prospective hosts. The Service finds that extensive information indicates cowbird parasitism negatively affects the southwestern willow flycatcher. This information includes specific examples of parasitism of *E. t. extimus*, cited in this rule, and examples of the effects of cowbird parasitism on other rare species of limited habitat. Recent information continues to document high parasitism rates for *E. t. extimus* (Sogge *et al.* 1993, Muiznieks *et al.* 1994), and increases in flycatcher reproduction or populations, concurrent with reductions in cowbird numbers (Griffith and Griffith 1993, M. Whitfield *in litt.*—1993).

Issue 9: Tamarisk is not an invader species, but a successional stage, becoming established on recently-scoured areas; livestock do eat tamarisk for its salt content; the Service needs to clarify the positive and negative characteristics of tamarisk; tamarisk increases habitat availability, in fact provides high-quality bird habitat.

Service Response: The Service found no information, and was not provided any information by commenters, indicating that tamarisk is primarily a successional stage vegetation type, rather than an invasive exotic. This final rule presents an updated discussion of tamarisk ecology, supported by additional literature references. The Service concurs with the consensus among published authorities that tamarisk is an invasive, usually dominant exotic plant, not a successional species. Commenters that stated livestock eat tamarisk for its salt content provided no supporting information. The Service's understanding of the literature is that cattle prefer native species over tamarisk for forage.

As discussed in this rule, *E. t. extimus* has been documented nesting in tamarisk at elevations above approximately 625 m (2000 feet). Rather than attempt to present criteria here for when tamarisk eradication presents a threat or a positive recovery action, the Service will address this issue on a case-by-case basis through the section 7 consultation process with other Federal agencies. This will allow Federal agencies the flexibility to consider individual cases in the light of the specific circumstances surrounding each one.

Although Brown and Trosset (1989) suggested that tamarisk provided an ''ecological equivalent'' to native vegetation, they qualified this statement. They noted that their study involved small sample sizes, and that their methods differed from Whitmore's (1975, 1977), which was their basis for comparison with native riparian habitats. Further, Brown and Trosset (1989) noted that this ''ecological equivalent'' function may be most significant where tamarisk became established where no native riparian vegetation existed previously (*e.g.*, the Colorado River in Grand Canyon).

Issue 10: Herbert Brown's collection of 36 nests with eggs from the lower Colorado River, in 1900 and 1902, indicates overcollection for science may have caused declines.

Service Response: The effects of Brown's collections on populations over 90 years ago are unknown. These effects may have been significant. However, Brown's collections themselves may suggest that populations at that time could sustain such collecting pressure. The origin of Brown's collections from several specific locales suggests that *E. t. extimus* was an abundant nesting bird in the area of the confluence of the Gila and Colorado rivers. Collection of 36 nests would have impacted reproduction alone, only for 1902, when all but one of the nests was collected. Considering continued habitat loss, and increasing cowbird populations since 1902, the Service does not believe that Brown's collection of 36 nests with eggs in 1900 and 1902 significantly affects *E. t. extimus* populations in 1995. However, the Service believes that current flycatcher populations are unlikely to be able to sustain collecting pressures like Brown's activities of 1902. In 1993, extensive surveys of the region of Brown's collections located only four to five territories (Muiznieks *et al.* 1994).

Issue 11: Drought has impacted habitat.

Service Response: The Service recognizes that extended droughts are likely to have impacted *E. t. extimus* through habitat reduction. This natural phenomenon and human-induced habitat impacts may exacerbate one another's effects on *E. t. extimus* habitat.

Issue 12: Predators such as snakes, hawks, ravens, grackles, and domestic cats are threats to *E. t. extimus*.

Service Response: The Service agrees that these constitute potential predators of songbirds, including *E. t. extimus*. While predation would not normally be expected to be a major threat to the flycatcher, its populations may be so low currently that they cannot withstand normal predation. Further, several of these types of predation may be facilitated by habitat alteration or other human actions. Therefore, the Service will address predation in recovery planning, and other Federal agencies should consider the effects of their actions on some of these forms of predation.

Issue 13: Hikers, elk, deer, and beaver are threats to flycatcher nests and habitat; listing would cause restrictions on fishing and water recreation.

Service Response: No information was provided to support statements that hikers constitute a threat to *E. t. extimus*. This rule briefly discusses possible impacts of recreation on *E. t. extimus* and its habitat. These impacts are expected to be primarily effects on vegetation through soil compaction, clearing vegetation, and creating trails. Because *E. t. extimus* is not a timid species, disturbance is expected to be an impact only when continuous intrusive activities take place near habitat, or when recreation takes place within or adjacent to the nest stand. Because nest stands tend to be very dense, virtually impenetrable thickets, often with swampy conditions, recreational impacts are not expected to occur often.

Elk and deer use riparian habitats for foraging, but generally behave differently than domestic livestock. They tend not to occur in large concentrations and remain in riparian areas for long periods like domestic cattle. The Service is aware that elk can impact riparian systems when their numbers reach high levels. However, elk are lacking from the majority of southwestern willow flycatcher habitats, because these riparian areas occur at lower elevations than elk. Beaver cut and use willow and cottonwood, but may also be important in creating quiet-water riparian habitats by damming smaller and steeper creeks.

Issue 14: The presence of unoccupied habitat indicates that *E. t. extimus* is not currently habitat limited.

Service Response: As discussed in this rule, the Service has determined that *E. t. extimus* has suffered extensive habitat loss, which is complicated by the current low number of flycatchers, and reduction of reproductive output due to brood parasitism by brown-headed cowbirds. The current existence of apparently suitable habitat that is not occupied by *E. t. extimus* more likely indicates that its numbers are too low to fill all available habitat. Further, habitat exists in isolated, fragmented patches. With low population numbers and inhibited reproduction, *E. t. extimus* may be unable to maintain local populations, much less be able to disperse and colonize unoccupied locales.

Issue 15: Cowbird parasitism is the main threat to *E. t. extimus*, not habitat loss; cowbird control is the primary recovery need, not habitat protection; cowbird trapping would eliminate the need for designating critical habitat; the Service should implement and fund cowbird control programs instead of listing.

Service Response: The Service has determined that cowbird parasitism is one of several primary threats to *E. t. extimus*, which also includes the loss and modification of habitat. Cowbird parasitism and loss and modification of habitat are interrelated. Cowbird parasitism is a function not just of cowbird abundance, but also habitat quality. Potential host species in degraded, fragmented habitat are more susceptible to nest parasitism than those nesting in larger tracts of dense, contiguous habitat. Cowbird parasitism

will probably remain an imminent threat until habitat rehabilitation is accomplished. The Service acknowledges that cowbird control should be an immediate, high priority recovery action. However, cowbird control is a ''stop-gap'' action. Rehabilitating riparian habitat to make *E. t. extimus* and other riparian birds less susceptible to cowbird parasitism will be necessary for a long-term solution. Ultimately, the ranking of threats in order of severity is not relevant to the listing question. It is because a number of often interdependent threats exist that listing *E. t. extimus* is necessary. Ranking threats in order of severity and addressing them accordingly will be part of the recovery process.

Issue 16: Willow flycatchers nesting in the northern States, Alaska, and Canada are subspecies other than *E. t. extimus*. The boundaries of the breeding range of *E. t. extimus* should be expanded to include the Santa Ynez River in California, and the Green and Colorado River systems in west-central Utah; *E. t. extimus* does not occur in Utah, Colorado, or the Carson National Forest in northern New Mexico; the willow flycatcher is common in the northern States, Alaska, Canada, most of the U.S., Mexico and Panama; caution should be exercised in defining range limits of the subspecies, including elevational limits.

Service Response: Two primary authorities (Unitt 1987, Browning 1993) provide the range limits of *E. t. extimus* identified in this rule (see Figure 1). The Service also considered other information, such as historical nesting records, habitat characteristics, and proximity to neighboring populations of *E. t. extimus* or other willow flycatcher subspecies. Using this information, the Service provisionally defines the northwestern limit of the subspecies' range to be the Santa Ynez River in California. Willow flycatchers nesting along the Santa Ynez River occupy lowland riparian habitat similar to other coastal California locations of *E. t. extimus*, and few willow flycatcher (i.e., *E. t. brewsteri*) nesting locales are known in coastal California for a considerable distance north of the Santa Ynez River.

Browning (1993) found no evidence of intergrades between *E. t. extimus* and *E. t. adastus* in Utah. The northern limit of *E. t. extimus* in Utah is believed to correspond closely to the area comprising the following counties: Garfield, Kane, San Juan, Washington, and Wayne. This area takes in stretches of riverine riparian habitat in southern Utah that have historical records of flycatchers and that still have potential willow flycatcher habitat.

The Service recognizes that taxonomic questions may arise concerning flycatchers occupying some high-elevation locales within the range of *E. t. extimus*. Because the genetic relatedness of willow flycatchers breeding at some high elevation areas, such as the White Mountains of Arizona, may be substantial, willow flycatchers in those locales should be considered *E. t. extimus* until further research demonstrates otherwise. Protection of these breeding groups could be critical for population recovery, immigration, and exchange of genetic material within a highly-fragmented landscape.

Issue 17: It is inappropriate to use data from *E. t. brewsteri* and *E. t. adastus* to support listing *E. t. extimus;* information cited on livestock damaging nests comes from other subspecies.

Service Response: The Service carefully considered the propriety of using information on other willow flycatcher subspecies in evaluating the listing question for *E. t. extimus*. In applying such information, the Service considered ecological similarities and dissimilarities between the subspecies. The Service believes that data from other subspecies are applicable in some cases, but not others. The Service has identified which subspecies provided data sources throughout the proposed and final rules. The phenomenon of livestock damaging nests and/or contents through physical contact is known for willow flycatcher subspecies other than *E. t. extimus*. This threat was noted to recognize that the potential exists, where nests occur low enough in vegetation or in other vulnerable locations, that livestock, humans, or other animals may contact them or the nest plant.

Issue 18: Habitat in California was lost to urbanization, not livestock; the proposed rule had inadequate discussion of urban and suburban development as a threat; urban development is not a threat to some populations.

Service Response: Loss and modification of the riparian habitat of *E. t. extimus* is the result of numerous factors, discussed in depth in this rule. Not all these factors have affected all riparian habitats, and some rare habitats remain unaffected. Further, the degree to which these factors influence riparian habitat varies across the landscape. Urban and suburban development has certainly impacted some *E. t. extimus* habitats. These impacts may result from direct encroachment and channelization of riparian habitats, as in coastal southern California and central Arizona. Urban and suburban development also increase demands on river systems for water and hydropower. Thus, expanding urban centers can result in dewatering or alteration of riparian systems tens or hundreds of miles away. For example, the water and power demands of Los Angeles, Phoenix and Las Vegas result in effects on the Colorado River hundreds of miles from any of these cities.

Issue 19: The primary threat to *E. t. extimus* is loss of wintering habitat in Central and South America, or other factors along migration routes; the proposed rule contained insufficient information on migration studies; protecting breeding grounds is not logical, because *E. t. extimus* spends eight months of the year in migration or on wintering grounds.

Service Response: Although tropical deforestation possibly may restrict wintering habitat of the willow flycatcher, the best available current information on the subject suggests otherwise. The limited data on willow flycatcher wintering habitat indicates that this species uses ''* * * brushy savannah edges and second growth'' in Costa Rica (Stiles and Skutch 1989); in Panama it has been documented in ''shrubby areas'' (Ridgely 1981); and in South America it has been documented in ''* * * shrubby clearings, pastures, and lighter woodland'' or ''* * * on islands with early successional growth'' (Ridgely and Tudor 1994). Given existing land use practices in Central and South America, which are characterized by conversion of old-growth forested habitat to agricultural and second-growth habitats, few if any of the winter habitat types in which willow flycatchers have been documented should currently be in jeopardy.

Issue 20: The Service cannot define nesting habitat; habitat requirements are poorly understood; the proposed rule's description of nesting habitat is flawed and inadequate to direct management; the minimum patch size necessary to support a nesting pair of *E. t. extimus* is 1 to 1.5 hectares.

Service Response: The Service believes the proposed rule and this final rule accurately compile and summarize the existing information on *E. t. extimus* nesting habitat, and that information is sufficient to identify, conserve, and recover the riparian ecosystem of which *E. t. extimus* is a part. Habitat patches occupied by *E. t. extimus* vary somewhat in size, floristic composition, vegetation structure, and type of wetland. Therefore, the Service believes it is inappropriate and inaccurate to

narrowly define suitable habitat in terms of plants per unit area, vegetation density, specific plant community composition, type and volume of surface water, and patch size. The Service has no information to indicate inaccuracy or inadequacy of the habitat description presented in this rule. Specifically regarding patch sizes, one to two *E. t. extimus* pairs have been observed nesting in habitat patches of 0.5 ha (Sogge *et al.* 1993, Sogge *et al.* unpubl. 1994 data); therefore 1.0 to 1.5 ha is not an accurate estimate of the minimum patch size needed to support a single nesting pair.

Issue 21: Habitats used by nesting pairs differ from those used by single, unmated, wandering, or migrant flycatchers; the latter face minimal threats and are not essential to conservation of the species.

Service Response: The commenters provided no data supporting the statement that habitats used by unpaired *E. t. extimus* differ from nesting habitat, and the Service found no indication of this in the available literature. Unmated, resident *E. t. extimus* have been found in habitats identical to nearby habitats occupied by nesting pairs (Sogge and Tibbitts 1992, Sogge *et al.* 1993). The Service believes that single, unmated *E. t. extimus* also face threats of habitat loss, and that conservation of these individuals is essential to the conservation of the species, particularly at the low current numbers of flycatchers.

Issue 22: Listing constitutes single-species management that will damage other species; *E. t. extimus* habitat is incompatible with habitat needs of other listed and sensitive species, particularly the spikedace and loach minnow.

Service Response: The purposes of the Act are to provide a program for the conservation of threatened and endangered species and to conserve the ecosystems upon which threatened and endangered species depend. The Service believes that managing for *E. t. extimus* and other listed riparian and aquatic species accomplishes this purpose, to the mutual benefit of listed and nonlisted species alike. The intent of this listing is to conserve and recover *E. t. extimus* and the riparian and aquatic ecosystems of which it is a part.

The primary constituent elements of critical habitat described for the spikedace (59 FR 10906) and loach minnow (59 FR 10898) are not in conflict with the habitat requirements for the southwestern willow flycatcher, and are not in conflict with the primary constituent elements of its proposed critical habitat (58 FR 39495). The fishes require ''a healthy, intact riparian community,'' which will also benefit *E. t. extimus* and other riparian and aquatic species. The spikedace, loach minnow, and *E. t. extimus* all require surface water and/or a high water table, a low to moderate stream gradient, and periodic flooding. The fishes specifically require a ''natural, unregulated hydrograph,'' which the Service believes would also benefit the flycatcher. These fish also require moderate to high bank stability; maintenance of the riparian vegetation on which *E. t. extimus* depends will provide such bank stability. The Service does not view management for *E. t. extimus*, spikedace, and loach minnow as mutually exclusive, but as mutually beneficial.

Issue 23: Floods regenerate habitat, they do not destroy it; floods destroy habitat; floods, not livestock, caused much of riparian degradation; the proposed rule is confusing and contradictory on the role of floods as a threat or necessary ecological function.

Service Response: The proposed rule stated that ''Its habitat rarity, and small, isolated populations make the remaining *E. t. extimus* increasingly susceptible to local extirpation through stochastic events such as floods * * *. In early 1993, catastrophic floods in southern California and Arizona damaged or destroyed much of the remaining occupied or potential breeding habitat. Historically, these floods have always destroyed habitat but were also important events in regenerating cottonwood-willow communities.''

It is important to note that *E. t. extimus* is threatened by stochastic events like floods because of its current rarity and isolated nature of populations. If the species existed at healthy population levels, and if its riparian habitat were not greatly reduced, these natural stochastic events would not constitute threats. The 1993 flood events referred to were extraordinary in nature, described regionally as 500-year floods. Therefore, they do not typify flood events in the river systems involved. Further, while natural flood events are expected to destroy some flycatcher habitat, they are also crucial for regenerating natural riparian nesting habitat. In a healthy system where riparian vegetation is abundant and the stream channel is not eroded or destabilized, destruction and regeneration are balanced and habitat is generally available. Only when riparian vegetation is severely reduced and the stream channel and watershed are destabilized are riparian and aquatic species threatened by the natural, short-term habitat losses resulting from flooding.

Issue 24: To manage for *E. t. extimus*, the Service will enforce or has proposed a fenced livestock-free corridor.

Service Response: The Service has neither proposed nor been consulted regarding a fenced, livestock-free corridor established along riparian areas on State, Federal, or private lands.

Issue 25: Beneficial land management practices should be recognized and discussed; the proposed rule fails to acknowledge that some habitats are protected from urban development.

Service Response: The Service recognizes that some management practices are beneficial. Some practices have protected or improved habitat, resulted in expanded populations, and/or improved reproduction. The Service will look to these beneficial land management practices as important examples in the recovery planning process. However, in making a listing determination the Service must consider the situation across the species' entire range. It is this overall perspective that drives the listing decision. Although some nesting groups of *E. t. extimus* may be safe, stable, or perhaps even increasing, the Service has determined that overall the species is endangered.

Issue 26: Existing regulatory mechanisms are adequate, including: the Migratory Bird Treaty Act (MBTA); State listings for Arizona, New Mexico, and California; section 404 of the Clean Water Act; Bureau of Land Management and Forest Service policies; Executive Orders 11988 and 11990; protection of riparian habitat due to presence of other listed species; private and/or cooperative management plans at local areas.

Service Response: The Service considered these regulatory mechanisms and management plans, and determines that overall existing regulatory mechanisms are insufficient to conserve and recover *E. t. extimus* in the face of the primary threats of loss and modification of habitat and cowbird parasitism. A full discussion of Federal and State protection is found in this document under Factor D: ''*Inadequacy of existing regulatory mechanisms*''.

The Service recognizes that some local management plans benefit and conserve *E. t. extimus* and its habitat. Examples include management of the Bureau of Land Management's San Pedro Riparian National Conservation Area (SPRNCA) in Arizona, where six years of livestock exclusion have resulted in significant restoration of riparian habitats and increases in birds associated with habitats similar to *E. t. extimus* (Krueper 1993). Willow

flycatchers have not yet returned to their historical locations on the SPRNCA but may soon. Habitat protection and cowbird management at The Nature Conservancy's Kern River Preserve and on Marine Corps Base Camp Pendleton in California have improved habitat and reduced brood parasitism pressures for resident *E. t. extimus* (Griffith and Griffith 1993). Wetland management at Bosque del Apache National Wildlife Refuge in New Mexico is apparently sustaining a small population of flycatchers. While these actions are beneficial, they provide for *E. t. extimus* only at several locales. Further, long-term continuation of these management actions is not assured.

Provisions of section 404 of the Clean Water Act do not specifically protect *E. t. extimus* or its habitat, but do provide some protection to the aquatic and riparian ecosystems of which it is a part. Section 404 of the Clean Water Act also provides for mitigation of destruction of these habitats, however, allowing even temporary destruction of riparian habitat is not consistent with the immediate conservation needs of *E. t. extimus*.

Issue 27: The Service did not use the best available scientific or commercial information in making this determination; the Service presented insufficient and inconclusive information to support listing; the proposed rule used information which was general, incomplete, and originated with other flycatcher subspecies; the proposed rule was premature; the Service did not adequately solicit information and public input; scientific, economic, biological, hydrological and botanical data must support listing; how does the Service know the scientific information supporting listing was right?

Service Response: The Service canvassed the published literature regarding the taxonomy, ecology, and biology of the southwestern willow flycatcher, and the threats to it and its habitat. Because numerous and complex phenomena and processes were involved, this information ranged from general (e.g., wide scale trends in riparian habitat) to very specific (status of nesting groups). The Service believes it used the best available information, and has determined that this information is adequate to support listing. The Service evaluates sources before using or discounting information. In general, the Service expects that publications in peer-reviewed scientific journals, reports from land and resource management agencies, and dissertations or reports from academic or research institutions have undergone technical review. Other information sources are considered more anecdotal, and the Service seeks to confirm such information before using it.

Issue 28: The Service should comply with the National Environmental Policy Act (NEPA) by completing an Environmental Impact Statement (EIS), and comply with 40 CFR 1506 to reduce duplication between NEPA and State and local requirements; the Service should comply with 40 CFR 1508.20 to compensate for producing substitute resources or environments; the Service should engage in joint planning with local governments under NEPA regulations.

Service Response: As noted in this final rule, the Service has determined that an Environmental Assessment, as defined under the authority of NEPA, need not be prepared for listing actions. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244). Because of this determination, an EIS also need not be prepared. Also because of this determination, reduction of duplication between the NEPA process and State and local agencies, and joint planning between those agencies and the NEPA process, are rendered moot.

Issue 29: The proposed rule violates the Regulatory Flexibility Act; no Regulatory Impact Analysis/Assessment as required under Executive Orders 12291 and 12866 was completed; it also may be inconsistent with the mandates of other agencies.

Service Response: Decisions on listing and reclassification under the Act are made based on five factors defined in section 4(a)(1) of the Act. These five factors are discussed in this rule, as they relate to *E. t. extimus*. The Act requires the Service to consider only scientific and commercial information relating to these five factors in making listing determinations, not economic information. Economic information is considered in designating critical habitat, which is not part of this rule. Therefore, compliance with the Regulatory Flexibility Act and Executive Orders 12291 and 12866 is not an issue for this action, but will be addressed if a critical habitat designation is made (H.R. Conf. Rep. No. 835, 97th Cong., 2d Sess. 20 (1982); *accord*, S. Rep. No. 418, 97th Cong., 2d Sess. 4 (1982)).

Where conservation and recovery of threatened and endangered species is inconsistent with other mandates of Federal agencies, processes under section 7 of the Act serve to evaluate projects arising from those mandates, with regard to protection of listed species. However, section 2(c) of the Act requires all Federal departments and agencies to conserve listed species and further the purposes of the Act.

Issue 30: The Service should complete a Takings Implications Assessment prior to listing/designating critical habitat.

Service Response: The Service will complete a takings analysis for any final designation of critical habitat in compliance with Executive Order 12630 and the Attorney General's supplemental guidelines issued June 30, 1988. In accordance with those guidelines and Interior Department policy, this analysis will be completed after listing, not as part of consideration of the listing determination itself.

Issue 31: Requests were received for local public hearings.

Service Response: The proposed rule stated that three public hearings would be held. Because of many requests for additional hearings, a total of six public hearings were held. Regulations at 50 CFR 424.16(c)(3) require the Service to hold one public hearing if requested.

Issue 32: The time allowed for public comments was inadequate; the proposal should have been subjected to peer review.

Service Response: The Service is required to accept public comments for at least 60 days regarding proposals to list and/or designate critical habitat (50 CFR 424.16(c)(2)). In this case the Service initially announced a 90-day public comment period, then extended that another 40 days for a total of 130 days (July 23, 1993 through November 30, 1993). Public comment periods and public hearings are the mechanisms by which the Service receives input from all interested parties, including scientific peer review.

Issue 33: Listing would require private property owners to consult with the Service on their actions; listing and/or designating critical habitat constitute take of private property rights; adverse modification of critical habitat would be prohibited on private lands; the Service failed to notify the affected public of the consequences of adverse modification of critical habitat; listing and/or designating critical habitat may affect civil rights.

Service Response: Listing does not require private property owners to consult with the Service on actions which may affect a listed species. However, section 7 of the Act does require Federal agencies to consult on actions which they fund, permit, or carry out if those actions may affect a listed species or adversely modify critical habitat. Any potential take of private property will be analyzed in compliance with Executive Order 12630

(see Issue 30). As discussed later (Issue 35), because critical habitat is not being designated with this rule, comments regarding critical habitat will be addressed during subsequent actions regarding critical habitat.

Issue 34: Requests were received to be on a mailing list for all actions relating to this issue or to be provided personal notification of a final decision.

Service Response: The Service tries to maintain mailing lists for specific issues whenever possible. However, when large numbers of parties request to be on such lists, it becomes logistically and financially unfeasible to mail information to each party. This issue is one of those, and the Service must rely to some degree on mass communication forums like news releases, public notices in newspapers, and publications in the Federal Register.

Issue 35: Numerous comments were received regarding critical habitat.

Service Response: Critical habitat for *E. t. extimus* is not being designated with this rule; therefore, the above issues are not addressed here. Designation of critical habitat is being deferred while the Service further considers the extent to which designation is appropriate. Issues pertaining to this designation will be addressed when a final decision is made with regard to the critical habitat proposal.

Issue 36: Numerous comments were received regarding recovery of *E. t. extimus*, including: the Service has no recovery plan for *E. t. extimus;* the proposed rule failed to identify recovery goals for habitat, flycatcher numbers, and flycatcher distribution; the proposed rule failed to identify what actions will be used to achieve recovery; a recovery plan should address control of cowbird parasitism, nest damage by livestock, tamarisk eradication, wintering habitat, monitoring populations, protection of public and private lands from fire; cowbird parasitism cannot be addressed by listing and designating critical habitat; cowbirds are not easily controlled without sacrificing flycatchers and/or impacting habitat; the proposed rule contained no livestock managing strategy; rotating livestock will allow habitat enhancement/recovery; the factors affecting riparian habitats are numerous and complex; failure to address all could be futile or have damaging effects.

Service Response: Section 4(f) of the Act authorizes the Service to develop and implement recovery plans for listed species, not species that are proposed for listing. For *E. t. extimus*, this process therefore begins with the effective date of listing. In accordance with section 4(f)(B) of the Act the recovery plan process will address actions necessary to achieve conservation and recovery of *E. t. extimus*, will identify measurable criteria by which recovery (*i.e.,* the point at which protection under the Act is no longer necessary) can be gauged, and will identify the time and costs required to achieve recovery. The specific issues identified above will be considered in developing a recovery plan, and that plan will be available for public review and comment prior to adoption. Monitoring species is frequently an element of recovery plans, and is also required by section 4(g) of the Act for any species deemed to be recovered.

Issue 37: Several commenters questioned the motivations of the petitioners in requesting the listing, and others apparently believed the petitioners authored the listing proposal. Several commenters noted that the petition contained inaccuracies, and therefore no listing proposal should have resulted.

Service Response: The Service cannot speak for the petitioners' motivations in requesting listing of *E. t. extimus.* The Service judged the petition solely on the scientific information it contained. Inaccuracies were found in the petition, but on the whole the Service determined that it presented substantial information indicating that listing may be warranted. The listing proposal was authored by the Service, not the petitioners. The Service developed its proposal not from the petition, but from information gained from journal publications, agency reports, and the general public's responses to several information solicitations. This status review process had resulted in the Service designating *E. t. extimus* a category 1 candidate species prior to the petition being received. That designation indicated that the Service had sufficient information to support a listing proposal but did not publish a proposal immediately because it was dealing with listing actions of higher priority. Information presented by the petitioners that the Service did not already possess was checked for accuracy; information that could not be confirmed, or was found to be inaccurate, was not used.

Issue 38: The Service is required to purchase interest in land or water for implementation of the Act; this violates the U.S. Constitution.

Service Response: Section 5 of the Act directs the Secretary to use land acquisition and other authorities of the Fish and Wildlife Act of 1956, as amended, the Fish and Wildlife Coordination Act, as amended, and the Migratory Bird Conservation Act, as appropriate. The Secretary is authorized, but not required, to acquire interest in land or water to conserve threatened and endangered species. The Service does not carry out these authorities in violation of the U.S. Constitution. The Service does not acquire all lands designated as critical habitat for a listed species, and does not develop critical habitat designations based on land ownership or interest of landowners in purchasing or selling properties. It is the Service's policy to acquire property only on a voluntary basis from willing sellers.

Issue 39: Land use outside occupied/critical habitat will be adversely impacted.

Service Response: Federal actions that take place outside occupied habitat or critical habitat, but that may affect *E. t. extimus,* will be subject to consultation between the action agency and the Service in accordance with section 7 of the Act. Exclusively private actions are unaffected by listing and/or designation of critical habitat, provided they do not result in violation of section 9 of the Act (*e.g.*, take of the species).

Issue 40: Listing (regardless of critical habitat) will have adverse impacts on local economy; economic impacts of listing were not addressed; the Act requires the Service to consider impacts on other wildlife species and social and economic impacts prior to listing.

Service Response: Consideration of economic effects is required for designation of critical habitat. The Act requires that species listing decisions be based solely on the best scientific and commercial information available, which precludes consideration of social or cultural impacts or impacts on other species. (See section 4(b)(1)(A) of the Act). The Service anticipates no significant impacts on other native wildlife species as a result of listing, with the probable exception of the brown-headed cowbird.

Issue 41: Who initiated, performed, and paid for studies along the Kern River?

Service Response: Reports on studies done on the Kern River were published by Harris *et al.* (1986), Harris *et al.* (1987), Whitfield (1990), and Harris (1991). Specific information on project participants, funding sources, and cooperators can be found in those sources. The Service understands that monitoring and cowbird control are being continued by the Kern River Research Center and The Nature Conservancy, with funding assistance from the State of California and the Service.

Issue 42: The Service should perform additional surveys before listing.

Service Response: The Service is supporting continuing surveys to detect additional *E. t. extimus,* to monitor known nest sites, and to evaluate habitat presence, quality, and distribution. The Service supports these surveys with funding to States in accordance with section 6 of the Act, and through logistical and technical assistance to other agencies and parties. Extensive surveys in New Mexico and Arizona in 1993 located *E. t. extimus* in numbers that do not significantly change the total population estimates made in the proposed rule. These surveys also confirmed high levels of brood parasitism by cowbirds. With low estimates of total flycatcher numbers being validated by continuing surveys, the Service has determined that sufficient information exists on the threats of habitat loss and cowbird parasitism to justify listing.

Issue 43: The Service failed to consult adequately with private interests, State, Federal, and local agencies prior to publishing the proposed rule.

Service Response: The Service published public requests for information on the status of *E. t. extimus* in the Federal Register when it was designated a category 2 candidate species in January 1989, and when it was designated a category 1 species in November 1991. The Service supplemented these requests with general mailings soliciting information, and information solicitations in professional publications. Beyond these mechanisms, the Service is constrained by funding limitations and citizens' suits such as *Environmental Defense Center, Inc. vs. Babbitt et al.* IV 93–1848–R (C.D. Calif.), which was brought to compel the Service to propose listing and designation of critical habitat for the species, that preclude individually contacting every interested party.

Issue 44: The parties who petitioned for listing should pay for studies supporting their request.

Service Response: Regulations implementing section 4 of the Act, specifically the petition process [50 CFR 424.14], do not require petitioners to fund studies supporting their request. Listing determinations are made if existing information is deemed sufficient to make a determination. This information typically originates from a variety of sources.

Issue 45: The southwestern willow flycatcher is abundant. There is no need to list.

Service Response: The Service has determined that *E. t. extimus* is rare, not abundant, faces serious threats to its continued existence, and warrants listing as endangered. See discussion under Factor A: *The present or threatened destruction, modification, or curtailment of its habitat or range.*

Issue 46: The ''little'' willow flycatcher (*E. t. brewsteri*) is the most common subspecies observed and collected in the Southwest.

Service Response: The abundance of collections of *E. t. brewsteri* from within the breeding range of *E. t. extimus* is because *E. t. brewsteri* migrates through the Southwest between its Pacific coastal breeding range and wintering grounds in Central America. *E. t. brewsteri* passes through riparian habitats in the breeding range of *E. t. extimus* in spring and fall, but does not breed there.

Issue 47: There is no need to list *E. t. extimus* in areas where it is doing well.

Service Response: The Service has determined that *E. t. extimus* is endangered; local areas where the bird is relatively stable could only be excluded from listing or classified as threatened if they constituted distinct population segments [50 CFR 424.02(k)]. The Service has not identified any distinct population segments of *E. t. extimus.* Further, because the Service determines *E. t. extimus* to be endangered, all existing habitat and local nesting concentrations are deemed to be essential to the conservation and recovery of the species. Protection of locales where the bird is doing relatively well may be especially important for the conservation and recovery of *E. t. extimus.*

Issue 48: Prey availability may be a limiting factor.

Service Response: The Service recognizes that food availability is always a potential limiting factor in wildlife populations. It is possible that reduction of riparian habitats not only reduced vegetation for nesting, but reduced or altered the arthropod fauna associated with surface water and extensive vegetation. Also, as noted in this rule, some speculation exists that tamarisk provides a substandard nesting habitat because it supports a significantly different insect fauna than native vegetation. However, no information was available to evaluate this factor directly for *E. t. extimus.*

Issue 49: Several comments were received that pertained to the Service's management of the 90-day petition finding, including that the 90-day petition finding was late; that it is not the Service's role to conduct a status review if information in a petition is lacking; and that a 30-day comment period on the 90-day petition finding was insufficient.

Service Response: The Service acknowledges that its finding on the listing petition was published after 90 days, however, the Act (section 4(b)(3)(A) states that the [Service] shall, *to the maximum extent practicable,* make a petition finding within 90 days (emphasis added). Because the petition was found to present substantial information indicating that the petitioned action may have been warranted, the Service continued a status review after this finding, in accordance with 50 CFR 424.14(b)(3). There are no requirements for the Service to open a formal comment period regarding a 90-day petition finding. The Service did so in this case to solicit additional information on *E. t. extimus.* In reaching its 12-month petition finding, the Service considered all information received within the 30-day period identified, and information received for several months thereafter.

Issue 50: E. t. extimus should be listed as threatened, not endangered.

Service Response: The Service carefully evaluated the status of *E. t. extimus* and has determined that it meets the definition of an endangered species, not a threatened species. As stated in the proposed rule, (58 FR 39495) threatened status would not be appropriate because the large historic habitat loss already has caused extirpation throughout a significant portion of the species' range. Population numbers are extremely low, and a variety of threats are serious and imminent.

Issue 51: Restrictions on rural livestock grazing will cause ranching to become nonviable, and the land will be converted by suburban development, which is a greater threat to *E. t. extimus* than overgrazing.

Service Response: The conversion of lands from livestock grazing to suburban development is hypothetical and therefore cannot drive the Service's determination on this issue. Much of the livestock grazing that may be affected by this rule takes place on Federal lands.

Therefore, conversion to suburban development would require land exchanges or sales. These actions, if they were determined to affect *E. t. extimus,* would require consultation under section 7 of the Act. Regardless, prioritization of threats should be undertaken in the recovery, rather than listing, process.

Issue 52: The proposed rule fails to consider changing ecological factors: drought, migration patterns, nesting habits, and climatic changes.

Service Response: The Service recognizes that populations of *E. t. extimus* are likely to fluctuate naturally in response to various ecological factors. However, the Service believes that declines in habitat availability and increased exposure to cowbird parasitism have caused population reductions beyond the scale of natural fluctuations. Fluctuations in response to nonanthropogenic phenomena are likely to continue, but the current population levels are so low that these natural phenomena may be sufficient to cause local extirpations.

Issue 53: Restrictions associated with listing would be in conflict with Kern County's General Plan.

Service Response: Under section 4 of the Act, the Service considers only scientific and commercial information relating to the five listing factors outlined in section 4(a)(1) and discussed with respect to *E. t. extimus* in this rule. Therefore, conflicts with local plans were not considered in making this determination. However, the Service strives to pursue conservation and recovery of listed species in cooperation with State and local authorities, and seeks to minimize conflicts.

Issue 54: Listing and critical habitat designations will adversely affect flood control measures, some authorized by the Federal Emergency Management Agency and other Federal and State regulations; the proposed rule failed to consider flood accommodation needs, channelization, and clearing vegetation.

Service Response: Flood control measures virtually always involve a Federal agency, through funding, permitting, and/or other action. Therefore, flood control measures that may affect *E. t. extimus* would undergo consultation under section 7 of the Act. Section 7 and its implementing regulations have provisions for emergency consultations, and for actions within presidentially declared disaster areas.

Issue 55: Government agencies are responsible for many impacts to riparian areas; campgrounds, fish hatcheries, and some district offices are located in riparian areas.

Service Response: The Service acknowledges that some Federal actions are in part responsible for the threats facing *E. t. extimus.* As a result of listing, those Federal actions will be subject to consultation under section 7 of the Act to evaluate and minimize the effects of those actions.

Issue 56: The Service does not acknowledge receipt of comments on listing, and probably does not read them.

Service Response: The Service does not routinely acknowledge receipt of each letter commenting on listing proposals. The number of letters in this case made it logistically and financially impossible to acknowledge each one. However, all letters were read, and their issues addressed either here or elsewhere in this final rule. All comment letters and transcripts of public hearings are retained in the permanent file on this species and are available for public inspection.

Issue 57: Protecting flycatcher habitat may restrict mosquito control, which is important for control of encephalitis and other mosquito-borne diseases.

Service Response: Where such control involves a Federal action, mosquito and disease control actions may be subject to consultation under section 7(a)(2) of the Act, which would evaluate but not necessarily restrict or significantly modify the project. Ultimately, section 7(e) of the Act allows exemptions to the requirements of section 7(a)(2).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the southwestern willow flycatcher should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the southwestern willow flycatcher (*Empidonax traillii extimus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Large scale losses of southwestern wetlands have occurred, particularly the cottonwood-willow riparian habitats of the southwestern willow flycatcher (Phillips *et al.* 1964, Carothers 1977, Rea 1983, Johnson and Haight 1984, Katibah 1984, Johnson *et al.* 1987, Unitt 1987, General Accounting Office (GAO) 1988, Bowler 1989, Szaro 1989, Dahl 1990, State of Arizona 1990, Howe and Knopf 1991). Changes in riparian plant communities have resulted in the reduction, degradation, and elimination of nesting habitat for the willow flycatcher, curtailing the ranges, distributions, and numbers of western subspecies, including *E. t. extimus* (Gaines 1974, Serena 1982, Cannon and Knopf 1984, Klebenow and Oakleaf 1984, Taylor 1986, Unitt 1987, Schlorff 1990, Ehrlich *et al.* 1992).

Dahl (1990) reviewed estimated losses of wetlands between 1780 and the 1980's in the Southwest: California is estimated to have lost 91 percent, Nevada 52 percent, Utah 30 percent, Arizona 36 percent, New Mexico 33 percent, and Texas 52 percent. As much as 90 percent of major lowland riparian habitat has been lost or modified in Arizona (State of Arizona 1990). Franzreb (1987) noted that ''[B]ottomland riparian forests are the most highly modified of natural landscapes in California.''

Loss and modification of southwestern riparian habitats have occurred from urban and agricultural development, water diversion and impoundment, channelization, livestock grazing, off-road vehicle and other recreational uses, and hydrological changes resulting from these and other land uses. Rosenberg *et al.* (1991) noted that ''it is the cottonwood-willow plant community that has declined most with modern river management.'' Loss of the cottonwood-willow riparian forests has had widespread impact on the distribution and abundance of bird species associated with that forest type (Hunter *et al.* 1987, Hunter *et al.* 1988, Rosenberg *et al.* 1991).

Overuse by livestock has been a major factor in the degradation and modification of riparian habitats in the western United States. These effects include changes in plant community structure and species composition, and relative abundance of species and plant density. These changes are often linked to more widespread changes in watershed hydrology (Rea 1983, General Accounting Office 1988) and directly affect the habitat characteristics critical to *E. t. extimus.* Livestock grazing in riparian habitats typically results in reduction of plant species diversity and density, especially of palatable broadleaf plants like willows and cottonwood saplings, and is one of the most common causes of riparian degradation (Carothers 1977, USDA Forest Service 1979, Rickard and Cushing 1982, Cannon and Knopf 1984, Klebenow and Oakleaf 1984, GAO 1988, Clary and Webster 1989, Schultz and Leininger 1990).

Increases in abundance of riparian bird species have followed reduction, modification, or removal of cattle grazing. Krueper (1993) found the following increases in birds associated with cottonwood-willow habitat on Arizona's San Pedro River four years after the removal of livestock: yellow warbler, 606 percent; common yellow-throat, 2,128 percent; yellow-breasted

chat, 423 percent. Bock *et al.* (1993) found that 40 percent of the riparian bird species they examined, including the willow flycatcher (various subspecies), were negatively affected by livestock grazing. Increases in willow flycatcher numbers (various subspecies) have followed reduction, modification, or removal of cattle grazing. Taylor (1986) found a negative correlation between recent cattle grazing and abundance of numerous riparian birds, including the Great Basin willow flycatcher (*E. t. adastus*). In an area ungrazed since 1940, his bird counts were five to seven times higher than comparable plots where grazing was terminated in 1980. Taylor and Littlefield (1986) found higher numbers of Great Basin willow flycatchers correlated with minimal or nonexistent livestock grazing. Klebenow and Oakleaf (1984) listed the Great Basin willow flycatcher among bird species that declined from abundant to absent in riparian habitats degraded in part by overgrazing. Schlorff reported willow flycatchers returning to Modoc County, California, several years after removal of livestock grazing (pers. comm. cited in Valentine *et al.* 1988). Knopf *et al.* (1988) found that, during the summer, Great Basin willow flycatchers were present on winter-grazed pastures, but were virtually absent from summer-grazed pastures.

The Service believes that documentation of livestock impacts on other willow flycatcher subspecies is relevant to *E. t. extimus*, because linear riparian habitats in the arid range of *E. t. extimus* are especially vulnerable to fragmentation and destruction by livestock. As shady, cool, wet areas providing abundant forage, they are disproportionately preferred by livestock over the surrounding xeric uplands (Ames 1977, Valentine *et al.* 1988, A. Johnson 1989). Harris *et al.* (1987) believed that termination of grazing along portions of the South Fork of the Kern River in California was responsible for increases in riparian vegetation and, consequently, nesting *E. t. extimus*. Suckling *et al.* (1992) noted that most of the areas still known to support *E. t. extimus* have low or nonexistent levels of livestock grazing. More recent surveys (Muiznieks *et al.* 1994) have found *E. t. extimus* in areas with livestock grazing; however, these occur in widely dispersed, small groups whose nesting success is largely unknown, and where livestock grazing intensity and seasonality are also unknown.

Another likely factor in the loss and modification of southwestern willow flycatcher habitat is invasion by the exotic tamarisk. Tamarisk (also called saltcedar) was introduced into western North America from the Middle East in the late 1800's as an ornamental windbreak and for erosion control. It has spread rapidly along southwestern watercourses, typically at the expense of native riparian vegetation, especially cottonwood/willow communities. Although tamarisk is present in nearly every southwestern riparian community, its dominance varies. It has replaced some communities entirely, but occurs at a low frequency in others.

The spread and persistence of tamarisk has resulted in significant changes in riparian plant communities. In monotypic tamarisk stands, the most striking change is the loss of community structure. The multilayered community of herbaceous understory, small shrubs, middle-layer willows, and overstory deciduous trees is often replaced by one monotonous layer. Plant species diversity has declined in many areas, and relative species abundance has shifted in others. Other effects include changes in percent cover, total biomass, fire cycles, thermal regimes, and perhaps insect fauna (Kerpez and Smith 1987, Carothers and Brown 1991, Rosenberg *et al.* 1991, Busch and Smith 1993).

Disturbance regimes imposed by man (e.g., grazing, water diversion, flood control, woodcutting, and vegetation clearing) have facilitated the spread of tamarisk (Behle and Higgins 1959, Kerpez and Smith 1987, Hunter *et al.* 1988, Rosenberg *et al.* 1991). Cattle find tamarisk unpalatable. However, they eat the shoots and seedlings of cottonwood and willow, acting as a selective agent to shift the relative abundance of these species (Kerpez and Smith 1987). Degradation and, in some cases, loss of native riparian vegetation lowered the water table and resulted in the loss of perennial flows in some streams. With its deep root system and adaptive reproductive strategy, tamarisk thrives or persists where surface flow has been reduced or lost. Further, tamarisk establishment often results in a self-perpetuating regime of periodic fires, which were uncommon in native riparian woodlands (Busch and Smith 1993).

Manipulation of perennial rivers and streams has resulted in habitats that tend to allow tamarisk to outcompete native vegetation. Construction of dams created impoundments that destroyed native riparian communities. Dams also eliminated or changed flood regimes, which were essential in maintaining native riparian ecosystems. Changing (usually eliminating) flood regimes provided a competitive edge to tamarisk. In contrast to native phreatophytes, tamarisk does not need floods and is intolerant of submersion when young. Diversion of water caused the lowering of near-surface groundwater and reduced the relative success of native species in becoming established. Irrigation water containing high levels of dissolved salts also favors tamarisk, which is more tolerant of high salt levels than most native species (Kerpez and Smith 1987, Busch and Smith 1993).

The rapid spread of tamarisk has coincided with the decline of the southwestern willow flycatcher. Although *E. t. extimus* has been documented nesting in tamarisk, it is not known whether, over the long term, reproductive success of southwestern willow flycatchers nesting in tamarisk has differed from the success of flycatchers nesting in native vegetation. Studies in Arizona have documented low breeding densities and low reproductive success for southwestern willow flycatchers nesting in tamarisk (Hunter *et al.* 1988, Muiznieks *et al.* 1994). These data, coupled with a possible decrease in the arthropod prey base and thermal protection for nests provided by tamarisk, suggest that tamarisk may provide poor quality nesting habitat. However, more extensive comparative studies are needed to determine the overall impact on the southwestern willow flycatcher of the conversion of native broadleaf-dominated riparian habitat to tamarisk-dominated habitat.

Other studies of riparian bird communities have documented changes in bird species diversity, corresponding with invasion by tamarisk.

Conversion to tamarisk typically coincides with reduction or complete loss of bird species strongly associated with cottonwood-willow habitats. These include the yellow-billed cuckoo (*Coccyzus americanus*), summer tanager (*Piranga rubra*), northern oriole (*Icterus galbula*), and the southwestern willow flycatcher (Hunter *et al.* 1987, Hunter *et al.* 1988, Rosenberg *et al.* 1991). While Brown and Trosset (1989) believed tamarisk may serve as an ''ecological equivalent'' to native vegetation, they noted that their study occurred where a tamarisk community became established where no native equivalent existed before.

Some authors believe tamarisk may not provide the thermal protection that native broadleaf species do (Hunter *et al.* 1987, Hunter *et al.* 1988). This could be important at lower elevations in the Southwest, where extreme high temperatures are common during the bird's midsummer breeding season. It is

also possible that tamarisk affects *E. t. extimus* by altering the riparian insect fauna (Carothers and Brown 1991). Some sources also speculated that nests in tamarisk stands may be more easily located by brown-headed cowbirds (see cowbird discussion below). Hunter *et al.* (1987) reported the willow flycatcher as one of seven midsummer-breeding builders of open nests that were found in tamarisk at higher elevations but not lower elevations. Nesting *E. t. extimus* have been found in tamarisk at middle elevations (610–1200 m (2000–3500 feet)) (Hundertmark 1978, Hubbard 1987, Hunter *et al.* 1987, Brown 1988, Sogge *et al.* 1993, Muiznieks *et al.* 1994). However, nest success in tamarisk at these elevations appears to be low (Sogge and Tibbitts 1992, Sogge *et al.* 1993, Muiznieks *et al.* 1994). The species is essentially absent from tamarisk-dominated habitats below 610 m (2000 feet). On the lower Colorado River (approximately 25 m (80 feet)) where tamarisk is widely dominant, the only territories found in recent decades were in relict stands dominated by willow, cottonwood, and other native vegetation (Muiznieks *et al.* 1994). Unitt (1987) speculated that at higher elevations and in the eastern portion of its range, some *E. t. extimus* populations may be adapting to tamarisk.

Water developments also likely reduced and modified southwestern willow flycatcher habitat. The series of dams along most major southwestern rivers (Colorado, Gila, Salt, Verde, Rio Grande, Kern, San Diegito, and Mojave) have altered riparian habitats downstream of dams through hydrological changes, vegetational changes, and inundated habitats upstream. New habitat is sometimes created along the shoreline of reservoirs, but this habitat (often tamarisk) is often unstable because of fluctuating levels of regulated reservoirs (Grinnell 1914, Phillips *et al.* 1964, Rosenberg *et al.* 1991). Construction of Glen Canyon Dam on the Colorado River allowed establishment of a tamarisk riparian community downstream in the Grand Canyon, where a small population of *E. t. extimus* exists, with poor reproduction (Brown 1991, Sogge *et al.* 1993). However, Lake Powell, formed upstream of the dam, inundated what was apparently superior habitat, with *E. t. extimus* considered common (Behle and Higgins 1959).

Diversion and channelization of natural watercourses are also likely to have reduced *E. t. extimus* habitat. Diversion results in diminished surface flows and increased salinity of residual flows. Consequent reductions and composition changes in riparian vegetation are likely. Channelization often alters stream banks and fluvial dynamics necessary to maintain native riparian vegetation.

Suckling *et al.* (1992) suggested that logging in the upper watersheds of southwestern rivers may constitute another potential threat to the southwestern willow flycatcher. They stated that logging increases the likelihood of damaging floods in southwestern willow flycatcher nesting habitat.

Finally, the willow flycatcher (all subspecies) is listed among neotropical migratory birds that may be impacted by alteration of wintering habitat, as through tropical deforestation (Finch 1991, Sherry and Holmes 1993).

Population Trends for Each State Are Discussed Briefly Below

California. All three resident subspecies of the willow flycatcher (*E. t. extimus, E. t. brewsteri,* and *E. t. adastus*) were once considered widely distributed and common in California, wherever suitable habitat existed (Wheelock 1912, Willett 1912, Grinnell and Miller 1944). The historic range of *E. t. extimus* in California apparently included all lowland riparian areas of the southern third of the State. Unitt (1984, 1987) concluded that it was once fairly common in the Los Angeles basin, the San Bernardino/Riverside area, and San Diego County. Willett (1912, 1933) considered the bird to be a common breeder in coastal southern California. Nest and egg collections indicate the bird was a common breeder along the lower Colorado River near Yuma in 1902 (T. Huels, University of Arizona *in litt.*, transcripts of H. Brown's field notes).

All three willow flycatcher subspecies breeding in California have declined, with declines most critical in *E. t. extimus,* which remains only in small, disjunct nesting groups (Unitt 1984 and 1987, Gaines 1988, Schlorff 1990, Service unpubl. data). Only two nesting groups have been stable or increasing in recent years. One is on private land where habitat impacts from livestock grazing have been virtually eliminated (Harris *et al.* 1987, Whitfield 1990). This group on the South Fork of the Kern River experienced numerical declines in 1991 and 1992, but increases in nesting success were realized in 1992 and 1993, attributed to shaking (killing) or removing cowbird eggs or nestlings found in flycatcher nests, and trapping cowbirds (Whitfield and Laymon, Kern River Research Center, *in litt.* 1993). The other apparently stable nesting group is along the Santa Margarita River on Marine Corps Base Camp Pendleton, where cowbird numbers have also been reduced by trapping (Griffith and Griffith 1993). Approximately eight other nesting groups are known in southern California, all of which consisted of six or fewer nesting pairs in recent years (Unitt 1987, Schlorff 1990, Service, unpubl. data). Using the most recent information for all areas, approximately 70 pairs and 8 single southwestern willow flycatchers are known to exist in California. Where information on population trends since the mid-1980's is available, most areas show declines. Three recent status reviews considered extirpation from California to be possible, even likely, in the foreseeable future (Garrett and Dunn 1981, Harris *et al.* 1986, Schlorff 1990). The State of California classifies the willow flycatcher as endangered [California Department of Fish and Game (CDFG) 1992].

Arizona. Records indicate that the former range of the southwestern willow flycatcher in Arizona included portions of all major watersheds (Colorado, Salt, Verde, Gila, Santa Cruz, and San Pedro). Historical records exist from the Colorado River near Lee's Ferry and near the Little Colorado River confluence (Phillips, pers. comm., cited in Unitt 1987), and along the Arizona-California border (Phillips 1948, Unitt 1987), the Santa Cruz River near Tucson (Swarth 1914, Phillips 1948), the Verde River at Camp Verde (Phillips 1948), the Gila River at Fort Thomas (W.C. Hunter, pers. comm., cited in Unitt 1987), the White River at Whiteriver, the upper and lower San Pedro River (Willard 1912, Phillips 1948), and the Little Colorado River headwaters area (Phillips 1948).

The southwestern willow flycatcher has declined throughout Arizona. The subspecies was apparently abundant on the lower Colorado River in 1902 (T. Huels *in litt.*, transcripts of H. Brown's field notes), but only four to five territories were located in 1993 (Muiznieks *et al.* 1994). Elsewhere in the State, *E. t. extimus* persists only in several small, widely scattered locations. In the Grand Canyon, several groups of nesting birds have fluctuated from a high of 11 singing males in 1986 (Brown 1988) to two pairs and three single birds in 1992 (Sogge and Tibbitts 1992). Grand Canyon surveys in 1993 located 13 birds; six unpaired individuals, two pairs, and what appeared to be one male with two females. No nesting attempts were successful (Sogge *et al.* 1993). Although Brown (*et al.* 1987) noted *E. t. extimus* as nesting in Havasu Canyon, in 1993 none were located there and cowbirds were abundant (Sogge *et al.* 1993). A

location on the lower San Pedro River apparently supported relatively large numbers of *E. t. extimus* in the 1940's (G. Monson, private individual, *in litt.* 1993 and pers. comm. 1993), but only a single pair in 1978 and 1979, and none in 1986 (Unitt 1987). Following habitat improvements at this locale, six to seven singing males were present in 1993, and a total of 11 singing males were located at two other locations on the lower San Pedro in 1993 (Muiznieks *et al.* 1994).

Historically occupied habitat on the upper San Pedro River is in the process of rehabilitation, but remains unoccupied by nesting *E. t. extimus* (Krueper and Corman 1988, D. Krueper unpubl. data). Two small groups at high elevations in the White Mountains, comprising approximately five singing males each, have remained relatively stable numerically from 1985 to 1993 (Muiznieks *et al.* 1994, Arizona Game and Fish Department (AGFD), unpubl. data). At a site on the Verde River in central Arizona where R. Ohmart (unpubl. data) observed four nesting pairs in 1992, one pair and one single male were present in 1993. The single nest produced only a cowbird young. Of 13 river reaches in Arizona studied by Hunter *et al.* (1987), nesting *E. t. extimus* were extirpated from eight, declining in two, and present in stable numbers in three.

Statewide surveys in 1993 located between 42 and 56 territorial males, and all nest sites were considered vulnerable to habitat loss and cowbird parasitism (Muiznieks *et al.* 1994). Preliminary data from 1994 surveys indicate that approximately 70 to 80 breeding pairs were found at a total of 12 locations in the State. This included the discovery of a group of flycatchers at one location consisting of approximately 15 breeding pairs. Brood parasitism by cowbirds was documented at at least six (50%) of those 12 sites. Brown-headed cowbirds were documented at all 12 breeding locations (Arizona Game and Fish Department, *in prep.*).

Where information on population trends since the mid-1980's is available, most areas show declines and/or high rates of cowbird parasitism. In early 1993, catastrophic flooding on the Verde, Gila, and San Pedro Rivers temporarily damaged many sites inhabited since the mid-1980's, and much potential habitat. Unitt (1987) concluded that ''Probably the steepest decline in the population levels of *E. t. extimus* has occurred in Arizona * * * *E. t.* extimus has been extirpated from much of the area from which it was originally described, the riparian woodlands of southern Arizona.'' The State of Arizona classifies the willow flycatcher as endangered (AGFD 1988).

New Mexico. Bailey (1928) classified breeding willow flycatchers in New Mexico as *E. t. brewsteri,* according to Oberholser's (1918) taxonomy of that time. Because of few records at that time, she believed that either the bird was rare or was overlooked by most observers and collectors. More recently, Hubbard (1987) reviewed and summarized the flycatcher's status in New Mexico. He classified breeding birds in the State as *E. t. extimus* and reported breeding locations that were generally confined to the regions west of the Rio Grande, with records from the Rio Grande, Chama, Zuni, San Francisco, and Gila drainages (See also Hubbard 1982). However, he provisionally assigned all willow flycatchers nesting in New Mexico to *E. t. extimus,* noting records from the Pecos River and Penasco Creek in the southeast and from near Las Vegas in the northeast.

Both Hubbard (1987) and Unitt (1987) believed that the overall range of *E. t. extimus* had not been reduced in New Mexico, but that habitat and numbers had declined. Unitt (1987) believed the majority of all remaining nesting birds may occur in New Mexico. Areas with 19 and 53 singing flycatchers, not distinguished as nesting or migrants, were found on the upper Gila River (Montgomery *et al.* 1985, cited in Suckling *et al.* 1992). Preliminary data from 1994 surveys indicate that this breeding group is still present. However, the breeding status of flycatchers and trend over time have not been determined (S.O. Williams, New Mexico Department of Game and Fish—pers. comm.)

Hubbard (1987) noted that data were lacking for trends of most nesting areas. However, where data were available, they indicated loss of a group of 15 breeding pairs by the rising waters of Elephant Butte Reservoir. The willow flycatcher was considered fairly common in this area on the middle Rio Grande in the late 1970's (Hundertmark 1978). Hubbard hypothesized that some of these birds could have moved upstream, to new shoreline habitat created by the impoundment. Between 1987 and 1990, bird surveys along the Rio Grande Valley State Park in Albuquerque found a single singing willow flycatcher during the breeding season (Hoffman 1990). Current trends in New Mexico are not being extensively monitored. However, in 1992, 71 transects along the Rio Grande were surveyed for breeding birds, but not specifically targeting willow flycatcher habitat. A single willow flycatcher was located near Espanola (Leal, Meyer and Thompson, unpubl. data). In 1993, surveys of 52 locations found 31 pairs or singing males at 15 of those locations (S.O. Williams III, New Mexico Department of Game and Fish (NMDGF), *in litt.* 1993). Hubbard (1987) estimated that the State population may total 100 pairs; that estimate has not been revised. Hubbard (1987) found that ''the conclusion is virtually inescapable * * * a decrease has occurred in the population of breeding willow flycatchers in New Mexico over historic time,'' resulting from habitat loss. The State of New Mexico classifies the willow flycatcher as endangered (NMDGF 1988).

Texas. The eastern limit of the southwestern willow flycatcher's breeding range is in western Texas (Unitt 1987). Collections have been made at Fort Hancock on the Rio Grande (Phillips 1948), in the Guadalupe Mountains (Phillips, pers. comm., cited in Unitt 1987), the Davis Mountains (Oberholser 1974), and from unspecified locales in Brewster County (Wolfe 1956). Wauer (1973 and 1985) considered *E. t. extimus* a rare summer resident in Big Bend National Park. Data are lacking on current population levels and trends in Texas. Loss and modification of habitat may have reduced populations on the Rio Grande and Pecos Rivers.

Utah. The north-central limit of breeding southwestern willow flycatchers is in southern Utah. Behle (1985) and Unitt (1987) believed a clinal gradation between *E. t. extimus* and *E. t. adastus* existed, but Browning (1993) disagreed, identifying a range boundary at approximately the 38th north parallel. Southern Utah is characterized by extreme topographic relief. In this region, subspecific separation may be a function of elevation, with *E. t. extimus* at lower elevations (e.g., Virgin and Colorado Rivers) and *E. t. adastus* higher (e.g., Sevier River, wet meadows of mountains and high plateaus). Records that are likely to represent *E. t. extimus* are from the Virgin River (Phillips 1948, Wauer and Carter 1965, Whitmore 1975), Kanab Creek, and along the San Juan and Colorado Rivers (Behle *et al.* 1958, cited in Unitt 1987; Behle and Higgins 1959, Behle 1985; see also Browning 1993). Other reports document the subspecies being present along the Virgin, Colorado, San Juan, and perhaps Paria Rivers (BLM, unpubl. data). Although Behle believed *E. t. extimus* was always rare in southern Utah overall (pers. comm. cited in Unitt 1987), he considered it a locally common breeding resident where habitat existed along the Colorado River

and its tributaries in southeastern Utah (Behle and Higgins 1959).

Few data are available on population trends in southern Utah. However, loss and modification of habitat is likely to have reduced populations on the Virgin, Colorado, and San Juan Rivers. These losses have been due to suburban expansion and habitat changes along the Virgin River, inundation by Lake Powell on the Colorado and San Juan Rivers, and encroachment of tamarisk throughout the region (Unitt 1987, BLM unpublished data).

Nevada. Unitt (1987) reported only three records for Nevada, all made before 1962. Unitt (1987), Hubbard (1987), and Browning (1993) all considered southern Nevada (approximately south of 38° north parallel) to be within the range of *E. t. extimus.* However, no recent data are available on population levels or trends. Habitat may remain along the lower Virgin River and at the inflow of the Virgin River into Lake Mead. However, loss and modification of habitat is likely to have reduced populations on the Virgin and Colorado Rivers.

Colorado. Whether or not the southwestern willow flycatcher breeds in Colorado is unclear. Hubbard (1987) believed the subspecies ranged into extreme southwestern Colorado, Browning (1993) was noncommittal, and Unitt (1987) tentatively used the New Mexico-Colorado border as the boundary between *E. t. extimus* and *E. t. adastus.* Several specimens taken in late summer have been identified as *E. t. extimus,* but nesting was not confirmed (Bailey and Niedrach 1965). Phillips (1948) cautioned that willow flycatchers in this region displayed considerable individual variation and may represent intergrades between *E. t. extimus* and *E. t. adastus.* No recent data are available on occurrence, population levels, or trends in this area.

Mexico. Six specimens from Baja California del Norte and two from Sonora were discussed by Unitt (1987). He and Phillips (pers. comm., cited in Unitt 1987) believed *E. t. extimus* was not common in northwestern Mexico. Wilbur (1987) was skeptical of its presence as a breeder in Baja California. In the more general treatments of field guides, the willow flycatcher is described as breeding in extreme northwestern Mexico, including northern Baja California del Norte (Blake 1953, Peterson 1973). No recent data are available on current population levels or trends.

Using the most recent censuses and estimates for all areas, the estimated total of all southwestern willow flycatchers is approximately 300 to 500 nesting pairs. Unitt (1987) believed the total was ''well under'' 1000 pairs, more likely 500. The regional estimates and information on which these total estimates are based generally date from the late 1980's to 1993 (e.g., Hubbard 1987, T. Johnson 1989). Virtually all nesting groups monitored since that time have continued to decline (Whitfield 1990, Brown 1991, Sogge *et al.* 1993, Whitfield and Laymon, unpubl. data).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Service is unaware of threats resulting from overutilization.

C. Disease or Predation

The Service is unaware of any disease that constitutes a significant threat to *E. t. extimus.* Boland *et al.* (1989) found only one case of larval parasites in willow flycatcher nestlings in California.

Predation of southwestern willow flycatchers may constitute a significant threat and may be increasing with habitat fragmentation. Where *E. t. extimus* has been extirpated in the lower Colorado River valley, Rosenberg *et al.* (1991) found increases in the great-tailed grackle (*Quiscalus mexicanus*), which preys on the eggs and young of other birds (Bent 1965). Whitfield (1990) found predation on *E. t. extimus* nests to be significant. Predation increased with decreasing distance from nests to thicket edges, suggesting that habitat fragmentation may increase the threat of predation.

D. The Inadequacy of Existing Regulatory Mechanisms

The Migratory Bird Treaty Act (MBTA)(16 U.S.C. § 703–712) is the only current Federal protection provided for the southwestern willow flycatcher. The MBTA prohibits ''take'' of any migratory bird, which is defined as: ''* * * to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect * * *'' However, unlike the Act, there are no provisions in the MBTA preventing habitat destruction unless direct mortality or destruction of active nests occurs.

The majority of the southwestern willow flycatcher's range lies within California, Arizona, and New Mexico (Phillips 1948, Hubbard 1987, Unitt 1987). All of those States classify the willow flycatcher as endangered (AGFD 1988, NMDGF 1988, CDFG 1992). The State listings in New Mexico and Arizona do not convey habitat protection or protection of individuals beyond existing regulations on capture, handling, transportation, and take of native wildlife. The California Endangered Species Act (CESA) prohibits unpermitted possession, purchase, sale, or take of listed species. However, the CESA definition of take does not include harm, which under the Act can include destruction of habitat that actually kills or injures wildlife by significantly impairing essential behavioral patterns (50 CFR 17.3). However, CESA requires consultation between the CDFG and other State agencies to ensure that activities of State agencies will not jeopardize the continued existence of State-listed species (E. Toffoli, State of California, *in litt.* 1992). The Service believes that this and other regulatory mechanisms are inadequate to ensure the continued existence of the southwestern willow flycatcher.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The riparian habitat of the southwestern willow flycatcher has always been rare and has become more so. Its habitat rarity and small, isolated populations make the remaining *E. t. extimus* increasingly susceptible to local extirpation through stochastic events such as floods, fire, brood parasitism, predation, depredation, and land development. In early 1993, catastrophic floods in southern California and Arizona impacted much of the remaining occupied or potential breeding habitat. Historically, these floods have always destroyed habitat but were also important events in regenerating cottonwood-willow communities. However, with little southwestern willow flycatcher habitat remaining, widespread events like those of 1993 could destroy virtually all remaining habitat throughout all or a significant portion of the subspecies' range. Further, regeneration with natural vegetation after floods may be inhibited if the area is subjected to overgrazing by domestic livestock.

The disjunct nature of habitats and small breeding populations impede the flow of genetic material and reduce the chance of demographic rescue from migration from adjacent populations. The resulting constraints on the gene pool intensify the external threats to the species.

Brood parasitism by the brown-headed cowbird also threatens the southwestern willow flycatcher. Cowbirds lay their eggs in the nests of other, usually smaller, songbirds. The cowbird often removes a number of the host's eggs and replaces them with an equal number of cowbird eggs. The host

species then incubates the cowbird eggs, which typically hatch prior to the host's own eggs. Cowbird eggs require a relatively short incubation period of 10 to 12 days. Thus, the young cowbirds have several advantages over the host's young; they hatch earlier, they are larger, and they are also more aggressive than the host's young. Cowbird nestlings typically outcompete those of the host species for parental care, and, as a result, the host species' own reproduction is reduced or eliminated (Bent 1965, McGeen 1972, Mayfield 1977a, Harrison 1979, Brittingham and Temple 1983).

The brown-headed cowbird commonly preys on insects stirred up by grazing ungulates, and was originally restricted to the Great Plains, where it was strongly associated with American bison (*Bison bison*). As North America was settled, cowbirds became associated with livestock and human agriculture because of the food sources they provided (Bent 1965, Flett and Sanders 1987, Valentine *et al.* 1988). The expansion of agriculture, livestock grazing, and wide scale human activities in general caused opening and fragmenting of forest and woodland habitats. Habitat fragmentation and agriculture are strongly correlated with increased rates of brood parasitism by brown-headed cowbirds (Rothstein *et al.* 1980, Brittingham and Temple 1983, Airola 1986, Robinson *et al.* 1993). Some species are likely to have adapted to parasitism over time, particularly prairie nesters in the original range of the cowbird. However, the cowbird's rapid expansion now brings it into contact with forest and woodland species not adapted to deal with brood parasitism, significantly impacting those species (Hill 1976, Mayfield 1977a, Robinson *et al.* 1993).

The brown-headed cowbird was apparently an uncommon bird within the range of *E. t. extimus*, until the late 1800's. Since then, the species has greatly expanded in numbers and distribution throughout the region (Laymon 1987, Rothstein *in prep*.). Increases in cowbirds in the San Bernardino Valley between 1918 and 1928 caused Hanna (1928) ''considerable alarm.'' Although Friedmann *et al.* (1977) reported relatively low rates of parasitism of willow flycatchers in the western United States, this was apparently owing to their data (egg sets) being collected prior to the major incursions of cowbirds into Pacific coast riparian habitats (L. Kiff, Western Foundation for Vertebrate Zoology, *in litt.* 1993). Brood parasitism of several subspecies of the willow flycatcher, including *E. t. extimus*, by brown-headed cowbirds is well documented (Hanna 1928, Rowley 1930, Willett 1933, Hicks 1934, King 1954, Holcomb 1972, Friedmann *et al.* 1977, Garret and Dunn 1981, Harris *et al.* 1987, Brown 1988, 1991, Sedgewick and Knopf 1988, Whitfield 1990, Harris 1991, Sogge *et al.* 1993, Muiznieks *et al.* 1994).

The increases in cowbirds in the Southwest and parasitism of *E. t. extimus* and other birds are generally attributed to the following scenario: The introduction of modern human settlements, livestock grazing, and other agricultural developments resulted in habitat fragmentation. Simultaneously, livestock grazing and other agricultural developments served as vectors for cowbirds by providing feeding areas near host species' nesting habitats (Hanna 1928, Gaines 1974, Mayfield 1977a). Cowbirds may travel almost 7 kilometers (4.2 miles) from feeding sites where livestock congregate to areas where host species are parasitized (Rothstein *et al.* 1984). These factors increased both the vulnerability of *E. t. extimus* and the likelihood of encounters with cowbirds. Finally, the high edge-to-interior ratio of linear riparian habitats like those used by *E. t. extimus* renders birds nesting there particularly vulnerable to parasitism (Airola 1986, Laymon 1987, Harris 1991). Linear riparian habitats are also especially vulnerable to fragmentation by grazing, which further increases both the edge-to-interior ratio and the threat of parasitism.

The effects of parasitism by brown-headed cowbirds on willow flycatchers include reducing nest success rate and egg-to-fledging rate, and delaying successful fledging (because of renesting attempts) (Harris 1991). A common response to parasitism is abandonment of the nest (Holcomb 1972). Willow flycatchers may also respond to parasitism by ejecting cowbird eggs, by burying them with nesting material and renesting on top of them, or by renesting in another nest (Harris *et al.* 1991). However, the success rate of renesting is often reduced, because these attempts produce fledglings several weeks later than normal, which may not allow them adequate time to prepare for migration (Harris 1991). Renesting also usually consists of smaller clutches, further reducing overall reproductive potential (Holcomb 1974).

McCabe (1991) downplayed the significance of cowbird parasitism as a threat to any species except Kirtland's warbler (*Dendroica kirtlandii*). McCabe's monograph focussed on the combined ''Traill's flycatcher'' superspecies, comprised of *E. t. traillii* and *E. alnorum* in marshy habitats in the upper Midwest, where parasitism rates ranged from 3 percent to 19 percent. However, perhaps reflecting his regional perspective, he characterized the high parasitism rates on willow flycatchers reported by Trautman (1940, cited in McCabe 1991) and Sedgwick and Knopf (1988) as aberrant (56 percent and 41 percent, respectively). McCabe considered the high rates the result of the ''* * * linear configuration of the habitat * * * [c]owbirds lay eggs in songbird nests closest to cover edge.'' The vast majority of southwestern willow flycatcher habitat is very linear and may experience higher rates of parasitism than other willow flycatcher subspecies.

Brittingham and Temple (1983) considered ''high'' parasitism rates (percent of nests parasitized) to be 24 percent, with some as high as 72 percent. Mayfield (1977a) thought a species (or population) might be able to survive a 24 percent parasitism rate, but that losses much higher than that ''would be alarming.'' Parasitism rates of 72 percent to 83 percent on Kirtland's warbler (Mayfield 1977b) resulted in a precipitous population decline. Where parasitism rates are known for *E. t. extimus*, they are comparable to rates for Kirtland's warbler and are capable of causing similar declines. In California, parasitism rates ranged from 50 percent to 80 percent between 1987 and 1992, when an estimated population size decreased from 44 to 28 nesting pairs (Whitfield 1990, Harris *et al.* 1991, Whitfield and Laymon, unpubl. data). These parasitism rates were considered minimum measures, because several nests were abandoned each year due to unknown causes, which could have been parasitism. Brown (1988) reported an average 50 percent parasitism rate in the Grand Canyon between 1982 and 1987. Although his estimated population increased from two pairs to 11 during that period, it has since decreased back as low as two nesting pairs (Brown 1991, Sogge and Tibbitts 1992). In 1993, parasitism reached 100 percent in the Grand Canyon, and no *E. t. extimus* were fledged (Sogge *et al.* 1993). Harris *et al.* (1991) believed that the parasitism rates observed on the Kern River in 1987 (68 percent of all nests, 88 percent of all nest territories) were high enough to prevent *E. t. extimus* from recolonizing lowland riparian habitat, even if it were restored.

Rothstein *et al.* (1980), Stafford and Valentine (1985), and Harris (1991) believed parasitism may be correlated with elevation, being more severe at lower elevations. Coupled with greater loss of lowland (desert) riparian habitat,

the effects of habitat loss and parasitism are compounded. However, cowbirds now appear to be increasing at higher elevations (Hanka 1985).

In addition to causing habitat degradation and facilitating brood parasitism, livestock grazing in and near riparian areas may also threaten *E. t. extimus* through direct mortality. Livestock in riparian habitats sometimes make physical contact with nests or supporting branches, resulting in destruction of nests and spillage of eggs or nestlings. All known documentation of this threat involves *E. t. brewsteri*, perhaps because virtually all known remaining populations of *E. t. extimus* are in ungrazed habitats (Serena 1982, Harris *et al.* 1987, Whitfield and Laymon, unpubl. data). Valentine *et al.* (1988) studied willow flycatchers in California from 1983 through 1987, when 11 of their 20 recorded nesting attempts failed. They found that ''Prior to reduction of grazing intensity in 1987, livestock accounted for 36 percent of the failed nests or 20 percent of all nesting attempts. In addition, livestock destroyed four successful nests shortly after the young had fledged.'' Stafford and Valentine (1985) reported that three of eight (37.5 percent) willow flycatcher nests in their study site were probably destroyed by cattle. Flett and Sanders (1987) documented no nest upsets due to livestock but noted the vulnerability of nests to upset, due to their placement low in willow clumps (see also Serena 1982). Livestock grazing may affect *E. t. extimus* similarly.

The southwestern willow flycatcher's preference for, and former abundance in, floodplain areas that are now largely agricultural may indicate a potential threat from pesticides. Where flycatcher populations remain, they are sometimes in proximity to agricultural areas, with the associated pesticides and herbicides. Without appropriate precautions, these agents may potentially affect the southwestern willow flycatcher through direct toxicity or effects on their insect food base. No quantitative data on this potential threat are known at this time.

Recreation that is focused on riparian areas, particularly during warm summer breeding months, may also constitute a threat to *E. t. extimus*. Taylor (1986) found a possible correlation between recreational activities and decreased riparian bird abundance. Blakesley and Reese (1988) reported the willow flycatcher (probably *E. t. adastus*) as one of seven species negatively associated with campgrounds in riparian areas in northern Utah. It is unknown whether these possible effects involve impacts to habitat or disturbance of nesting birds.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the southwestern willow flycatcher as endangered. A decision regarding designation of critical habitat for this species is being deferred, and a final decision regarding the designation will be made by July 23, 1995. Critical habitat for this species is not now determinable.

Critical Habitat

Critical Habitat is defined in section 3 of the Act as (i) the specific areas within the area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to a point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Critical habitat was proposed to be designated for the flycatcher at the time it was proposed for listing as endangered to encompass approximately 640 miles (1000 km) of riparian zones in the States of California, Arizona, and New Mexico.

After reviewing comments submitted during the public comment period the Service is deferring the designation of critical habitat for this endangered species. The Service received numerous comments on the proposed rule, including many recommendations for additions and deletions to proposed critical habitat. The Service is reviewing these comments as well as survey data collected in 1994. These sources included more complete information on the primary constituent elements of flycatcher habitat and on the distribution of that habitat across the bird's range. Substantial disagreement has also been found among scientists knowledgeable about the species regarding the proposed designations. Further, written comments submitted by State agencies recommended substantial changes in proposed critical habitat areas.

The Service is presently reconsidering the prudence of critical habitat designation for this species, the need for special management considerations or protection of habitat within the species' range, and the proper boundaries of any areas that might be designated as critical habitat. Issues raised in public comments, new information, and the lack of the economic information necessary to perform the required economic analysis cause the Service to conclude that critical habitat is not now determinable and to invoke an extension until July 23, 1995, pursuant to 16 U.S.C. § 1533(b)(6)(C) for reaching a final decision on the proposal of critical habitat for the flycatcher. The Service has determined that this is in compliance with provisions of 50 CFR 424.12(a) and § 424.17, regarding delaying final rules on proposed critical habitat designations, and with provisions for addressing State agencies that disagree in whole or part with a proposed rule (50 CFR 424.18(c)). In order to assist in its deliberation, the Service is reopening comment on the proposal to designate critical habitat for a period of 60 days. Comments are particularly sought on the following topics:

1. The need for special management of areas within the range of the flycatcher, including those proposed as critical habitat as well as other areas,
2. The net benefit to the flycatcher in addition to the protection provided by its listing as endangered likely to accrue from a designation of critical habitat, and
3. Any indication that areas should be added to or excluded from those proposed for designation.

Comments already received that address the above topics will be considered in reaching a final decision regarding critical habitat designation, and need not be resubmitted.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies

and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

No conservation plans or habitat restoration projects specific to the southwestern willow flycatcher exist on lands managed by the U.S. Forest Service (USFS), BLM, U.S. Bureau of Reclamation (Reclamation), Indian Nations, State agencies, or the Service. The USFS and BLM have focussed some attention on modifying livestock grazing practices in recent years, particularly as they affect riparian ecosystems. As mitigation for other projects impacting riparian habitats, Reclamation is engaged in riparian habitat restoration projects in several areas in the range of *E. t. extimus*, including some historical nesting locations. The BLM currently manages approximately 40 miles of the upper San Pedro River in Arizona (including historic nest sites), as a Riparian National Conservation Area. Riparian habitat rehabilitation is also underway at several National Wildlife Refuges in the breeding range of *E. t. extimus*, which are managed by the Service. The Nature Conservancy manages one of the largest remaining flycatcher populations, as well as several other areas with high recovery potential. The U.S. Marines have maintained a cowbird control program near the Santa Margarita River to benefit the least Bell's vireo. This program has benefitted nesting southwestern willow flycatchers there. Grand Canyon National Park has instituted a seasonal recreation closure at the remaining site with nesting willow flycatchers in the Grand Canyon, and has begun a cowbird monitoring program.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. The Service believes that, based on the best available information, the following are examples of actions that will not result in a violation of section 9:

(1) Dispersed recreational activities near willow flycatcher breeding areas that do not disrupt normal flycatcher breeding activities and behavior, attract avian and mammalian predators, nor result in the trampling or destruction of riparian breeding habitat;

(2) Federally-approved projects that involve activities such as discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or diversion or alteration of surface or ground water flow into or out of the wetland (i.e., due to roads, impoundments, discharge pipes, stormwater detention basins, etc.)—when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act; and

(3) Livestock grazing that does not attract the brood parasitic brown-headed cowbird or result in the destruction of riparian habitat or the disturbance of breeding flycatchers.

Activities that the Service believes could potentially harm the southwestern willow flycatcher and result in ''take,'' include, but are not limited to:

(1) Unauthorized handling or collecting of the species;

(2) Destruction/alteration of the species' habitat by discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or diversion or alteration of surface or ground water flow into or out of the wetland (i.e., due to roads, impoundments, discharge pipes, stormwater detention basins, etc.);

(3) Livestock grazing that results in direct or indirect destruction of riparian habitat;

(4) Activities such as continued presence of cattle and fragmentation of flycatcher habitat that facilitate brood parasitism by the brown-headed cowbird; and

(5) Pesticide applications in violation of label restrictions.

Questions as to whether specific activities will constitute a violation of section 9 should be directed to Sam F. Spiller or Robert M. Marshall at the Service's Ecological Services State Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021 (Telephone 602/640–2720)

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Supervisor, Ecological Services State Office in Arizona (see **ADDRESSES** above).

Author

The primary author of this rule is Robert M. Marshall, Ecological Services State Office in Arizona (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under Birds, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
BIRDS							
*	*	*	*	*	*	*	*
Flycatcher, southwestern willow.	*Empidonax traillii, extimus.*	U.S.A. (AZ, CA, CO, NM, NV, TX, UT).	Entire	E	577	NA	NA
*	*	*	*	*	*	*	*

Dated: February 16, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–4531 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–55–P

federal register

Monday
February 27, 1995

Part IV

Department of Health and Human Services

Public Health Service

42 CFR Part 63
Traineeships; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 63

RIN 0905–AD28

Traineeships

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Final rule.

SUMMARY: This final rule revises regulations governing National Institutes of Health (NIH) research traineeship awards in their entirety. The regulations are obsolete and require revision. The revised regulations are intended to provide NIH with the flexibility needed to effectively support the development and operation of a variety of training programs essential to the NIH research mission.

EFFECTIVE DATE: This final rule is effective March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Moore, Regulatory Affairs Officer, National Institutes of Health, Building 31, Room 1B25, 31 Center DR MSC, 9000 Rockville Pike, Bethesda, Maryland 20892–2075, telephone (301) 496–4606 (not a toll-free number). For information concerning the program contact the Office of Education, National Institutes of Health, Building 10, Room 1C129, 9000 Rockville Pike, Bethesda, Maryland 20892–0001, telephone (301) 496–2427 (not a toll-free number).

SUPPLEMENTAL INFORMATION: On August 6, 1993 (58 FR 42039), NIH published a notice of proposed rulemaking in the Federal Register announcing its intention to revise in their entirety the regulations at 42 CFR part 63 governing traineeships to cover traineeships awarded under sections 404E(d)(2), 405(b)(1)(C), 472, and 484 of the Public Health Service (PHS) Act, as amended.

Traineeships under part 63 are designed to provide research training for which fellowship support is not provided under section 487 of the PHS Act, and which is not residency training of physicians or other health professionals. The traineeships provide opportunities for developmental training and practical research experience in the labs of NIH, and are available to postdoctoral scientists at the beginning stages of their professional research careers, and to high school, college, graduate and professional (e.g. medical, dental, and other health fields) school students pursuing studies in academic disciplines related to biomedical research and in medical library science and related fields.

NIH received no comments concerning the NPRM. However, enactment of the NIH Revitalization Act of 1993, Public Law 103–43, necessitated making several technical changes to the proposed regulations to conform the regulations to Public Law 103–43. More specifically, Public Law 103–43 redesignated the National Center for Nursing Research as the National Institute of Nursing Research. Accordingly, references to the National Center for Nursing Research in paragraph (a) of § 63.1 and in the definition for the term ''Director'' in § 63.2 were deleted. This redesignation also eliminated the need for the reference to PHS Act section 484. Accordingly, references to section 484 were deleted from the authority citation, paragraph (a) of § 63.1, and the definitions for the terms ''Award,'' ''Awardee'' and ''Traineeship'' in § 63.2.

Public Law 103–43 also set forth new traineeship authority for the Director of the National Center for Human Genome Research (NCHGR) in PHS Act section 485B and the Director of the Office of Alternative Medicine (OAM) in PHS Act section 404E(d)(2). Accordingly, references to the NCHGR and OAM authorities were added to paragraph (a) of § 63.1 and to the definition for the term ''Director'' in § 63.2. In addition, references to PHS Act section 485B and 404E were added to the authority citation, paragraph (a) of § 63.1, and to the definitions for the terms ''Award,'' ''Awardee,'' and ''Traineeship'' in § 63.2.

Additionally, Public Law 103–43 required NIH to establish guidelines on the inclusion of women and minorities and their subpopulations in research involving human subjects, including clinical trails, supported by NIH. These guidelines, which were originally published in the Federal Register on March 9, 1994 (59 FR 1146), were republished on March 28, 1994 (59 FR 14508) because of typesetting problems. Section 63.10 of the regulations was modified to include a reference for these guidelines.

In accordance with section 553 of title 5 of the United States Code, NIH finds that good cause exists for waiving another NPRM. Delay of this rule would be contrary to the public interest and unnecessary given the technical nature of these changes.

Further, PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Regulatory Impact Statement

Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, requires the Department to prepare an analysis for any rule that meets one of the E. O. 12866 criteria for a significant regulatory action; that is, that may—

Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In addition, the Department prepares a regulatory flexibility analysis, in accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6), if the rule is expected to have a significant impact on a substantial number of small entities.

For the reasons outlined below, the Secretary does not believe this rule is economically significant nor does the Secretary believe that it will have a significant impact on a substantial number of small entities. In addition, this proposed rule is not inconsistent with the actions of any other agency.

This proposed rule merely codifies internal policies and procedures of the Federal government currently used to administer traineeship awards. The program does not have a significant economic or policy impact on a broad cross-section of the public. Furthermore, this rule will only affect those few highly qualified health professionals who are interested in participating in the program, subject to the normal accountability requirements for program participation. No individual is obligated to participate in the program. For these same reasons, the Secretary certifies this proposed rule will not have a significant economic impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis, as defined under the Regulatory Flexibility Act of 1980, is not required.

Paperwork Reduction Act

This rule contains information collection requirements subject to Office of Management and Budget (OMB) review and approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

Title: National Institutes of Health Research Traineeships.

Description: The information collected is used by NIH to determine an applicant's eligibility to apply for a traineeship, ensures that an awardee agrees to comply with the terms and conditions of the traineeship and that an awardee shows good cause for not reimbursing PHS for any overpayment of stipends or other allowances because of early termination of the traineeship or for any other reason.

Respondent Description: Individuals or households.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Reporting: § 63.6(b)				
Summer Fellowship Applicants	3,000	1	1	3,000
Predoctoral & Postdoctoral Applicants	400	1	1	400
Summer Fellowship References	6,000	1	.33	2,000
Predoctoral & Postdoctoral References	1,200	1	.33	400
Subtotal	10,600	1	.55	[1] 5,800
§ 63.8(c)	100	1	.25	25
§ 63.9(a)	100	1	.25	25
Total				50

[1] This burden is approved under OMB Approval Number 0925–0299 (expires April 30, 1997).

The information collection in § 63.6(b) regarding application materials and the associated burden are approved under OMB Approval Number 0925–0299 (expires April 30, 1997). The information collection in § 63.8(c) and § 63.9(a), and the associated burden have been reported to OMB for review and approval under OMB Approval Number 0925–0299.

Catalog of Federal Domestic Assistance

Catalog of Federal Domestic Assistance program numbers affected by this rule are: 93.140 and 93.172.

List of Subjects in Part 63

Grant programs—health; Health; Medical research.

Dated: December 16, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: February 16, 1995.

Donna E. Shalala,

Secretary.

Accordingly, part 63 of title 42 of the Code of Federal Regulations is revised to read as set forth below.

PART 63—TRAINEESHIPS

Sec.

63.1 To what programs do these regulations apply?
63.2 Definitions.
63.3 What is the purpose of traineeships?
63.4 What are the minimum qualifications for awards?
63.5 How will NIH make awards?
63.6 How to apply.
63.7 What are the benefits of awards?
63.8 What are the terms and conditions of awards?
63.9 How may NIH terminate awards?
63.10 Other HHS regulations and policies that apply.

Authority: 42 U.S.C. 216, 283g(d), 284(b)(1)(C), 286b-3, 287c(b).

§ 63.1 To what programs do these regulations apply?

(a) The regulations in this part apply to research traineeships awarded by each Director of a national research institute of NIH, the Director of the National Library of Medicine (NLM), the Director of the National Center for Human Genome Research (NCHGR), the Director of the Office of Alternative Medicine, or designees pursuant to sections 404E(d)(2), 405(b)(1)(C), 472, and 485B of the Public Health Service Act, as amended.

(b) The regulations of this part do not apply to research training which is part of the National Research Service Award Program provided under 42 CFR part 66, the Mental Health Traineeship Program provided under 42 CFR part 64a, or residency training of physicians or other health professionals.

§ 63.2 Definitions.

As used in this part:

''Act'' means the Public Health Service Act, as amended (42 U.S.C. 201 *et seq.*).

''Award'' means an award of funds under sections 404E(d)(2), 405(b)(1)(C), 472, or 485B of the Act, or other sections of the Act which authorize research training or traineeships.

''Awardee'' means an individual awarded a traineeship under sections 404E(d)(2), 405(b)(1)(C), 472, or 485B of the Act, or other sections of the Act which authorize research training or traineeships.

''Director'' means the director of one of the national research institutes of NIH specified in section 401(b)(1) of the Act, the Director of the National Library of Medicine, the Director of the National Center for Human Genome Research, the Director of the Office of Alternative Medicine, or any official of NIH to whom the authority involved has been delegated.

''HHS'' means the Department of Health and Human Services.

''NIH'' means the National Institutes of Health.

''PHS'' means the Public Health Service.

''Traineeship'' means an award of funds under section 404E(d)(2), 405(b)(1)(C), 472, or 485B of the Act, or other sections of the Act authorizing research training or traineeships, and the regulations of this part, to a qualified individual for the person's subsistence and other expenses during a period in which the awardee is acquiring the research training approved under the award.

§ 63.3 What is the purpose of traineeships?

The purpose of an NIH research traineeship is to provide support for financial subsistence to an individual during a period in which the awardee is acquiring training in:

(a) Basic and/or clinical biomedical or behavioral research relating to human health, including extending healthy life and reducing the burdens of illness, or

(b) Medical library science or related fields pertaining to sciences related to health or the communication of health sciences information.

Traineeships are intended to make available in the United States an increased number of persons having special competence in these research fields through developmental training and practical research experience in the facilities of NIH, with supplemental training at other qualified institutions (see § 63.8(a)).

§ 63.4 What are the minimum qualifications for awards?

Minimum qualifications for any traineeship shall be established by the Director and shall be uniformly applicable to all applicants in each traineeship program. These minimum qualifications may include requirements as to citizenship, medical standards, academic degrees, professional or other training or experience, and other factors as may be necessary to the fulfillment of the purpose of the traineeship. The Director may, as a matter of general policy or, in individual cases, waive compliance with any minimum qualification so established to the extent that the applicant or applicants have substantially equivalent qualifications or have such special training, experience or opportunity for service as to make an award particularly appropriate, and to the extent the Director finds it is consistent with the fulfillment of the purpose of the traineeship.

§ 63.5 How will NIH make awards?

Subject to the regulations of this part, the Director may award traineeships to those qualified applicants who are best able in that official's judgment to carry out the purpose of the traineeships. These awards may be made for a period of one (1) year or other period, including extensions or renewals, as may be specified.

§ 63.6 How to apply.

(a) Application for a traineeship shall be made in writing as prescribed by the Director.

(b) In addition to other pertinent information, the Director may require each applicant to submit the following information:

(1) Certification of the applicant's citizenship status;

(2) The applicant's educational background and other qualifications and experience, including previous academic and professional degrees, if any; and

(3) The subject area of the proposed training.

(c) By applying, eligible individuals agree to abide by HHS, PHS, and NIH regulations, and the terms and conditions of the traineeship award which may require compliance with policies and procedures that apply to the proper conduct of research, such as research involving human and animal subjects, patient care, hospital and laboratory procedures, handling of confidential information, and outside employment.

§ 63.7 What are the benefits of awards?

(a) Subject to the availability of funds, each individual awarded a traineeship may receive a stipend fixed in an amount determined by the Director.

(b) Additional allowances and benefits may be authorized by and at the discretion of the Director, taking into account the cost of living and other factors such as the requirements of the training program and availability of discretionary funds. Discretionary allowances and benefits may include: health benefits coverage; dependents' allowance; travel to pre-award interviews, to first duty station, and return to the place of origin upon conclusion of the traineeship; tuition and institution fees; and other specific costs as may be necessary to fulfill the purpose of the training program.

§ 63.8 What are the terms and conditions of awards?

All traineeships shall be subject to the following terms and conditions:

(a) Training must be carried out at a facility of the NIH, but may be supplemented by additional training acquired at another institution which is found by the Director to be directly related to the purpose of the traineeship and necessary to its successful completion.

(b) Payments shall be made to the awardee or to the institution for payment to the awardee in accordance with payment schedules as prescribed by the Director for each traineeship program.

(c) The awardee shall reimburse NIH for any overpayment of stipends or other allowances because of early termination of the traineeship or any other reason, unless waived for good cause shown by the awardee.

(d) The Director may establish procedures and requirements applicable to traineeship awards, consistent with the regulations in this part, regarding: (1) The proper conduct of research investigations, including research involving human and animal subjects; (2) patient care; (3) hospital and laboratory procedures; (4) handling of confidential information; (5) outside employment; and (6) additional conditions the Director finds necessary to fulfill the purpose of the traineeship.

(e) The awardee shall sign an agreement to comply with the terms and conditions of the traineeship.

§ 63.9 How may NIH terminate awards?

The Director may terminate a traineeship at any time:

(a) Upon written request of the awardee; or

(b) If it is determined that the awardee is ineligible, has materially failed to comply with the terms and conditions of the award, or to carry out the purpose for which it was made.

§ 63.10 Other HHS regulations and policies that apply.

Several other policies and regulations apply to awards under this part. These include, but are not necessarily limited to:

45 CFR part 46—Protection of human subjects

45 CFR part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)

45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—effectuation of title VI of the Civil Rights Act of 1964

45 CFR part 81—Practice and procedure for hearings under Part 80 of this title

45 CFR part 84—Nondiscrimination on the basis of handicap in programs and activities receiving Federal financial assistance

45 CFR part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

51 FR 16958 (May 7, 1986)—NIH Guidelines for Research Involving Recombinant DNA Molecules

''Public Health Service Policy on Humane Care and Use of Laboratory Animals,'' Office for Protection from Research Risks, NIH (Revised September 1986)

59 FR 14508 (March 28, 1994)—NIH Guidelines on the Inclusion of Women and Minorities as Subjects in Clinical Research

[FR Doc. 95–4637 Filed 2–24–95; 8:45 am]

BILLING CODE 4140–01–P

federal register

Monday
February 27, 1995

Part V

Department of Justice

Bureau of Prisons

28 CFR Part 524

Inmate Control at Independent Camps: Progress Reports; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 524

[BOP–1037–F]

RIN 1120–AA32

Progress Reports

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons is amending its regulations on progress reports to require that progress reports be prepared for inmates at independent camps at least once every 24 or 36 months. The purpose of this change is to streamline operations at Bureau facilities while continuing to provide appropriate program services to inmates.

EFFECTIVE DATE: February 27, 1995.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Progress Reports. A final rule on this subject was published in the Federal Register on December 3, 1990 (55 FR 49977), and was amended on February 11, 1994 (59 FR 6856).

Current policy requires that a progress report be prepared on each federal inmate at least once every 24 months, if for no other reason than to update report information. With this amendment, inmates at independent camps would be given progress reports at least once every 24 or 36 months, dependent upon institution resources. Progress reports are used to maintain current information on an inmate such as his/her institutional adjustment, program participation, and readiness for release. Inmates at independent camps have demonstrated the necessary responsibility to serve their term of incarceration in the least restrictive environment. Because inmates in this environment do not need the same level of program opportunities as inmates at higher security institutions, program opportunities at camps are more limited. Release readiness for such inmates is monitored regularly through unit team review as part of the institution's release preparation program. Consequently, the need for frequent progress reports is greatly diminished. This amendment makes no change to the provisions in § 524.41(f) which allows for preparation for any other reason. This amendment, therefore, will not negatively impact inmates at independent camps. This change will give the Bureau the flexibility to streamline operations at independent camps in accordance with staff resources.

The Bureau has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director of the Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Because these changes allow the Bureau to allocate staff resources in a more efficient manner and do not impose further restrictions on inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the Federal Register.

List of Subjects in 28 CFR Part 524

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 524 in subchapter B of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 524—CLASSIFICATION OF INMATES

1. The authority citation for 28 CFR part 524 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3521–3528, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 524.41, paragraph (e) is revised to read as follows:

§ 524.41 Types of progress reports.

* * * * *

(e) Biennial Report—except for inmates at independent camps, a progress report shall be completed on each designated inmate at least once every 24 months if not previously generated for another reason required by this section. Dependent upon institution resources, progress reports for inmates housed at independent camps shall be updated at least once every 24 or 36 months.

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[FR Doc. 95–4655 Filed 2–24–95; 8:45 am]

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Part VI

Securities and Exchange Commission

17 CFR Part 228, et al.

Prospectus Delivery, Securities Transactions Settlement; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230, 239, and 240

Release No. 33–7141; 34–35396; IC–20903
File No. S7–7–95

RIN 3235–AG40

Prospectus Delivery; Securities Transactions Settlement

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing revisions to its rules and forms and a new rule under the Securities Act of 1933 in order to implement two solutions to prospectus delivery issues arising in connection with the change to T+3 securities transaction settlement. The proposals are based on recommendations submitted by representatives of financial intermediaries. In addition, the Commission is proposing to amend an exemption from T+3 clearance and settlement for purchases and sales of securities pursuant to a firm commitment offering. Such exemption is proposed to be limited to offerings of asset-backed securities and structured securities and would provide an extended settlement time frame to firm commitment offerings under certain conditions.

DATES: Comments should be received on or before March 31, 1995.

ADDRESSES: Comment letters should refer to File Number S7–7–95 and be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 6–1, Washington, D.C. 20549. The Commission will make all comments available for public inspection and copying in its Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT: Anita Klein, Michael Mitchell or Joseph Babits, (202) 942–2900, Division of Corporation Finance; and, with regard to questions concerning the T+3 settlement proposals, Jerry W. Carpenter or Christine Sibille, (202) 942–4187, Division of Market Regulation; and, with regard to questions concerning Rule 15c2–8 proposals, Alexander Dill, (202) 942–4892, Division of Market Regulation; and, with regard to questions concerning the application of the proposal to investment companies, Kathleen Clarke, (202) 942–0721, Division of Investment Management, U.S. Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Under the Securities Act of 1933 (the ''Securities Act''),[1] a prospectus used after a registration statement has been filed must meet the disclosure requirements of Section 10 of the Securities Act.[2] The term ''prospectus'' is defined broadly to include any written communication that ''offers a security for sale or confirms the sale of any security.''[3] Because information generally contained in a confirmation typically does not satisfy the disclosure requirements of Section 10, a prospectus meeting Section 10(a) requirements must be sent or given prior to or at the same time with the confirmation.[4] In addition, the Securities Act prohibits persons from sending securities through interstate commerce ''for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements'' of Section 10(a).[5]

On October 6, 1993, the Commission adopted Rule 15c6–1 under the Securities Exchange Act of 1934 (the ''Exchange Act'')[6] to establish three business days after trade (hereinafter, ''T+3'') as the standard settlement time frame for most broker-dealer trades.[7] Rule 15c6–1 covers all securities other than exempted securities, government securities, municipal securities,[8] commercial paper, bankers' acceptances, or commercial bills. That Rule is scheduled to become effective on June 7, 1995.[9]

When Rule 15c6–1 was proposed in February 1993, it provided that public offerings of debt and equity securities would have to be settled by T+3. Commentators on the proposal raised concerns that new issues of securities[10] could not be settled by T+3 because the prospectus could not be printed prior to the trade date (the date on which the securities are priced) and therefore the prospectus printing and delivery process could not be completed within a T+3 time frame. To address those concerns, Rule 15c6–1 was modified upon adoption to provide a limited exemption from T+3 for the sale of securities for cash pursuant to firm commitment offerings registered under the Securities Act.[11] Accordingly, an underwriter can set any settlement period for such offerings. Resales of such securities, other than the sale to an initial purchaser by a broker-dealer participating in such offering, remain subject to the T+3 time frame.

Since the adoption of Rule 15c6–1, members of the brokerage community have suggested that the Commission eliminate this exemption from T+3 and ease the problems associated with prospectus delivery within T+3 by other means. The primary reasons expressed for requiring T+3 settlement of such offerings are: (i) the secondary market for a new issue may be subject to greater price fluctuations or instability, which in turn may expose underwriters, dealers and investors to disproportionate credit and market risk; and (ii) the bifurcated settlement cycle created for initial sales and resales of new issues would be disruptive to broker-dealer operations and to the clearance and settlement system. In particular, it has been noted that if a purchaser of a new issue sells on the first or second day after pricing, the purchaser's broker will not be able to settle with the buyer's broker on a T+3 schedule because the securities will not yet be available for settlement purposes. As a result, all such trades by the purchasers would ''fail'' and result in expense, inefficiencies and greater settlement risk for all participants.[12] A bifurcated settlement cycle also may require the maintenance of separate computer systems and additional internal procedures.

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

[2] 15 U.S.C. 77j. *See also* Section 5(b)(1) of the Securities Act, 15 U.S.C. § 77e(b)(1).

[3] *See* Section 2(10) of the Securities Act, 15 U.S.C. 77b(10).

[4] The Securities Act provides that ''a communication provided after the effective date of the registration statement * * * shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of'' Section 10(a) is provided. *See* Section 2(10)(a) of the Securities Act, 15 U.S.C. 77b(10)(a).

A written confirmation must be sent to a purchaser prior to settlement pursuant to Rule 10b–10 under the Securities Exchange Act of 1934, 17 CFR 240.10b–10.

[5] *See* Section 5(b)(2) of the Securities Act, 15 U.S.C. 77e(b)(2).

[6] 15 U.S.C. 78a *et seq.*

[7] 17 CFR 240.15c6–1. *See* Exchange Act Release No. 33023 (Oct. 6, 1993) [58 FR 52891].

[8] The Commission has published notice of a proposed rule change of the Municipal Securities Rulemaking Board that will require transactions in municipal securities to settle by T+3. Exchange Act Release No. 34541 (Aug. 17, 1994) [59 FR 43603].

[9] The effective date was changed from June 1, 1995 to June 7, 1995 in Exchange Act Release No. 34952 (Nov. 9, 1994) [59 FR 59137].

[10] The term ''new issues'' is used herein to refer to both initial public offerings by issuers and offerings of additional securities by reporting companies.

[11] Rule 15c6–1 also contains a specific exemption for sales of unlisted limited partnership interests.

[12] A system for when-issued trading could be developed to help alleviate such failed transactions, but commentators have suggested that when-issued trading would not be a solution since, among other reasons, many institutional customers are unable to engage in when-issued trading. *See* letter from Joseph McLaughlin, *infra* footnote 15.

According to the brokerage community, the primary reason that settlement within T+3 currently is not feasible for many new issues is the amount of time it takes to print and deliver prospectuses. Some of these timing difficulties can be expected to be alleviated as markets increasingly rely on electronic delivery of materials. In recognition of that development, the Commission staff has recently issued an interpretive letter to facilitate the use of electronic transmission to satisfy prospectus delivery requirements.[13] Until the markets create systems that make electronic delivery the method of choice, and most investors have the means to accept electronic delivery, however, the Commission must address delivery of prospectuses in paper form.[14]

While multiple recommendations have been made that the Commission eliminate the existing T+3 exemption and facilitate the prospectus delivery process, members of the brokerage community are not in unanimity as to how the prospectus delivery process could best be expedited. Two proposals by members of the brokerage community have been presented for Commission consideration.[15] Those proposals recommend markedly different solutions to accomplishing prospectus delivery in a T+3 time frame.[16]

The approaches reflected in the two proposals are not mutually exclusive methods of expediting prospectus delivery. The Commission therefore is proposing amendments to its rules that would accomplish both proposals. Comment is sought regarding which alternative should be implemented or whether the Commission should implement both proposals and thereby allow market participants a choice as to which approach to use in any given offering. Alternatively, would some other combination of the proposals best expedite prospectus delivery? Comment also is solicited with respect to whether there is a need for any Commission action with respect to prospectus delivery to accommodate T+3 clearance and settlement.

II. The Prospectus Delivery Proposals

A. The Four Firms Proposal and Related Commission Proposals

The first proposal to facilitate T+3 settlement was made by a group of four firms: CS First Boston Corporation, Goldman, Sachs & Co., Lehman Brothers Inc. and Morgan Stanley & Co. Incorporated (hereinafter, the ''Four Firms Proposal''). The Four Firms Proposal is premised on the view that the process of preparation and delivery of prospectuses in new issues can be accelerated sufficiently to comply with T+3 if six steps are taken by the Commission. According to the proponents, these steps would modify the registration process in ways that would facilitate the printing of a significant portion of the final prospectus prior to pricing, and therefore accommodate compliance with T+3. Certain aspects of the Four Firms Proposal also are proposed to apply to offerings of investment company shares. Comment is requested on whether some or all of those aspects of the Four Firms Proposal should apply to investment companies.

1. Re-ordering of Prospectuses

The Four Firms Proposal first suggests that the contents of prospectuses could be re-ordered so that all portions likely to be subject to change at the time of pricing are placed together at the front. The Four Firms Proposal indicates that this change would expedite printing of the prospectus because the bulk of it is unlikely to change as a result of pricing and, therefore, could be printed in advance of pricing.

In practice, prospectus information has been organized roughly in the order in which the Commission forms set forth the required items of disclosure. While information contained in a prospectus need not follow the order of the items in the form,[17] some Commission rules currently require that certain information is to be included in a specified part of the prospectus, or in a specified order.[18]

Under the proposal, the Commission would not raise objections if a prospectus is re-ordered to place the sections likely to change at the front in order to expedite the printing process,[19] provided that the cover pages of the prospectus continue to contain the information currently specified by Commission rules.[20] In addition, any

[13] *See* Brown & Wood (Feb. 17, 1995). An earlier no-action letter granted relief in connection with the use of electronic means to transmit confirmations. *See* Thomson Financial Services, Inc. (Oct. 8, 1993).

[14] The Division of Corporation Finance staff, in addition to issuing the Brown & Wood letter, is considering generally delivery under the Securities Act of prospectuses through other non-paper media (*e.g.*, audiotapes, videotapes, facsimile, directed electronic mail, and CD ROMs). The staff anticipates submitting to the Commission in the near future recommendations intended both to facilitate compliance with the Securities Act's prospectus delivery requirements and to encourage continued technological developments of non-paper delivery media.

[15] *See* letter from Robin Shelby, CS First Boston Corporation; Goldman Sachs & Co.; Steven Barkenfield, Lehman Brothers Inc.; and John Ander, Morgan Stanley & Co. Inc. to Anita Klein, Securities and Exchange Commission, dated Jan. 24, 1995 and letter from Goldman Sachs to Anita Klein, Securities and Exchange Commission, dated Feb. 3, 1995. *See also* letter from Joseph McLaughlin, Brown & Wood, on behalf of the Securities Industry Association, to Anita Klein, Securities and Exchange Commission, dated Feb. 1, 1995. Copies of these proposals are available for inspection and duplication at the Commission's Public Reference Room, 450 Fifth St. NW, Washington, D.C. 20549, File Number S7–7–95.

[16] Today's proposal is not the first time the Commission has addressed concerns that the settlement schedule is difficult to meet in connection with firm commitment offerings of securities for cash. In 1987, the Commission issued a release, in response to industry requests, making alternative proposals to expedite the prospectus delivery process. *See* Securities Act Release No. 6727 (July 31, 1987) [52 FR 29206]. Those proposals engendered opposition from commentators and were not adopted by the Commission.

[17] *See* Rule 421(a) under the Securities Act, 17 CFR 230.421(a). Rule 421(a) does require that information in a prospectus be set forth in a fashion so as not to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading.

[18] Rules specifying information required on the cover pages of the prospectus are: (i) Item 501(c) of Regulation S–K, 17 CFR 229.501(c) (information that must be contained on the outside front cover page of the prospectus); and (ii) Item 502 of Regulation S–K, 17 CFR 229.502 (information that must be contained on the inside front cover page and the outside back cover page). *See also* Item 501 and Item 502 of Regulation S–B, 17 CFR 228.501 and 228.502.

Rules specifying information required in the forepart of the prospectus are: (i) Item 503(b) of Regulation S–K, 17 CFR 229.503(b) (mailing address and telephone number of the registrant's executive offices); and (ii) Item 503(c) of Regulation S–K, 17 CFR 229.503(c) (a discussion of the principal risk factors related to the offering). *See also* Item 503(b) and Item 503(c) of Regulation S–B, 17 CFR 228.503(b) and 228.503(c).

Other rules, certain Securities Act Industry Guides, and a Commission release, which are applicable only to limited categories of transactions, specify location or order of prospectus information: (i) Items 903(a) and 904(a) of Regulation S–K, 17 CFR 229.903(a) and 229.904(a) specify, respectively, that a summary of a roll-up transaction be included in the forepart of the disclosure document and that, immediately following the summary, a reasonably detailed description of each material risk and effect of the roll-up transaction be included; (ii) Securities Act Industry Guide 4, 17 CFR 229.801(d), for oil and gas programs, specifies that disclosure throughout the prospectus should appear in the sequence indicated; (iii) Securities Act Industry Guide 5, 17 CFR 229.801(e), relating to interests in real estate limited partnerships, specifies that suitability standards, if any, to be utilized by the registrant should be described immediately following the cover page; (iv) Securities Act Release No. 6900 (June 17, 1991) [56 FR 28979], relating to limited partnerships, requires that the forepart of the prospectus begin with a cover page, a table of contents, a summary, disclosure of risk factors and suitability standards, and requires that a glossary be located in the back of the prospectus.

[19] Of course, the information set forth in the prospectus must nevertheless be presented in a clear, concise and understandable fashion, as required by Rule 421(b) under the Securities Act, 17 CFR 230.421(b). *See also* Rule 421(a), *supra* footnote 17.

[20] *But see* proposed revision to Item 502(f) of Regulation S–K, 17 CFR 229.502(f).

summary section, which logically can appear only near the front of the prospectus, and the discussion of risk factors must remain in the forepart of the prospectus, although those sections may immediately follow a ''pricing information'' section which would include disclosure likely to be subject to change at pricing, such as: use of proceeds, the plan of distribution and capitalization.[21] Accordingly, certain Commission rules that specify the location of other information in the forepart of the prospectus, or in a specified order within the prospectus, are proposed to be eliminated.[22] No revision to the remaining order and location rules, which relate to specific and limited classes of transactions, are proposed at this time.[23] Comment is requested as to whether the Commission should require that the summary and risk factors disclosure immediately follow the cover page of the prospectus. In addition, should other rules that would continue to specify order or location also be revised to accommodate expedited printing of prospectuses?

2. Extension of Pricing Period

Under Rule 430A under the Securities Act,[24] if a prospectus supplement containing pricing and other information omitted from a registration statement is not filed by the later of five business days after the effective date of the registration statement or any post-effective amendment thereto, the information omitted must be filed in a post-effective amendment rather than under Rule 424(b). Unlike a filing under Rule 424(b), a post-effective amendment must be declared effective prior to any sale of the securities. The second modification suggested by the Four Firms Proposal is a revision to Rule 430A to extend, from five business days to ten business days, the period during which an offering in reliance on that rule may be priced and a supplement filed. According to the Four Firms Proposal, issuers delay the time at which they seek to have registration statements effective, and therefore printing of the prospectus, because they have only five days thereafter in which to price and file the required pricing supplement. By extending the time in which to file the pricing supplement, the Commission would encourage issuers to have their filings become effective earlier, and consequently start the printing earlier.

The principal purpose of the five business day limitation was to ensure that delays in pricing securities under Rule 430A would not permit delayed offerings to be made by persons that do not meet the criteria for use of shelf registration.[25] An extension of the five-day period would not appear to defeat the purpose of that limitation. The Commission therefore proposes to extend the period during which the pricing supplement may be filed from five business days to ten business days after the effective date of the registration statement. Comment is requested as to whether any problems could arise from the extension, and whether such extension would in fact encourage earlier printing of all or a portion of the prospectus. Comment also is requested as to whether a longer period, such as 15, 25 or 30 business days, would provide additional flexibility and further expedite prospectus delivery for purposes of complying with T+3.

3. Changes in Offering Size and Estimated Price Range

The Four Firms Proposal also states that delays in printing prospectuses in 430A offerings arise because a post-effective amendment must be filed if there is a material decrease in the amount of securities offered or the pricing of the securities falls outside the range estimated in the effective registration statement. Printing and sales are delayed until such amendment is declared effective. Similarly, where participants decide to increase the size of the offering, a new registration statement to register the additional securities must be filed and declared effective.[26] The Four Firms Proposal suggests that no filing with the Commission be required if the size of the offering is increased or decreased up to 20% or the price deviates from the estimated price range by up to 20%.

a. *Increases in Offering Size.* Where a registrant wishes to offer and sell more securities than were included in the registration statement at the time it became effective, the Securities Act requires that it register the additional securities.[27] The Commission understands that the determination of offering size, particularly in certain market climates, can change at the time when prospectus printing is imminent. In light of the timing difficulties presented by that situation, the Commission is proposing changes to facilitate expedited registration in a Rule 430A offering if it is done solely for the purpose of increasing an offering size by up to 20%.

Under the proposal, a short-form version of such a registration statement would be accepted.[28] Such registration would consist of: the facing page, a statement incorporating the contents of the earlier registration statement relating to the offering, all required consents and opinions, the signature page, and any information required in the new registration statement that is not in the earlier registration statement.[29] To ensure that no delay would result from Commission processing, such registration statements would be made effective automatically upon filing.[30] Such a short-form registration statement would be deemed to be a part of the earlier registration statement relating to the offering.[31]

To expedite preparation of such registration statements, the Commission also would provide that duplicated or facsimile versions of manual signatures could be included on the signature page of such registration statements, rather than the manual signatures currently required.[32] In addition, opinions and consents required in such registration statements could be incorporated by reference to the extent that the opinions

[21] *See* proposed revisions to Item 503(c) of Regulation S–K, 17 CFR 229.503(c) and Item 503(c) of Regulation S–B, 17 CFR 228.503(c).

[22] *See* proposed revisions to Item 503(b) of Regulation S–K, 17 CFR 229.503(b), Item 503(b) of Regulation S–B, 17 CFR 228.503(b) and Securities Act Industry Guide 4, 17 CFR 229.801(d).

[23] The requirements not proposed to be changed are those set forth *supra* footnote 18 other than the rules set forth *supra* footnotes 21 and 22.

[24] 17 CFR 230.430A.

[25] *See* Securities Act Release No. 6714 (May 27, 1987) [52 FR 21252].

[26] These increases are most common in the context of an initial public offering, since the lack of an existing market makes it difficult to estimate market demand and the appropriate price for such securities.

[27] *See* Section 6 of the Securities Act, 15 U.S.C. 77f, and Rule 413 under the Securities Act, 17 CFR 230.413.

[28] *See* proposed revisions to General Instructions of Forms SB–1, SB–2, S–1, S–2, S–3, S–11, F–1, F–2 and F–3.

[29] Information regarding the effect of the increase in offering size may be required in the new registration statement and would not have been contained in the earlier registration statement.

A similar short-form procedure was adopted by the Commission for registration of additional securities for employee benefit plans. *See* General Instruction E to Form S–8.

[30] *See* proposed Rule 462(b), 17 CFR 230.462(b). This registration statement would be required to be filed within two business days of the pricing of the securities registered on the earlier registration statement. While indications of interest may exceed the amount of securities registered in the earlier registration statement, no offers would be permitted prior to the filing of the registration statement with respect to the additional 20% and no sales of the additional 20% would be permitted prior to the effectiveness thereof.

[31] *See* newly proposed Rule 430A(b), 17 CFR 230.430A(b).

[32] *See* proposed revisions to Rule 402 under the Securities Act, 17 CFR 230.402. In addition, Items 601(b)(24) of Regulations S–K and S–B, 17 CFR 229.601(b)(24) and 17 CFR 228.601(b)(24), are proposed to be revised so that a power of attorney included in the earlier registration statement relating to the offering may also relate to the short-form registration statement filed to register the additional securities.

and consents contained in the earlier effective registration statement were drafted to apply to any subsequent registration statement filed solely to increase the offering up to the 20% threshold.[33] Where consents cannot be incorporated, duplicated or facsimile versions of manual signatures would be accepted in the new consents required to be filed.[34] Comment is requested with regard to whether some or all of these changes to facilitate expedited registration to increase a Rule 430A offering should be extended to all registered offerings.

The Commission also is proposing to increase registrants' flexibility with respect to the amount of securities registered in Rule 430A offerings and thereby minimize the instances in which an increase in offering size results in the need to file a new registration statement. Such offerings would be permitted to be registered by specifying only the title of the class of securities to be registered and the proposed maximum aggregate offering price in the ''Calculation of Registration Fee'' section.[35] The amount of securities to be registered and the proposed maximum offering price per unit would no longer be required to be set forth.[36]

Under the proposal, an issuer would register a specified dollar amount of a class of securities, such as $50 million of common stock, and would not be required to register more if the number of shares to be offered was increased, unless the aggregate amount of the offering would exceed the total dollar amount registered. If registrants register a dollar amount greater than what is used for the offering, Rule 429 under the Securities Act could be used to save any amount of the registration fee paid to the Commission for the remaining dollar amount. Under Rule 429, the registrant, in a new registration statement filed in the future for another offering of that class of securities, could simply indicate that part of the registration fee had been paid previously in connection with the earlier registration. Comment is requested with regard to whether the flexibility provided by specifying the dollar amount of the class of securities registered should be extended to all registered offerings.

b. *Changes in Offering Size; Deviation from Price Range.* The Commission also is proposing to address the concerns raised in the Four Firms Proposal with respect to filings resulting from a 20% decrease of the offering size or a 20% deviation from the estimated price range. Currently, a post-effective amendment is not required to be filed where there is a decrease in volume of securities offered or a price chosen that is outside the disclosed estimated price range, unless the volume decrease or price change would materially change the disclosure included in the registration statement at the time of effectiveness.[37]

The proposal would provide that a post-effective amendment need not be filed if there is a decrease in the offering size of up to 20% or a deviation in price from the estimated price range of up to 20%.[38] In addition, the proposal would provide that, where an increase of up to 20% in the offering size would not require additional securities to be registered, such an increase also would not result in the need to file a post-effective amendment.[39] Comment is requested with respect to whether lower thresholds, such as 15%, or higher thresholds, such as 25%, should be used. Commenters also should consider whether this proposal would facilitate non-Rule 430A offerings and should be extended to those offerings as well. While the proposal contemplates that no post-effective amendment need be filed, issuers would continue to be responsible for evaluating the effect of such a volume change or price deviation on the accuracy and completeness of disclosure made to investors, including disclosure regarding the use of offering proceeds, dilution and debt coverage.

4. Immediate Takedowns from a Shelf Registration

The Four Firms Proposal also requests that the Commission permit immediate takedowns after a shelf registration statement becomes effective. Immediate offerings from an effective shelf registration statement currently are permitted. At the time of effectiveness, the shelf registration statement must accurately reflect all information known. If an offering of securities is certain at the time the registration statement becomes effective, the relevant information (*e.g.,* description of securities, plan of distribution and use of proceeds) must be disclosed and the Rule 430A undertakings should be included, if the issuer wants Rule 430A pricing flexibility. Accordingly, no rule amendments are required to address this request.

5. Acceleration of Effectiveness

The Four Firms Proposal also recommends that requests to accelerate effectiveness of registration statements be accepted by fax transmission. Rule revisions are proposed to allow such transmissions.[40] The Four Firms Proposal also suggests that the Commission accept oral acceleration requests. Rule revisions also are proposed to permit oral requests for acceleration to be made, provided that a version of the registration statement filed with the Commission is accompanied by a letter indicating that the registrant and the managing underwriter may make oral requests for acceleration and that they are aware of their obligations under the Securities Act.[41] Comment is requested regarding whether oral acceleration requests present greater risks of being transmitted by persons without the authority to do so, or being transmitted without the knowledge of all participants in the offering. If so, should written requests continue to be required?

6. Four-Day Settlement Period

Finally, the Four Firms Proposal suggests that Rule 15c6–1 be amended to provide that, if the offering is priced after the close of the market, payment of funds and delivery of securities may occur not later than the fourth business day thereafter (''T+4''). When such securities are priced late in the day, it is difficult to print the final prospectus for delivery by T+3. Further, the majority of secondary trading in the securities generally does not begin until

[33] *See* Rule 411(c) under the Securities Act, 17 CFR 230.411(c), proposed Rule 439(b) under the Securities Act, 17 CFR 230.439(b), and proposed changes to General Instructions of Forms SB–1, SB–2, S–1, S–2, S–3, S–11, F–1, F–2 and F–3.

[34] *See* proposed changes to Rules 402 and 439 under the Securities Act, 17 CFR 230.402 and 230.439.

[35] *See* proposed revisions to Rule 457(o) under the Securities Act, 17 CFR 230.457(o). Such flexibility already is provided in connection with unallocated shelf registration statements.

[36] In most non-shelf offerings, such information currently is required to be included on the cover page of the registration statement. *See, e.g.,* the ''Calculation of Registration Fee'' section in Form S–1. The registrant would continue to be required in Rule 430A offerings to specify in the prospectus, however, the amount of securities offered and, where the registrant is not a reporting company, a bona fide estimate of the range of the maximum offering price.

[37] *See* Securities Act Release No. 6964 (Oct. 22, 1992) [57 FR 48970] for a discussion of the materiality standard as it applies to these changes.

[38] *See* proposed revision to Instruction to Paragraph (a) of Rule 430A, 17 CFR 230.430A. As proposed, a change or deviation beyond the 20% threshold would continue to require a post-effective amendment only if it materially changes the previous disclosure.

[39] *Id.*

[40] *See* Securities Act Rule 461(a), 17 CFR 230.461(a). The facsimile or duplicate version need not be followed by transmission of the manually signed version to the Commission.

[41] *See* Securities Act Rule 461(a), 17 CFR 230.461(a). The liability of persons who sign the registration statement, the underwriters and others under Section 11(a) of the Securities Act, 15 U.S.C. § 77k(a), is based upon the registration statement at the time it becomes effective.

the opening of the market on the next business day. Thus, for these offerings there is less concern about an increase in failed transactions from secondary market trading or the need for special systems to accommodate two days of when-issued trading in order to effect delivery of securities in secondary market trades. The Four Firms are of the view that only minor systems modifications would be needed to accommodate a T+4 cycle, so the concerns previously expressed by the industry about the costs of maintaining systems for T+3 for all purposes except firm commitment offerings is reduced substantially.

The Commission is proposing to revise Rule 15c6–1 to establish T+4 as the standard settlement cycle for sales in connection with firm commitment offerings priced after the market closed and invites comment as to whether such a T+4 settlement period is workable. Specifically, would this period create confusion in the marketplace?

Some industry participants may believe that a T+4 requirement for firm commitment offerings is not sufficiently flexible. As an alternative, the Commission is publishing for comment a provision that would permit the settlement cycle for a firm commitment offering to be set for any period equal to or less than T+5.[42] Rule 15c6–1(a) contains an override provision that permits the parties to a contract to establish an alternate settlement time frame if expressly agreed to at the time of the transaction. In the release adopting the Rule 15c6–1, the Commission stated that this provision was not intended to permit broker-dealers to specify before execution of specific trades that a group of trades will settle in a time frame other than T+3.

If a situation occurs that requires more time for settlement of a firm commitment offering, it may be onerous for every broker-dealer in the offering to expressly set an alternate time frame for each individual trade. The Commission invites comment as to whether it would be appropriate to expand the override provision to allow the managing underwriter to establish T+3, T+4, or T+5 as the settlement time frame for the entire offering.[43] The underwriter would be required to provide notice of its intent to set an alternate time frame by sending written notice to prospective purchasers on or before the date the securities are priced and by providing notice of the alternate time frame to an exchange where the securities are listed or a registered securities association through which quotations are disseminated. Additionally, broker-dealers participating in the offering would retain their ability to use the specific trade override provision. Commenters are requested to provide comments on the benefits and drawbacks to this approach, including whether such an amendment would create uncertainty in the marketplace.

What are the relative benefits and drawbacks of the proposal establishing T+4 as the standard settlement cycle for offerings priced after the close of the market and the proposal giving underwriters the ability to select an alternate trade date? Would adoption of the first proposal make it unnecessary to adopt the second proposal? Should T+3 or T+4 be the standard for offerings that are priced after the close of the market?

B. The SIA Proposal and Related Commission Proposals

In the other proposal received by the Commission, the Securities Industry Association has recommended that the Commission adopt a rule allowing prospectus information to be delivered without the use of the traditional final prospectus (hereinafter, the ''SIA Proposal''). Where short-form registration[44] is not used, the SIA Proposal would provide that all required prospectus information be delivered to investors in the preliminary prospectus traditionally disseminated and, if necessary, a supplementing memorandum.[45] This supplementing memorandum would either set forth or summarize: (i) previously undisclosed information describing the registered securities (other than certain price-related information contained in the confirmation);[46] and (ii) previously undisclosed actual or anticipated changes between the preliminary prospectus circulated to investors and the final prospectus filed with the Commission.[47]

For securities offerings that use short-form registration, the SIA Proposal contemplates different methods of delivery depending upon whether or not shelf registration is used.[48] For shelf offerings, the SIA Proposal would require delivery of the base prospectus[49] contained in the registration statement at the time it is declared effective and an abbreviated supplementing memorandum.[50] The abbreviated supplementing memorandum in that case would set forth or summarize only a description of the material changes in the registrant's affairs pursuant to Item 11 of Form S–3 or Form F–3 (''Item 11 information'') that have not been disclosed in its Exchange Act reports. For non-shelf offerings using short-form registration, the SIA Proposal would require delivery of only an abbreviated supplementing memorandum describing Item 11 information. A preliminary prospectus would be delivered only at the issuer's discretion. Supplementing memoranda and abbreviated supplementing memoranda used under the SIA Proposal would be required to be filed with the Commission within two business days after first being sent to investors.

The Commission's proposal varies from the rule proposed by the SIA. Like the SIA Proposal, however, proposed Rule 434 under the Securities Act[51] would permit issuers to convey prospectus information in more than one document and allow such documents to be delivered to investors at separate intervals and in varying manners.[52]

The rule would provide that, in the aggregate, all required information be disclosed to investors on a timely basis

[42] *See* proposed Rule 15c6–1(e), 17 CFR 240.15c6–1(e).

[43] This provision will be available for firm commitment offerings subject to a T+3 settlement time frame under paragraph (a) of Rule 15c6–1, 17 CFR 240.15c6–1(a), and for firm commitment offerings subject to a T+4 settlement time frame under paragraph (d) of Rule 15c6–1, 17 CFR 240.15c6–1(d).

[44] Short-form registration is used herein to refer to registration on Commission Forms S–3 or F–3.

[45] ''Preliminary prospectus'' is used herein to refer to either a preliminary prospectus used in reliance on Rule 430, 17 CFR 230.430, or a prospectus filed in accordance with Rule 430A(a), 17 CFR 230.430A(a), which omits specified price-related information.

[46] This price-related information may be omitted from the registration statement at the time it is declared effective pursuant to Rule 430A under the Securities Act. The description of securities would be made in accordance with Item 202 of Regulation S–K, 17 CFR 229.202, or be a summary of such information.

[47] The final prospectus filed with the Commission would be the prospectus contained in the registration statement at the time it becomes effective, as modified subsequently by any prospectus filed pursuant to Rule 424(b), 17 CFR 230.424(b).

[48] ''Shelf registration'' is used herein to refer to registration of a delayed offering pursuant to Rule 415(a)(1)(x) under the Securities Act, 17 CFR 230.415(a)(1)(x).

[49] ''Base prospectus'' is used herein to refer to a prospectus contained in a registration statement at the time of effectiveness that omits information that is not yet known concerning a delayed offering pursuant to Rule 415(a)(1)(x), 17 CFR 230.415(a)(1)(x).

[50] For medium-term note programs, however, any program supplement also would be delivered under the SIA proposal.

[51] 17 CFR 230.434.

[52] The Commission provided analogous treatment with respect to prospectus delivery in connection with employee benefit plans when it adopted revisions to Form S–8 in 1990. See Securities Act Release No. 6867 (June 13, 1990) [55 FR 23909].

(*i.e.*, prior to or at the same time as a confirmation is sent). Reliance upon this rule would allow participants in a firm commitment underwritten offering of securities for cash (hereinafter, an ''eligible offering'') to forego last-minute mass printing, shipping and mailing of a traditional final prospectus, which is generally undertaken only after pricing of the offering. The proposed rule sets forth two methods for delivering prospectus information: one that is available for eligible offerings not using shelf registration, and one that is available for eligible offerings using short-form registration.

1. *Prospectus Delivery Method for Offerings Not Made Using Short-Form Registration*

In all eligible offerings not made using short-form registration, persons could comply with their prospectus delivery obligations by delivering a preliminary prospectus, a confirmation and, as needed, a supplementing memorandum. A supplementing memorandum would be required to be delivered only if information material to investors with respect to the offering is not disclosed in the preliminary prospectus or the confirmation. This method of delivery differs from traditional prospectus delivery primarily in that it is accomplished in more than one document. Investors would be delivered information comparable to that which is currently required to be delivered.

a. *Rule 430A Offerings.* In Rule 430A offerings, a preliminary prospectus omitting the price-related information specified in the rule would be delivered in addition to a supplementing memorandum that contains such price-related information (to the extent not contained in the confirmation). The supplementing memorandum also would contain any other necessary material disclosure missing from the preliminary prospectus. Together, the preliminary prospectus and the supplementing memorandum would contain information comparable to the traditional final prospectus.[53]

b. *Offerings Not Made in Reliance on Rule 430A.* In offerings not proceeding under Rule 430A, a preliminary prospectus containing price-related information alone could be delivered to investors. Unlike in Rule 430A offerings, the price-related information could be included in the preliminary prospectus. If such information is included in the preliminary prospectus, a supplementing memorandum would not have to be delivered unless material changes or material additions to the information in the preliminary prospectus must be disclosed. In all cases, the preliminary prospectus and any supplementing memorandum, together, would contain information comparable to the traditional final prospectus, which currently reflects the information set forth in the registration statement at the time it goes effective.

c. *Use of Incremental Disclosure.* As the SIA Proposal notes, the use of a preliminary prospectus and a separate supplementing memorandum may not be feasible in all offerings. Whether the latter document, which is anticipated to be brief, can convey clearly the missing or changed information will depend upon the nature and magnitude of the disclosure differences between the preliminary prospectus and the prospectus contained in the effective registration statement (as modified by post-effective amendments). In some cases, the disclosure that would have to be contained in the supplementing memorandum may not be able to be described in isolation from other disclosure in the preliminary prospectus. Where disclosure in many parts of the preliminary prospectus has changed, participants may find the option of preparing a supplementing memorandum is not of great benefit.

Comment is requested as to whether the proposal should be limited either with respect to the amount of time that could elapse between delivery of the preliminary prospectus and the supplementing memorandum, or with respect to the magnitude of changes that a supplementing memorandum could contain. If the latter, how would the acceptable magnitude be defined?

d. *Filing and Review of Registration Statements.* Although the method of delivering prospectus information would change under the proposed rule, neither the process of filing registration statements and amendments thereto, nor the Commission's registration statement review process, would be altered.[54] The proposed rule would require that the preliminary prospectus and the supplementing memorandum, taken together, not materially differ from the disclosure filed with the Commission in connection with the registration statement.[55] This provision would preserve the integrity of the Commission's review process and ensure that the delivered prospectus disclosure is comparable to that contained in the registration statement.

Under the proposed rule, a supplementing memorandum would be filed with the Commission pursuant to Rule 424(b)(1) under the Securities Act within two business days after the earlier of pricing and first use. Thus, the Commission staff generally would not review supplementing memoranda prior to use.[56] Comment is requested as to whether the proposal should require that the supplementing memorandum be filed prior to use and, therefore, be subject to staff review.

e. *Comparison With SIA Proposal.* The proposed method of prospectus delivery applicable to non-short form offerings departs from the SIA Proposal in one significant respect. While the SIA Proposal contemplates that a supplementing memorandum could summarize previously undisclosed information, the proposed rule would require full disclosure of material changes or material additions. Comment is requested regarding whether a summary version of material information should be permitted under the proposed rule.

2. *Prospectus Delivery Method for Offerings Using Short-Form Registration*

As in the case of non-short-form offerings, the proposed delivery method for offerings using short-form registration would allow the disclosure to be contained in more than one document delivered at different times. In addition, delivery would have to occur prior to or with a confirmation. Unlike the proposed delivery method for other offerings, however, the proposal for offerings using short-form registration relies upon delivery of certain prospectus information by publication with the Commission.

Currently, in recognition of the market following that exists for issuers

[53] The traditional final prospectus currently reflects the information set forth in the registration statement at the time of effectiveness, any post-effective amendment and the pricing supplement. Post-effective amendments, however, are unlikely to be filed unless the pricing date exceeds the five business day limitation allowing for use of a pricing supplement.

[54] Thus, investors that wish to acquire a traditional final prospectus would have access to one through the Commission, where the issuer would continue to file all required prospectus disclosure in the traditional, integrated format. Comment is requested as to whether access to a final prospectus in traditional, integrated format should be ensured other than through the Commission's facilities, such as through the issuer or underwriter(s)' facilities. *See also* proposed Rule 434(c)(4), 17 CFR 230.434(c)(4), with regard to short-form registrants.

[55] The delivered documents could not materially differ from the prospectus disclosure in the registration statement at the effective date, in any post-effective amendment thereto and in the pricing supplement.

[56] As under the current practice, the staff will continue to consider whether recirculation of a prospectus is needed when there are material changes in disclosure arising after the prospectus subject to completion has been given to investors. *See* Rules 460 and 461(b) of Regulation S–K, 17 CFR 230.460 and 230.461(b).

using short-form registration, physical delivery of most issuer-specific information is not required for offerings by such persons.[57] Instead, such information is incorporated by reference into the prospectus from the issuer's Exchange Act reports. Delivery of such information is therefore accomplished by publication of such information through filing with the Commission. Thus, the traditional final prospectus that is physically delivered by short-form issuers contains primarily ''offering-specific'' information as to which the efficient market theory generally has not been applied, including a description of: the terms of the securities offered, risk factors specific to the registered transaction, the intended use of offering proceeds, and the plan of distribution for the securities. The balance between information physically delivered to investors and information published would be altered by the proposed rule.

a. *Short-Form, Non-Shelf Registration.* The proposed rule would permit participants in non-shelf offerings using short-form registration to comply with their delivery obligations by distributing a preliminary prospectus and an abbreviated supplementing memorandum. The abbreviated supplementing memorandum would be required to contain: (i) a fair and accurate summary of the description of securities;[58] and (ii) Item 11 information, to the extent not disclosed in the preliminary prospectus or the registrant's Exchange Act reports.[59]

Under the proposed rule, it is likely that the preliminary prospectus would contain the bulk of offering-specific disclosure that would have been physically delivered in a traditional final prospectus.[60] Thus, offering-specific information physically delivered would continue to surpass offering-specific information published in those offerings. Where Rule 430A is relied upon, certain price-related information that may be excluded at effectiveness also would not be in the preliminary prospectus. Such information generally would not be included in the abbreviated supplementing memorandum, but it would be on file with the Commission prior to the time confirmations are sent. The price itself will be set forth in the confirmation.

b. *Short-Form Delayed Shelf Registration.* The proposed rule would permit participants in delayed shelf offerings using short-form registration to comply with their delivery obligations by distributing a base prospectus and an abbreviated supplementing memorandum. As in the case of non-shelf offerings, the abbreviated supplementing memorandum would be required to contain: (i) a fair and accurate summary of the description of securities; and (ii) Item 11 information, to the extent not disclosed in the base prospectus or the registrant's Exchange Act reports.[61]

Traditionally, the final prospectus delivered to investors in delayed shelf offerings would include information set forth in both the base prospectus and a prospectus supplement.[62] Information in the prospectus supplement would no longer be delivered physically to investors, except to the extent it is disclosed pursuant to the abbreviated supplementing memorandum. For example, use of proceeds, syndicate and plan of distribution information and a full description of securities need not be included in the abbreviated supplementing memorandum. The proposal would require, however, that the prospectus supplement in such offerings be filed with the Commission by the time any confirmation is sent or given to investors.[63] In addition, such prospectus supplement would be deemed a part of the registration statement upon filing with the Commission.

As proposed, Rule 434 would not apply to offerings pursuant to the Commission's shelf registration rules other than delayed shelf offerings made by persons using short-form registration.[64] It appears that other types of shelf offerings would not be contemplated within the parameters of firm commitment underwritten offerings for cash. Comment is requested, however, with respect to whether any other type of shelf offerings, including secondary offerings,[65] could take place in connection with a firm commitment underwritten offering for cash. If so, should the proposed rule be extended to such offerings?

c. *Variations from the SIA Proposal.* Under the SIA Proposal, in the case of short-form delayed shelf offerings, publication of prospectus information would only occur after the time confirmations had been sent, since the prospectus supplement would not be required to be filed with the Commission until two business days after the earlier of pricing or first use. The proposed rule does not incorporate this aspect of the SIA Proposal because delaying the availability of disclosure to a time after delivery of the confirmation appears inconsistent with Sections 5(b) and 2(10)(a) of the Securities Act and may not be particularly useful to investors.

For non-shelf offerings using short-form registration, the proposed rule also diverges from the SIA Proposal in that it would require delivery of a preliminary prospectus, rather than just an abbreviated supplementing memorandum. Under the SIA Proposal, the abbreviated supplementing memorandum would include only a summary of Item 11 information. Thus, the SIA Proposal essentially would not require physical delivery of offering-specific information. The proposed rule would require physical delivery of certain offering-specific disclosure.

Comment is requested with respect to whether the proposed rule strikes the

[57] To be eligible to use short-form registration for a primary offering, an issuer must have a public float of $75 million and must have been reporting with the Commission for one year. *See* General Instructions I.A.3. and I.B.1. to Form S–3 and General Instructions I.A.1. and I.B.1. to Form F–3.

[58] This disclosure would be a fair and accurate summary of that which is required under Item 202 of Regulation S–K, 17 CFR 229.202.

[59] The abbreviated supplementing memorandum would be required to be filed with the Commission pursuant to Rule 424(b)(1) under the Securities Act, 17 CFR 230.424(b)(1) (or, if the disclosure represents a fundamental change in the information contained in the registration statement, in a post-effective amendment declared effective prior to the time a confirmation is sent or given). Pursuant to Rule 430A, the abbreviated supplementing memorandum would be deemed to be a part of the registration statement at the time it became effective.

[60] The information currently required to be physically delivered in a short-form final prospectus would consist of disclosure required by Items 501–510 and 202 of Regulation S–K, 17 CFR 229.502–229.510 and 229.202, as well as Item 11 information.

Section 5(b)(1) of the Securities Act, 15 U.S.C. § 77e(b)(1), prohibits transmission of any prospectus relating to any security with respect to which a registration statement has been filed unless the prospectus meets the requirements of Section 10 of the Securities Act, 15 U.S.C. 77j.

[61] As proposed, an abbreviated supplementing memorandum would be filed with the Commission in accordance with Rule 424(b)(1), 17 CFR 230.424(b)(1), and would be deemed a part of the registration statement pursuant to Rule 430A. If the disclosure represents a fundamental change in the information contained in the registration statement, however, a post-effective amendment rather than a filing pursuant to Rule 424(b)(1) would be required. *See* proposed Rule 434(c)(3), 17 CFR 230.434(c)(3).

[62] The base prospectus omits information that is not yet known with respect to the terms of a specific securities offering. The omitted information is included in the prospectus supplement filed after the effective date of the registration statement. The base prospectus and prospectus supplement, which are physically delivered together, comprise the final prospectus.

[63] *See* proposed Rule 424(e), 17 CFR 230.424(e). Prospectus supplements for shelf offerings generally are required to be filed with the Commission two or more business days after the earlier of pricing or first use. *See* Rule 424(b)(2), 17 CFR 230.424(b)(2).

[64] *See* proposed Rule 434(b) and (c), 17 CFR 230.434(b) and (c).

[65] These offerings are described in Rule 415(a)(1)(i) under the Securities Act, 17 CFR 230.415(a)(1)(i).

appropriate balance between physical delivery of prospectus information and publication by filing. Should the full description of securities required by Item 202 of Regulation S–K be required to be physically delivered? If so, would such description cause the abbreviated supplementing memorandum to become so lengthy that the timing difficulties associated with prospectus delivery would not be surmounted? Should the proposed rule require physical delivery of other offering-specific information, such as disclosure of risk factors?

Offerings registered through short-form registration currently proceed frequently with delivery of only a final prospectus, although a preliminary or base prospectus is prepared for filing with the Commission.[66] Those offerings could proceed under the proposed rule only if a preliminary or base prospectus is delivered. Although base prospectuses are commonly prepared well in advance of a takedown from the delayed shelf, comment is requested with respect to whether a preliminary prospectus could be prepared and delivered sufficiently in advance of pricing in such offerings to warrant adoption of the proposed rule as it relates to non-shelf offerings made in short-form registration. If not, what alternative document should be allowed to be used to convey the required information? On the other hand, commenters should address whether physical delivery of all offering-specific information should be required for offerings using short-form registration.

3. *Conforming Changes to Rule 15c2–8*

Although the delivery of a prospectus to investors in advance of the final prospectus is not required by the Securities Act, paragraph (b) of Rule 15c2–8 under the Exchange Act[67] requires broker-dealers, in the case of certain initial public offerings, to deliver a copy of the preliminary prospectus at least 48 hours prior to the mailing of the confirmation.[68] Other provisions of Rule 15c2–8 govern the furnishing of the prospectus to broker-dealers participating in the offering to ensure that they have the latest available information when they solicit investors.

The Commission is proposing amendments to Rule 15c2–8 to reflect the provisions of proposed Rule 434 and new means of disseminating confirmations and prospectuses. The proposed revisions would add new paragraph (j) that states that, for purposes of Rule 15c2–8, the terms ''preliminary prospectus'' and ''final prospectus'' include the terms ''prospectus subject to completion'' and ''Section 10(a) prospectus,'' respectively, as such terms are used in proposed Rule 434. Also, the proposals substitute the term ''sending'' for the term ''mailing.'' These proposed revisions are not intended to make substantive changes to Rule 15c2–8. Commenters are requested to provide their views on whether these proposals are appropriate in light of proposed Rule 434, and whether any other changes to Rule 15c2–8 are necessary in light of Securities Act rule revisions proposed herein.

4. *Scope of the Proposed Rule*

a. *Exchange Offers and Business Combinations; Best Efforts Offerings.* Proposed Rule 434 extends only to offerings where the sole consideration given in exchange for securities is cash. Offerings such as exchange offers and business combinations would not be included. In those offerings, the final prospectus is traditionally used to begin the process of soliciting votes or consents to a transaction. Thus, the logistical difficulties of prospectus delivery intended to be minimized by the proposal should not be associated with those offerings.

The proposed rule also does not extend to offerings that are made other than on a firm commitment basis with underwriters. The SIA Proposal would cover agency transactions in securities registered on a delayed shelf registration statement. In a firm commitment underwriting, the underwriter(s) agree to purchase the securities from the issuer for a fixed price and then resells the securities to the public, thereby assuming the risk of market fluctuations in the price of securities. According to the SIA Proposal, the prospectus delivery pressures appear to be greatest in such firm commitment offerings where the underwriter must make payment of its own funds to the issuer on a specified date, whether or not its customers have paid for the securities. In contrast, in a best efforts offering,[69] the broker-dealer is required to pay customers' funds promptly to the issuer (or to a separate bank or escrow account in the case of a contingency) upon receipt. In that case, a broker-dealer would not pay out funds that it has not received, or use its own funds to pay for securities that have not been sold.

Comment is requested as to whether there are other types of offerings with comparable timing pressures to which the proposed rule ought to be expanded. Should the proposal be extended to some or all agency transactions in delayed-shelf-registered securities? Are such transactions subject to particular timing pressures in connection with settlement that are absent in best efforts offerings? Are such transactions sold to such a large number of investors that mass printing and delivery is required?

b. *Offerings of Asset-backed Securities.* The SIA Proposal recommends including firm commitment underwritten offerings of asset-backed securities (''ABS'') within the scope of the proposed rule. The Commission, however, has determined to exclude ABS offerings from proposed Rule 434 for several reasons.[70] First, it appears that settlement in connection with ABS offerings currently takes place outside of the T+3 time frame, on approximately a T+10 cycle, and is likely to continue to do so. The existing settlement schedule is the result primarily of factors unique to these offerings, which include: (i) the distinctive structuring process for most ABS offerings; (ii) the time needed for identification of the specific pool of collateral which will support the ABS; and (iii) the necessity of assembling the prospectus (or prospectus supplement), which describes all material features of the collateral and the transaction's structure, shortly before sale of the ABS. Furthermore, concerns relating to a bifurcated settlement cycle do not appear to be a pressing problem in the ABS market.

The SIA Proposal treats ABS offerings the same as other offerings using short-form registration. Unlike other issuers using short-form registration, however, the special purpose ABS issuer is not required to have a history of filing Exchange Act reports to use such forms. In fact, these special purpose issuers typically are newly created with each securities offering. Investors in ABS offerings have recourse only to the special purpose issuer's assets as the

[66] Offerings of novel or complex securities, even when done through short-form registration, are sometimes sold through use of a preliminary prospectus.

[67] 17 CFR 240.15c2–8(b).

[68] Any person who is expected to receive a confirmation must have been sent a preliminary prospectus at least 48 hours prior to the sending of the confirmation. This requirement is satisfied by delivering a preliminary prospectus that is current at the time of its delivery.

[69] In a best efforts offering, the underwriter acts as an agent for the issuer and agrees to use its best efforts to sell the securities on behalf of the issuer.

[70] ''Asset-backed security'' is defined for purposes of this release the same way it is defined in General Instruction I.B.5. of Form S–3: a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the securityholders.

source of payment on their ABS.[71] The Commission's treatment of short-form issuers under proposed Rule 434 is predicated, in part, on the fact that significant issuer-specific information is available through Exchange Act reports. There is no equivalent source of information about the special-purpose issuer in ABS offerings.

In addition, most ABS offerings are registered as delayed offerings under the Commission's shelf registration rule. While the base prospectus includes a general description of the securities that may be offered from time to time, the terms of a specific ABS offering are included in the prospectus supplement. Such supplement details the characteristics of specific pool assets and the structure of the transaction, and is of significant length and complexity. The Commission's proposed rule would provide that only a summary of such information be physically delivered in short-form delayed shelf offerings. In the case of ABS offerings, a summary of such terms would not serve as an adequate substitute for the complete description in the prospectus supplement.

Treating ABS offerings the same as non-short-form offerings under the proposed rule, and thereby requiring use of a preliminary prospectus, also would not be appropriate. Offerings of ABS differ significantly from conventional offerings of corporate securities. The principal focus in ABS offerings is on the structure of the transaction and the nature of the collateral generating the payment streams supporting the ABS. As a particular offering evolves, a variety of structures may be considered as the sponsor attempts to meet investors' needs by adjusting the impact of, *e.g.*, prepayment rate and cash flow variables on particular classes within the structure. The process of developing a satisfactory structure typically extends almost to the time when the security is priced. Consequently, a preliminary prospectus (or, in the case of a delayed shelf offering, a preliminary prospectus supplement) is virtually never utilized.

Finally, even in the rare instance when an ABS offering may employ a preliminary prospectus, the complexity of the disclosure and the structural modifications occurring during the course of the offering do not lend themselves to incremental delivery of prospectus information. Nevertheless, comment is requested regarding whether any ABS offerings could be accomplished within the strictures of the proposed rule while maintaining the present quality of prospectus disclosure.

c. *Offerings of Structured Securities.* As in the case of asset-backed securities, the SIA Proposal would extend relief to structured securities. The Commission's proposed Rule 434, however, would exclude offerings of such securities. These securities usually have terms that are highly complex, with many employing one or more indices as a basis for determining the issuer's payment obligations (*e.g.*, coupon, principal, redemption payments). Structured securities often are designed with specific market risks in mind, as well as risks relating to the issuer. Consequently, a structured security's value is derived not only from the creditworthiness of its issuer, but also from any underlying assets, indices, interest rates or cash flow upon which the security is predicated.

The incremental distribution of information proposed under the rule, when combined with the complex nature of these securities, may result in material disclosure not being readily accessible to investors. Additionally, issuers of securities with complex terms or formulas for the calculation of payment obligations may not be able to develop a summary description (as contemplated by the rule for short-form offerings) that is an adequate substitute for the complete description presently delivered to investors. A complete description of offering-specific information is of particular importance to investors in making an investment decision, given the market risks resulting from the structure of these securities.

Comment is solicited regarding the exclusion or inclusion of these securities with respect to the proposed rule. Comment is requested as to whether the proposed incremental delivery procedure would impede an investor's ability to consider and evaluate material information about structured securities. Can structured securities be adequately summarized? Also, are there additional concerns that further warrant the exclusion of structured securities? Comment also is solicited regarding whether ''structured securities'' as used in proposed Rule 434 should be defined. If so, how should such securities be defined? For example, should such definition conform to the proposed definition in Rule 15c6–1(c)(2) discussed below?

d. *Investment Companies.* The proposed rule provides that it does not apply to the offering of any security of any company registered or required to be registered under the Investment Company Act of 1940[72] or any company that is treated as a business development company under that Act.

In making its proposal, the SIA did not specifically address the applicability to registered investment companies. The Commission understands that open-end investment company (mutual fund) initial offerings typically do not raise the prospectus delivery logistical concerns that have led to these proposals. Mutual fund shares are normally offered on a continuous basis, and a preliminary prospectus is not generally printed. Moreover, the Commission has concerns that separate delivery of a document that supplements and modifies a prospectus may be inconsistent with efforts to simplify investment company prospectuses.

Comment is requested on whether adoption of a T+3 settlement period will raise prospectus delivery concerns with respect to initial offerings of closed-end funds and unit investment trusts. Commenters favoring the application of proposed Rule 434 to investment companies should address the effects of the proposal on retail investors' ability to understand their investment in these types of companies, as well as the specific investment company-related rules that would require modification.

5. *Feasibility of the Proposal*

A number of concerns have been raised about the feasibility of the SIA Proposal for issuers and underwriters and the utility of the disclosure to investors.[73] Comment is requested with respect to each of the issues raised under the following captions.

a. *Investor Confusion and Resistance.* Investors may be obliged to read multiple documents to ascertain the required information about the transaction and securities. While prospectuses included in short-form registrations currently are not self-contained, given the incorporation by reference of issuer-specific information, would investors expect and require an integrated disclosure document for other offerings, *e.g.*, initial public offerings?

Because a supplementing memorandum could reflect additions to, or changes from, the disclosure contained in a preliminary prospectus, thereby modifying or superseding such information, would investors be confused and frustrated in attempting to determine the important and relevant information? Is this process further

[71] While the sponsor/depositor associated with the offering may be a seasoned, reporting company, the reporting history of the sponsor/depositor usually is not relevant because there is no recourse to the sponsor/depositor.

[72] 15 U.S.C. § 80a–1 *et seq.*

[73] *See* the Four Firms letter, *supra* note 15.

exacerbated when a preliminary prospectus is distributed before staff comments on the document are resolved and multiple changes to the document are reflected in the supplementing memorandum? Are concerns that investors might not be shown all changes made in response to staff comments appropriate? Is the purported function of the supplementing memorandum inconsistent with its anticipated brevity?

Investors also may be required to examine multiple documents in order to obtain price-related information. Purchasers in secondary trades may receive prospectus information that does not disclose pricing information included only in the confirmations in connection with the primary offering. Would such delivery be adequate with respect to secondary market trading transactions effected during the prospectus delivery period specified in Securities Act Section 4(3) and Rule 174 thereunder? [74]

Investors who receive a supplementing memorandum may not have retained, or may have difficulty locating, a copy of the preliminary prospectus previously sent. Does this possibility compromise the utility of this proposed method for prospectus delivery?

Is there a risk that investors who receive more than one preliminary prospectus will be unwilling to be responsible for matching related supplementing memoranda to such preliminary prospectuses? How significant are concerns relating to investor confusion from mismatches or the inability to match related documents?

Will investors require the delivery of a traditional final prospectus (even if delivered after the confirmation) for convenience of reference or for other reasons?

b. *Monitoring Delivery.* Because prospectus information would be delivered incrementally, would participants in the offering require re-delivery of the preliminary prospectus at the time any supplementing memorandum is delivered? If so, to what extent would this negate the intended benefits of the modified delivery method? Would new recordkeeping burdens be incurred in connection with recording the delivery of the prospectus where delivery is effected incrementally? Would other variables exist under this delivery scheme that would impose substantial additional monitoring and recordkeeping burdens on underwriters? In the event an issuer delivers more than one version of the preliminary prospectus, would recordkeeping regarding which investors received which versions be burdensome? Commenters also should consider whether broker-dealers will be able to comply with Rule 15c2–8 and, if not, specifically discuss why compliance would not be feasible.

c. *Third Parties' Opinions.* Would issuers' and underwriters' counsel have difficulty giving opinions as to the adequacy of disclosure in the supplementing memorandum and preliminary prospectus, particularly if the supplementing memorandum only summarizes certain changes fully set forth in the filing declared effective? Auditors also may be expected to perform additional work. The additional work required by third parties may result in higher legal and accounting costs to issuers. How likely is it that disagreements, or the time required to reach agreement, among the parties about the content of a supplementing memorandum will negate the purported benefits of the proposal?

III. Revision of the Rule 15C6–1 Exemption

Because the difficulties associated with prospectus delivery within a T+3 time frame were the principal reason for the current exemption for firm commitment offerings in Rule 15c6–1, the Commission believes that the necessity for such exemption should be reconsidered in light of the proposals to alleviate those timing difficulties. It is consistent with the purposes of Rule 15c6–1 to establish T+3 as the standard settlement cycle for firm commitment offerings. It has been estimated that approximately $20 billion in new issues may be subject to settlement risk in any given day.[75] Rule 15c6–1 was intended to reduce the credit and market risk inherent in the settlement of securities transactions. Thus, by including these trades within a T+3 settlement time frame, the goal of risk reduction will be greatly enhanced. Moreover, by revising the exemption, the Commission believes that it will provide certainty to the industry in the form of a written standard.

As discussed above in connection with the SIA Proposal, offerings of asset-backed securities raise concerns different from other offerings, and it does not appear that settlement of such offerings typically will occur within a T+3 time frame. The Commission therefore preliminarily believes that it would be appropriate to continue to exempt from T+3 settlement sales of asset-backed securities sold pursuant to a firm commitment offering.

The release adopting Rule 15c6–1 includes an interpretation with respect to the treatment of a type of asset-backed security, mortgage pass-throughs in the to-be-announced market. With respect to the purchase or sale of such securities, the Commission interprets Rule 15c6–1 to permit settlement to occur within three days after the date a specific pool of mortgages is identified as collateral for the securities for purposes of the sales agreement with the customer. The Commission invites comment as to whether a similar interpretation should be applied to all asset-backed securities. If such an interpretation is provided, is an express exemption still needed for offerings of asset-backed securities?

While it appears that offerings of structured securities [76] currently settle within a T+5 settlement cycle, it may be difficult to settle offerings of structured securities by T+3 because of the time difficulties associated with prospectus delivery. As proposed, Rule 434 would not apply to such securities. The revisions contemplated in connection with the Four Firms Proposal, however, would provide the same benefits with respect to prospectus delivery in offerings of structured securities as to other offerings. Although an exemption for offerings of structured securities may create problems in secondary market trading as described above, the Commission currently believes that it is preferable that the exemption for firm commitment offerings be continued for offerings of structured securities because of the possible difficulties of settling such instruments within a T+3 time frame. The Commission invites comment as to the feasibility of this approach. In addition, the Commission invites comment as to the proposed Rule 15c6–1 definition of structured securities. Does the definition provide sufficient guidance as to the class of securities included?

The Commission invites commenters to address the merits of the proposed Rule 15c6–1 amendments. Assuming the adoption of the proposals relating to prospectus delivery, should the exemption for firm commitment

[74] 15 U.S.C. § 77d(3); 17 CFR 230.174.

[75] *See* letter from Joseph McLaughlin, *supra* footnote 15, page 4.

[76] For purposes of Rule 15c6–1, a structured security is proposed to be defined as a security whose cash flow characteristics depend upon one or more indices or that have imbedded forwards or options or a security where an investor's investment return and the issuer's payment obligations are contingent on, or highly sensitive to, changes in the value of underlying assets, indices, interest rates or cash flows. *See* proposed Rule 15c6–1(c)(2), 17 CFR 240.15c6–1(c)(2).

offerings be modified? Comment is specifically requested on the treatment of asset-backed securities and structured securities and particularly whether any exemption from the requirements of Rule 15c6–1 is needed for offerings of such securities. Would any exemption be needed if managing underwriters are given the ability to set alternate settlement time frames as previously discussed? Further, the Commission also invites comment on whether offerings of any other classes of securities pursuant to a firm commitment underwriting may need to be exempted from the scope of Rule 15c6–1.

IV. Cost-Benefit Analysis

To evaluate fully the costs and benefits associated with the proposals, the Commission requests commenters to provide views and empirical data as to the costs and benefits associated with such proposals. The proposals are expected to benefit issuers and other participants in certain offerings by lowering the transaction costs associated with the printing and delivery of prospectuses, and by providing them additional flexibility in reacting to changes in market conditions and in clearance and settlement of trades. For example, mass printing and delivery of a supplementing memorandum or abbreviated supplementing memorandum, due to its expected brevity, would be expected to consume far less time and be less expensive for issuers to undertake than would production of a traditional final prospectus. Furthermore, the proposals are not expected to diminish investor protection; rather, investors would be expected to benefit from the proposals since offering participants would be required to settle certain underwritten offerings in T+3 as opposed to T+5.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA''), pursuant to the requirements of the Regulatory Flexibility Act,[77] regarding the proposed rule and amendments to existing regulations. The IRFA notes that the proposed rule and amendments are intended to provide entities with, and reflect the availability of, greater flexibility and efficiency with respect to the timing of printing and delivery of prospectus information, thereby facilitating compliance with Rule 15c6–1 under the Exchange Act and access to the public securities markets. As discussed more fully in the analysis, the proposed rule and amendments to Securities Act regulations are anticipated to decrease costs associated with fulfilling entities' prospectus delivery obligations under the Securities Act. The proposed amendments to Exchange Act regulations are not anticipated to have any significant economic impact on entities. The proposed rule could impose minimal additional reporting, recordkeeping or compliance requirements, while the proposed amendments would not impose any new reporting, recordkeeping or compliance requirements on any entities. No alternatives to the proposed rule and amendments consistent with their objectives and the Commission's statutory mandate were found.

It is expected that the overall effect of the proposed rule and amendments will provide entities increased efficiency in raising capital from the public securities markets. The proposal to provide for the incremental delivery of prospectus information, if adopted, would apply to any entity engaged in a public distribution with respect to an eligible offering. The proposed amendments to Securities Act regulations are intended to streamline the registration process and thereby facilitate compliance with prospectus delivery within T+3 and would apply to any entity engaged in a public offering of securities. The proposed amendments to Exchange Act regulations are intended to reflect the availability of expedited delivery of prospectus information provided by the proposed new rule and amendments to the Securities Act regulations.

Commenters are encouraged to comment on any aspect of the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed rule and amendments are adopted. A copy of the IRFA may be obtained from Michael Mitchell, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 3–3, Washington, DC 20549, (202) 942–2900.

VI. General Request for Comments

Any interested person wishing to submit written comments on any aspect of the proposed rule and amendments to the rules and forms, as well as on other matters that might have an impact on the proposals contained herein, is requested to do so. In addition, the Commission requests comment on whether any further changes to the rules and forms are necessary or appropriate to facilitate T+3 at this time. Comment is requested specifically from investors, broker-dealers, underwriters, issuers, analysts and other persons that rely on the information provided in the prospectus supplement. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and should refer to file number S7–7–95.

VII. Statutory Bases

The proposed rule and the amendments to the Commission's rules and forms under the Securities Act are being proposed pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933, as amended. The proposed revisions to the Commission's rules under the Exchange Act are being proposed pursuant to sections 3, 10, 12, 15 and 23 of the Securities Exchange Act of 1934, as amended.

List of Subjects in 17 CFR Parts 228, 229, 230, 239, and 240

Brokers, Investment companies, Reporting and recordkeeping requirements, Securities, Small businesses.

Text of Proposed Amendments

In accordance with the foregoing, Title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By revising paragraph (b) and paragraph (c) of § 228.503 to read as follows:

§ 228.503 (Item 503) Summary Information and Risk Factors.

* * * * *

(b) *Address and telephone number.* Include in the prospectus the complete mailing address and telephone number of the small business issuer's principal executive offices.

(c) *Risk factors.* Small business issuers discuss, on the page immediately following the cover page of the prospectus (or following the summary, if included), or on the page immediately following a section containing pricing information where such section immediately follows the cover page (or following the summary, if included), any factors that make the offering speculative or risky. These

[77] 5 U.S.C. 603 (1988).

factors may include no operating history, no recent profit from operations, poor financial position, the kind of business in which the small business issuer is engaged or proposes to engage, or no market for the small business issuer's securities.

Instruction to Item 503(c). ''Pricing information'' as used in paragraph (c) includes disclosure required by Items 504 and 508 of Regulation S–B (§ 228.504 and § 228.508) and information regarding the small business issuer's capitalization.

3. By amending § 228.601 to revise the third sentence of paragraph (b)(24) to read as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(24) *Power of attorney.* * * * A power of attorney that is filed with the Commission shall relate to a specific filing, an amendment thereto, or a related registration statement that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act (§ 230.462(b) of this chapter). * * *

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

4. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

5. By revising the last sentence of the introductory text of paragraph (f) of § 229.502 to read as follows:

§ 229.502 (Item 502) Inside front and outside back cover pages of prospectus.

* * * * *

(f) * * * Such disclosure need not be included on the inside front cover page of the prospectus, if it is included, under appropriate caption, elsewhere in the prospectus.

* * * * *

6. By revising paragraph (b) and paragraph (c) of § 229.503 to read as follows:

§ 229.503 (Item 503) Summary information, risk factors and ratio of earnings to fixed charges.

* * * * *

(b) *Address and telephone number.* Registrants shall include in the prospectus the complete mailing address, including zip code, and the telephone number, including area code, of their principal executive offices.

(c) *Risk factors.* Registrants, where appropriate, shall set forth, on the page immediately following the cover page of the prospectus (or following the summary, if included), or on the page immediately following a section containing pricing information where such section immediately follows the cover page (or following the summary, if included), under an appropriate caption, a discussion of the principal factors that make the offering speculative or one of high risk; these factors may be due, among other things, to such matters as an absence of an operating history of the registrant, an absence of profitable operations in recent periods, the financial position of the registrant, the nature of the business in which the registrant is engaged or proposes to engage, or, if common equity or securities convertible into or exercisable for common equity are being offered, the absence of a previous market for the registrant's common equity.

Instruction to Item 503(c). ''Pricing information'' as used in paragraph (c) includes disclosure required by Items 504 and 508 of Regulation S–K (§ 229.504 and § 229.508) and information regarding the registrant's capitalization.

* * * * *

7. By amending § 229.601 to revise the fourth sentence of paragraph (b)(24) to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(24) *Power of attorney.* * * * A power of attorney that is filed with the Commission shall relate to a specific filing, an amendment thereto, or a related registration statement that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act (§ 230.462(b) of this chapter). * * *

* * * * *

8. Guide 4 (referenced in § 229.801(d)) is amended by removing the first sentence of the Guide.

Note: The text of Guide 4 does not and the amendments will not appear in the Code of Federal Regulations.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

9. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78*o*, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

10. By amending § 230.402(a) to add a sentence between the fourth and fifth sentences to read as follows:

§ 230.402 Number of copies; binding; signatures.

(a) * * * Registration statements filed pursuant to Rule 462(b) under the Act (§ 230.462(b)), however, may include duplicated or facsimile versions of manual signatures of persons required to sign, and such signatures shall be considered manual signatures for purposes of the Act and rules and regulations thereunder. * * *

* * * * *

11. By amending § 230.424 by redesignating paragraphs (e) and (f), respectively, as paragraphs (f) and (g) and by adding paragraph (e) to read as follows:

§ 230.424 Filing of prospectuses; number of copies.

* * * * *

(e) Ten copies of each form of prospectus which, but for the application of Rule 434 under the Act (§ 230.434) would be filed pursuant to paragraphs (b)(2) or (b)(5) of this section, shall be filed pursuant to this paragraph with the Commission on or prior to the date on which a confirmation is sent or given.

* * * * *

12. By amending § 230.430A by removing the word ''five'' and adding, in each place it appears, the word ''ten'' in paragraph (a)(3); by adding a sentence at the end of Instruction to paragraph (a); by redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f) and by adding paragraph (c) to read as follows:

§ 230.430A Prospectus in a registration statement at the time of effectiveness.

* * * * *

Instruction to paragraph (a): * * * Notwithstanding the foregoing, any increase or decrease in volume up to 20% or deviation in the price range of up to 20% may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b)(1) (§ 230.424(b)(1)) or Rule 497(h) (§ 230.497(h)), provided that in the case of a volume increase no form of prospectus filed pursuant to Rule 424(b)(1) (§ 230.424(b)(1)) may be used if the total dollar value of securities offered exceeds that which was registered.

* * * * *

(c) Where a registration statement is filed to increase the amount of securities in a Rule 430A (§ 230.430A) offering and it is to be effective upon filing pursuant to Rule 462(b) (§ 230.462(b)),

such registration statement upon its effectiveness shall be deemed part of the earlier filed registration statement with respect to such offering.

* * * * *

13. By adding § 230.434 to read as follows:

§ 230.434 Prospectus delivery requirements in firm commitment underwritten offerings of securities for cash.

(a) Where securities, other than asset-backed securities and structured securities, are offered for cash in a firm commitment underwritten offering and the conditions described in paragraph (b) or paragraph (c) of this section are satisfied:

(1) The prospectus subject to completion and the supplementing memorandum described in paragraphs (b)(1) and (b)(2) of this section, taken together, and the prospectus subject to completion and the supplementing memorandum described in paragraphs (c)(1) and (c)(2) of this section, taken together, shall constitute prospectuses that meet the requirements of Section 10(a) of the Act (15 U.S.C. 77j(a)) for purposes of Section 5(b)(2) and Section 2(10)(a) of the Act (15 U.S.C. 77e(b)(2) and 77b(10)(a)); and

(2) Such Section 10(a) prospectuses shall have:

(i) Been sent or given prior to or at the same time that a confirmation is sent or given for purposes of Section 2(10)(a) of the Act; and

(ii) Accompanied or preceded the transmission of the securities for purposes of sale or for delivery after sale for purposes of Section 5(b)(2) of the Act.

(b) With respect to offerings of securities (other than offerings pursuant to Rule 415 under the Act (§ 230.415)) that are registered on any form other than Form S–3 or Form F–3 (§§ 239.13 and 239.33 of this chapter) under the Act the following conditions are satisfied:

(1) A prospectus subject to completion and any supplementing memorandum described in paragraph (b)(3) of this section are sent or given prior to or at the same time with the confirmation;

(2) Except for information omitted from the prospectus in a registration statement at the time of effectiveness in accordance with Rule 430A (§ 230.430A), such prospectus subject to completion and supplementing memorandum, together, are not materially different from the prospectus in the registration statement at the time of its effectiveness or post-effective amendment thereto at the time of its effectiveness; and

(3) A supplementing memorandum setting forth all information material to investors with respect to the offering that is not disclosed in the prospectus subject to completion or the confirmation is filed with the Commission pursuant to Rule 424(b)(1) under the Act (§ 230.424(b)(1)).

(c) With respect to offerings of securities (other than offerings pursuant to Rule 415(a)(1)(i)–(ix) and (xi) (§ 230.415(a)(1)(i)–(ix) and (xi)) that are registered on Form S–3 or Form F–3 (§§ 239.13 and 239.33 of this chapter) the following conditions are satisfied:

(1) A prospectus subject to completion and the abbreviated supplementing memorandum described in paragraph (c)(2) of this section are sent or given prior to or at the same time with the confirmation;

(2) The abbreviated supplementing memorandum delivered to investors sets forth:

(i) If not disclosed in the prospectus subject to completion, a description of securities required to be disclosed pursuant to Item 202 of Regulation S–K (17 CFR 229.202 of this chapter), or a fair and accurate summary thereof; and

(ii) If not disclosed in the registrant's Exchange Act reports or the prospectus subject to completion, all material changes in the registrant's affairs required to be disclosed pursuant to Item 11 of Form S–3 or Form F–3 (§§ 239.13 and 239.33 of this chapter), as applicable;

(3) The abbreviated supplementing memorandum described in paragraph (c)(2) of this section is filed with the Commission pursuant to Rule 424(b)(1) under the Act (§ 230.424(b)(1)) or, if the disclosure represents a fundamental change in the information set forth in the prospectus filed as part of the registration statement declared effective or any post-effective amendment thereto, is filed in a post-effective amendment to the registration statement that is declared effective prior to the time any confirmation is sent or given;

(4) In an offering made pursuant to Rule 415(a)(1)(x) under the Act (§ 230.415(a)(1)(x)), a form of prospectus is filed pursuant to Rule 424(e) under the Act (§ 230.424(e)), and in an offering not made pursuant to Rule 415(a)(1)(x) under the Act (§ 230.415(a)(1)(x)), a prospectus meeting the requirements of Section 10(a) of the Act other than by virtue of paragraph (a)(1) of this section is filed with the Commission prior to the effective date of the registration statement; and

(d) The information contained in any form of prospectus filed with the Commission pursuant to Rule 424(e) under the Act (§ 230.424(e)) shall be deemed to be a part of the registration statement as of the time such information is filed with the Commission.

(e) For purposes of this section, *asset-backed securities* shall mean asset-backed securities as defined in General Instruction I.B.5 of Form S–3 (§ 239.13 of this chapter).

(f) For purposes of this section, *prospectus subject to completion* shall mean any prospectus that is either a preliminary prospectus used in reliance on Rule 430 (§ 230.430), a prospectus filed in accordance with Rule 430A(a) (§ 230.430A(a)), or a prospectus omitting information that is not yet known concerning a delayed offering pursuant to Rule 415(a)(i)(x) under the Act (§ 230.415(a)(1)(x)) that is contained in a registration statement at the time of effectiveness.

(g) Notwithstanding paragraphs (a) through (f) of this section, this section shall not apply to the offering of any security of any company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*, as amended) or any company that is exempt from the requirement to register under that Act through filing either a notification of election or a notice of intent to file a notification of election to be treated as a business development company under that Act.

14. By designating the existing text as paragraph (a) and adding paragraph (b) to § 230.439 to read as follows:

§ 230.439 Consent to use of material incorporated by reference.

(a) * * *

(b) In a registration statement filed pursuant to Rule 462(b) under the Act (§ 230.462(b)), any required consent may be incorporated by reference into the registration statement from a previously filed registration statement relating to the offering, provided that the consent contained in the previously filed registration statement expressly provides for such incorporation. Any consent filed in a Rule 462(b) (§ 230.462(b)) registration statement may contain duplicated or facsimile versions of required signatures, and such signatures shall be considered manually signed for purposes of the Act and the rules thereunder.

15. By amending § 230.457 to revise paragraph (o) to read as follows:

§ 230.457 Computation of fee.

* * * * *

(o) Where an issuer is offering securities pursuant to Rule 430A under the Act (§ 230.430A) or where an issuer eligible to use Form S–3 (§ 239.13 of this chapter) is registering securities pursuant to General Instruction I.B.1 or I.B.2 to Form S–3 to be offered on a delayed or continuous basis pursuant to Rule 415(a)(1)(x) under the Act (§ 230.415(a)(1)(x)), or pursuant to General Instruction H. to Form S–4 (§ 239.25 of this chapter) in connection with a business combination transaction pursuant to Rule 415(a)(1)(viii) under the Act (§ 230.415(a)(1)(viii)), the registration fee may be calculated on the basis of the maximum offering price of all the securities listed in the ''Calculation of Registration Fee'' table.

16. By revising the first sentence of paragraph (a) and adding two new sentences immediately after the first sentence of paragraph (a) to § 230.461 to read as follows:

§ 230.461 Acceleration of effective date.

(a) Requests for acceleration of the effective date of a registration statement shall be made by the registrant and the managing underwriters of the proposed issue, or, if there are no managing underwriters, by the principal underwriters of the proposed issue, and shall state the date upon which it is desired that the registration statement shall become effective. Such requests may be made in writing or orally, provided that, if oral requests are to be made, a letter indicating that fact and stating that the registrant and the managing or principal underwriters are aware of their obligations under the Act must accompany the filing of the registration statement with the Commission. Written requests may be sent to the Commission by facsimile transmission. * * *

* * * * *

17. By revising the section heading, designating the existing text as paragraph (a), and adding paragraph (b) to § 230.462 to read as follows:

§ 230.462 Effective date of certain registration statements.

(a) * * *

(b) A registration statement and any post-effective amendment thereto shall become effective upon filing with the Commission if:

(1) The registration statement is for the sole purpose of registering additional securities of the same class(es) as were included in an earlier registration statement for the same offering filed pursuant to Rule 430A under the Act (§ 230.430A) and declared effective by the Commission;

(2) The new registration statement is filed within two business days of the pricing of the earlier registration statement; and

(3) The new registration statement registers no more than 20% of the amount of such class(es) of securities that were registered in the earlier registration statement.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

18. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

19. By amending Form SB–1 (referenced in § 239.9) by adding one check box to the cover page immediately before ''Calculation of Registration Fee,'' by adding a Note to appear immediately after the Calculation of Registration Fee table, and by adding paragraph H to General Instructions to read as follows:

Note: The text of Form SB–1 does not and the amendments will not appear in the Code of Federal Regulations.

Form SB–1

Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is registering additional securities pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.
[ ] 33–_____

* * * * *

Calculation of Registration Fee

* * * * *

Note: For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

* * * * *

General Instructions

* * * * *

H. Registration of Additional Securities

With respect to offerings registered pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

20. By amending Form SB–2 (referenced in § 239.10) by adding one check box to the cover page immediately before ''Calculation of Registration Fee,'' by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph C to General Instructions to read as follows:

Note: The text of Form SB–2 does not and the amendments will not appear in the Code of Federal Regulations.

Form SB–2

Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is registering additional securities pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.
[ ] 33–_____

* * * * *

Note: * * * For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

* * * * *

General Instructions

* * * * *

C. Registration of Additional Securities

With respect to offerings registered pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. Any opinion or consent required

in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

21. By amending Form S–1 (referenced in § 239.11) by adding one check box to the cover page immediately before ''Calculation of Registration Fee,'' and by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph V to General Instructions to read as follows:

Note: The text of Form S–1 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–1

Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is registering additional securities pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

[ ] 33–_____

* * * * *

Note: * * * For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

V. Registration of Additional Securities

With respect to offerings registered pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

22. By amending Form S–2 (referenced in § 239.12) by adding one check box to the cover page immediately before ''Calculation of Registration Fee,'' by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph III to General Instructions to read as follows:

Note: The text of Form S–2 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–2

Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is registering additional securities pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

[ ] 33–_____

* * * * *

Note: * * * For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offering and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

III. Registration of Additional Securities

With respect to offerings registered pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

23. By amending Form S–3 (referenced in § 239.13) by adding one check box to the cover page immediately before ''Calculation of Registration Fee,'' by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph IV to General Instructions to read as follows:

Note: The text of Form S–3 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–3

Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is registering additional securities pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

[ ] 33–_____

* * * * *

Note: * * * For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

IV. Registration of Additional Securities

With respect to offerings registered pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

24. By amending Form S–11 (referenced in § 239.18) by adding paragraph G to General Instructions, by adding one check box to the cover page immediately before ''Calculation of Registration Fee'' and by adding two sentences to the end of the Note following the Calculation of Registration Fee table to read as follows:

Note: The text of Form S–11 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–11

For Registration Under the Securities Act of 1933 of Securities of Certain Real Estate Companies

General Instructions

* * * * *

G. Registration of Additional Securities

With respect to offerings registered pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

Form S–11

Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is registering additional securities pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] 33–_____

* * * * *

Note: * * * For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

* * * * *

25. By amending Form F–1 (referenced in § 239.31) by adding one check box to the cover page immediately before ''Calculation of Registration Fee,'' by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph V to General Instructions to read as follows:

Note: The text of Form F–1 does not and the amendments will not appear in the Code of Federal Regulations.

Form F–1

Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is registering additional securities pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] 33–_____

* * * * *

Note: * * * For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

V. Registration of Additional Securities

With respect to offerings registered pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

26. By amending Form F–2 (referenced in § 239.32) by adding one check box to the cover page immediately before ''Calculation of Registration Fee,'' by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph IV to General Instructions to read as follows:

Note: The text of Form F–2 does not and the amendments will not appear in the Code of Federal Regulations.

Form F–2

Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is registering additional securities pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] 33–_____

* * * * *

Note: * * * For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

IV. Registration of Additional Securities

With respect to offerings registered pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

27. By amending Form F–3 (referenced in § 239.33) by adding one check box to the cover page immediately before ''Calculation of Registration Fee,'' by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph IV to General Instructions to read as follows:

Note: The text of Form F–3 does not and the amendments will not appear in the Code of Federal Regulations.

Form F–3

Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is registering additional securities pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] 33–_____

* * * * *

Note: * * * For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered,

the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

IV. Registration of Additional Securities

With respect to offerings registered pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

28. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

29. Section 240.15c2–8(b) is amended by revising the phrase ''mailing'' to read ''sending''.

30. Section 240.15c2–8(c) is amended by revising the phrase ''mail'' to read ''send''.

31. Section 240.15c2–8(d) is amended by revising the phrase ''mail'' to read ''send''.

32. Section 240.15c2–8 is amended by adding paragraph (j) to read as follows:

§ 240.15c2–8 Delivery of prospectus.

* * * * *

(j) For purposes of this section, the term *preliminary prospectus* shall include the term *prospectus subject to completion* as used in 17 CFR 230.434(f), and the term *final prospectus* shall include the term *Section 10(a) prospectus* as used in 17 CFR 230.434(f).

33. Amend § 240.15c6–1 by revising the phrase ''paragraph (b)'' contained in paragraph (a) to read ''paragraphs (b), (d), and (e)''; by revising the phrase ''Paragraph (a)'' contained in the introductory text of paragraph (b) to read ''Paragraphs (a) and (d)''; by revising the phrase ''the sale for cash of securities'' contained in paragraph (b)(2) to read ''the sale for cash of asset-backed securities or structured securities''; and by adding paragraphs (c), (d), and (e) to read as follows:

§ 240.15c6–1 Settlement cycle.

* * * * *

(c) For purposes of this section:

(1) *Asset-backed security* means an asset-backed security as defined in General Instruction I.B.5 of Form S–3 (§ 239.13 of this chapter); and

(2) *Structured security* means a security whose cash flow characteristics depend upon one or more indices or that have imbedded forwards or options or a security where an investor's investment return and the issuer's payment obligations are contingent on, or highly sensitive to, changes in the value of underlying assets, indices, interest rates or cash flows.

(d) Paragraph (a) of this section shall not apply to securities that are sold pursuant to a firm commitment underwritten offering registered under the Securities Act of 1933 and that are priced after 4:30 p.m. Eastern time on the date such securities are priced, provided that a broker or dealer shall not effect or enter into a contract for the purchase or sale of such securities that provides for payment of funds and delivery of securities later than the fourth business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(e) For purposes of paragraphs (a) and (d) of this section, the parties to a contract shall be deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities pursuant to a firm commitment offering registered under the Securities Act of 1933 if:

(1) The alternate date is no later than the fifth business day after the date of the contract;

(2) The managing underwriter has selected such date for all securities sold pursuant to such offering;

(3) Information disclosing the alternate date is contained in a written notice sent or given to all prospective purchasers on or before the date the securities which are sold pursuant to such offering are priced;

(4) The managing underwriter provides written notification to all exchanges on which the securities are listed and all registered securities associations through which quotations for such securities are disseminated prior to the date the securities which are sold pursuant to such offering are priced; and

(5) The parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

Dated: February 21, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4647 Filed 2–24–95; 8:45 am]

BILLING CODE 8010–01–P

federal register

Monday
February 27, 1995

Part VII

Consumer Product Safety Commission

16 CFR Part 1500

Ban Small Balls Intended for Children Younger Than Three Years of Age and To Require Labelling of Certain Toys and Games; Final Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Final Rule to Ban Small Balls Intended for Children Younger Than Three Years of Age and To Require Labeling of Certain Toys and Games

AGENCY: Consumer Product Safety Commission.

ACTION: Final Rule.

SUMMARY: The Child Safety Protection Act of 1994 (CSPA) amended the Federal Hazardous Substances Act (FHSA) by adding a new section 24 which, *inter alia,* imposes labeling requirements on certain balls, balloons, marbles, and certain toys and games intended for use by children three years of age and older. The amendment also bans certain balls intended for use by children younger than three years of age. Although the requirements imposed by the amendments are generally self-executing, the Commission is publishing this regulation to incorporate the requirements of the CSPA into the Code of Federal Regulations (CFR) and to interpret or clarify certain provisions of that legislation.

DATES: This regulation becomes effective on August 28, 1995 for products manufactured or imported into the United States.

FOR FURTHER INFORMATION CONTACT: Francis Krivda, Compliance Officer, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207–0001; telephone (301) 504–0400, ext. 1372.

SUPPLEMENTARY INFORMATION:

A. Background

1. Previous Commission Actions

In 1979, the Commission issued regulations to ban toys and other articles which are intended for use by children younger than three years of age and which present an aspiration, ingestion, or choking hazard because of small parts. The small parts regulations are codified at 16 CFR 1500.18(a)(9) and Part 1501. Toys and children's articles subject to the regulations must be placed in a truncated cylinder with a diameter of 1.25 inches (31.7 mm.) and a depth ranging from 1 to 2.25 inches (25.4 mm to 57.1 mm). If the product or any independent or detachable component of the product fits entirely within the cylinder, it is banned. Additionally, a toy or children's article is banned if any component or piece of such a product becomes detached during ''use and abuse'' testing. The ''use and abuse'' tests are codified at 16 CFR 1500.50–1500.53.

The small parts regulations apply only to toys and articles intended for use by children younger than three years of age. Some products, including balloons, are excluded from the scope of these regulations because they cannot be manufactured to function as intended and still comply with the requirements of the regulations.

Previously, the Commission received information indicating that an average of seven children a year choke to death on balloons or parts of balloons. The agency also received reports of children younger than three choking on small toys or games, or the parts of such products, which were intended for children three years of age and older. For example, small balls and marbles are generally considered to be intended for such older children, but have been associated with choking fatalities involving children under three.

In some cases, choking incidents involving children younger than three years of age occurred after an adult purchased a product labeled to indicate that the article was suitable for children three years and older, but gave the article to a child younger than three. In such cases, it is possible that the purchaser believed that the labeling statement was not a safety message, but instead referred to the age at which the child could use or enjoy the product.

The origins of the CSPA rest in rulemaking activities in which the Commission engaged between 1988 and 1992. In 1988, the Commission published an advance notice of proposed rulemaking (ANPR) to initiate regulatory action to enlarge the dimensions of the cylinder used to evaluate whether toys or other articles intended for children under three contain small parts that could present a choking hazard. In 1990, the Commission terminated that proceeding. It determined that the use of the test cylinder specified in the existing small parts regulation had been effective in preventing choking deaths and injuries to children under three associated with toys intended for that age group. At the same time, however, the Commission published four ANPRs that, *inter alia,* solicited preliminary comment on proposals to require labeling on small balls, balloons, marbles, and toys and other articles with small parts intended for children aged three to approximately six. In 1991, after analyzing the comments received in response to the ANPRs, the Commission staff recommended that the Commission propose rules prescribing labeling under the FHSA for the products that later became the subject of the CSPA. The Commission, however, terminated all four proceedings because it felt that it could not make the findings required by the FHSA.

2. The Child Safety Protection Act

On June 16, 1994, Congress enacted the CSPA. The legislation establishes substantially the same labeling requirements for balloons, marbles, small balls, and toys and games containing small parts that the staff recommended in 1991. The primary purpose of the legislation is to warn purchasers of the potential hazards for children under three that products intended for older children may present. The CSPA prescribes labeling statements for balloons, for balls with a diameter of 1.75 inches or less (''small balls'') and marbles intended for children three years or over, and for toys or games that contain such items. The law also requires labeling for toys or games that contain small parts and that are intended for children at least three years old but not older than six. Under the CSPA, small balls intended for children under three are banned. The statute specifies the text of the required label statement for each of the enumerated products and requires that labeling appear on the principal display panel of product packages. For unpackaged, unlabeled items sold in bulk, any bin in which they are displayed, and any container for retail display or vending machine from which they are sold or dispensed must bear the required labeling. The law also directs the Commission to promulgate regulations to implement the statutory requirements.

On July 1, 1994, the Commission published in the **Federal Register** a proposed rule (59 FR 33932). The proposed rule clarified and interpreted certain provisions of the CSPA. It included definitions of terms such as ''ball,'' ''small part,'' and ''descriptive material,'' and established criteria for determining the age of children for which a game or toy is intended. It also clarified the applicability of the type size and conspicuousness requirements of the regulation codified at 16 C.F.R. 1500.121 to the products that are subject to the CSPA. It further contained provisions to assure that labeling statements would appear prominently on product packages.

B. Response to Comments

In response to the proposed rule, the Commission received almost 300 comments, most from individual consumers. Major consumer groups supported many of the provisions of the

rule as written and recommended strengthening others. Many individual members of those organizations submitted comments supporting the rule as drafted. Approximately twenty manufacturers, trade associations, and firms that test toys commented on the proposed labeling requirements for toys and games, while other commenters addressed issues such as the applicability of the CSPA to writing and art materials and to balloons distributed by individual performers or sold individually. Other comments raised issues relating to labeling for unpackaged products sold or distributed in bulk or requested clarification of specific technical requirements established by the act or the proposed regulation. Comments on specific parts of the rule and the Commission's responses to the comments are discussed in the following paragraphs.

1. Relationship of the CSPA to Other Standards

Representatives of foreign toy manufacturers commented generally on the complications the legislation presents with regard to standardized labeling statements under the European toy safety directive and to the development and use of a graphic symbol to identify products that are hazardous to children under three. Inasmuch as Congress mandated in the CSPA the precise labeling requirements that products in the U.S. market must meet, the Commission has little ability to address these concerns. Thus, no changes have been made to the final rule concerning these issues.

2. Existing Policies With Respect to Labeling and Toys

A recurring question throughout the comments is the extent to which the Commission, in administering the CSPA, intends to apply its existing policies and interpretations with respect to labeling and toys generally. For example, commenters inquired whether they can combine the warning statements required for marbles and for games with small parts, if they produce a game that contains both items.

Under the general labeling provisions of 16 CFR 1500.127, the Commission permits information relating to a specific hazard associated with a hazardous substance to be combined with information relating to additional hazards if the resulting statement contains all the information needed to deal with each respective hazard. If the Commission followed its existing policies, the labeling for the game could be condensed to reflect the hazard associated with the small parts and the marble in one statement.

Similarly, under the Commission's small parts testing regulations, toys reasonably intended to be assembled by an adult and not intended to be taken apart by a child are tested only in the assembled state, if the shelf package and assembly instructions prominently indicate that the article is intended to be assembled only by an adult. The effect of this exception is to exempt from the small parts test the hardware used to assemble the toy. If the Commission follows this policy with respect to the labeling required by the CSPA, products containing such hardware would also be exempt from the labeling requirements.

The majority of the Commission's policies applicable to toys have evolved over the last ten to fifteen years, while many of the labeling policies are twenty to thirty years old. All of the policies provide standardized points of reference, both for regulated industries as well as the Commission staff, and take into account the requirements of the law, the objective of protecting the public, and the practical realities of the commercial world.

To avoid the confusion associated with establishing differing requirements for similar toys and labels, in administering the labeling provisions of the CSPA, the Commission will generally apply its existing policies with respect to children's articles and hazardous substances labeling. This general rule will apply unless such a policy (1) conflicts with the express provisions of the CSPA; (2) is overridden by a policy decision of the Commission as expressed in the final rule or in subsequent guidance to the staff of the Commission; (3) is impractical in its application; or (4) could result in a diminution of the protection envisioned by the law. The Commission believes it unlikely, however, that either of the latter two exceptions will occur.

3. Upper Age Limit

a. Toys and Games

The CSPA establishes labeling requirements for any toy or game that includes a small part and that is intended for use by children who are at least three years old but not older than six. The law permits the Commission to establish an alternative age to the upper limit of six years, but that alternative limit ''may not be less than five years of age.'' 15 U.S.C. 1278(a)(1). In the proposed rule, the Commission declined to establish an alternative upper age limit. As explained below, the final rule adopts an upper age limit of less than six years.

Consumer advocates supported maintaining the upper age limit at six years, arguing that, in the absence of compelling evidence to the contrary, the upper age limit specified in the statute should control. Several industry commenters, however, objected to applying the labeling requirements to toys or games intended for use by children under seven years of age (i.e while they are six years old). These commenters argued that this upper age limit departed from the original 1991 staff recommendation that the Commission require labeling on toys or games intended for children aged from 36 months up to, but not including, 60 months. Most of these commenters suggested that the Commission select an alternative upper age limit of not more than five years, although some suggested that the Commission adopt the upper age limit in the original staff recommendation.

Other commenters argued that the upper age limit of six is inconsistent with the Commissions's Guidelines for Relating Children's Ages to Toy Characteristics which the Commission uses to evaluate toys or other articles intended for use by children. According to these commenters, the inconsistency arises because the guidelines differentiate products intended for children aged 37 through 72 months from those intended for children 73 through 96 months old. The commenters contended that, if manufacturers complied with the labeling requirements and also followed the guidelines, the practical effect of applying the labeling to products intended for children under the age of seven would be to require labeling for products intended for children between the ages of 73 and 96 months.

At the outset, neither the CSPA nor its legislative history contain an explanation of the reason for the statutory upper age limit of six years or for the floor of five years on the alternative age limit. The text of the legislation, however, expressly forecloses using the original staff recommendation to label toys and games intended for children up to, but not including, 60 months of age as the alternative upper age limit. Similarly, any alleged inconsistency between the Commission age grading guidelines and the labeling requirements of the CSPA arises because the statute itself establishes a presumptive upper age limit of six years for labeling that does not coincide with the age divisions in the guidelines. The Commission is, of

course, bound to follow the requirements of the law.

The original staff recommendation did not suggest labeling products for children five years of age or older because available data did not support the need to extend the labeling requirements to products intended for that age group. That recommendation therefore does not itself provide a basis for specifying a specific alternative upper age between five and seven years. However, the Commission believes that the rationale for the original proposal—that the products most likely to present a threat to children under three are toys and games intended for three and four year olds, and that the skills, levels of development and play interests of children five years of age and older differ significantly from those of such younger children—is valid. Thus, the Commission believes that establishing an upper age limit lower than six would not significantly compromise the safety of children under three.

An upper age limit of 5 years (e.g., under 60 months and one day) would most closely approximate the objectives of the original staff recommendation. However, since there is no clearly defined line between toys intended for four year olds and those intended for five years olds, drawing a distinction in the rule in effect based on the day after a child reaches his or her fifth year could create problems for manufacturers in complying with the law. In contrast, an upper age limit of less than 6 years (less than 73 months) would be consistent with the Commission's Guidelines for Relating Children's Ages to Toy Characteristics. Those established guidelines recognize a break between toys and games intended for children 37 months through 72 months old (less than 6 years old), and those intended for children 73 (6 years old) through 96 months.

The Commission has therefore lowered the upper age limit to apply to toys or games intended for use by children who are less than six years old. In addition to the reasons discussed above, the Commission believes that limiting the scope of the labeling requirement will more closely focus prospective purchasers on the potential hazards of those toys and games intended for older children that are most likely to be purchased for younger children. Moreover, many toys intended for children six years of age are also intended for children seven and eight years of age. While the great majority of these products are unlikely to be purchased for children under three, labeling all of these products could dilute the effectiveness of the labeling on products intended for children from three up to six years of age that are most likely to be purchased for younger children.

b. ''Younger Than Seven Years''

The preamble to the proposed rule points out that products intended for children of a specific age are generally recognized by consumers as being suitable for all children of that age. Thus, a toy labeled for use by children six years old is typically viewed as being appropriate for use by children who have just turned six, as well as for use by those approaching their seventh birthday. The proposed rule interpreted the term ''intended for use by children who are * * * not older than six years'' in the CSPA to mean that the labeling requirements apply to toys or games intended for children under seven years of age.

Several commenters disagreed with this approach. Some contended it was inconsistent with the Commission's age grading guidelines. Others, relying on the statutory upper age limit of six years, suggested that the interpretation in the proposed rule would lead manufacturers who currently label products for children age six and up in accordance with industry standard practice to revise the age recommendations to seven and up.

None of the commenters provided a basis for changing the interpretation. This approach is the same as that of the Commission's small parts regulation which applies to products intended for children under three years of age. Moreover, applying the labeling requirements to products intended for use by children who have not yet reached a specific age—in this case, six—is consistent with the analytical approach of the Commission's age grading guidelines. For example, a child does not attain the age of six years until the completion of the last day of his or her seventy-second month (i.e., is beginning the seventy-third month). Thus, the upper end of 72 months in the age grouping of 37 to 72 months specified in the guidelines, in effect, applies to articles intended for children who are in the midst of their fifth year but have not yet reached their sixth year, i.e. are under six years of age. The Commission, therefore, declines to modify the final rule in the manner requested by the commenters.

4. Prominence and Conspicuousness of Labeling

Under the CSPA, precautionary labeling statements must be displayed in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed material on a product package, on any accompanying descriptive material, on any bin or container for retail display from which the product is sold, and on any vending machine from which it is dispensed. The act also requires that the labeling statements be displayed ''in a manner consistent with part 1500 of title 16, Code of Federal Regulations.'' 15 U.S.C. 1278(c)(1)(B). Title 16, Part 1500.121, contains the Commission's policies and interpretations implementing section 2(p)(2) of the FHSA which requires that precautionary labeling for hazardous substances appear prominently and conspicuously. The proposed rule incorporated by reference those policies and interpretations, with modifications designed to accommodate specific provisions of the CSPA and the general differences between toy labels and hazardous substance labels.

No commenter objected to incorporating the provisions of 16 CFR 1500.121 by reference in the proposed rule. Consumer advocates favored publishing the proposed requirements in final without change. Several industry commenters, however, objected to specific provisions in the proposed rule modifying 16 CFR 1500.121. Those objections and the Commission's response are discussed below.

a. ''Color-Blocking''

To assure that the labeling statements required by the CSPA appear prominently and conspicuously, the proposed rule solicited comments on the desirability of ''color-blocking'' those statements. Color-blocking would require the statements to appear on a background different from the color of the background of the area of the package on which it appears, from the color of any printed matter in proximity to the required statements, and, if the package were a see-through package, from the color of the article contained in the package. As the proposed rule explained, the packages of products subject to the CSPA generally contain many visual messages, some in printed product descriptions and depictions, others in see-through features that display actual products. All of these features have the potential to obscure labeling statements which, if they generally followed the provisions of 16 CFR 1500.121, would otherwise be regarded as conspicuous.

Several commenters objected to the ''color-blocking'' proposal, contending that it is more stringent than the current conspicuousness requirements contained in 16 CFR 1500.121. They also contended that requiring color-

blocking would unnecessarily increase the size of blister packaging used for small products and hinder tri-lingual labeling under the North American Free Trade Agreement (NAFTA). The commenters argued that applying the existing provisions of 16 CFR 1500.121 to products subject to CSPA labeling would be adequate to assure that the labels are conspicuous.

The CSPA requires that the labels it prescribes must be displayed conspicuously in a manner consistent with part 1500 of title 16 of the Code of Federal Regulations. The law does not require that the conspicuousness requirements for the labels of toys and games be identical to any similar requirement in the existing regulations. Accordingly, while the proposed regulation incorporated certain provisions of 16 CFR 1500.121, it also contained variations that take into account the requirements of the legislation itself and the lithography and design features of packages for toys and games. The ''color-blocking'' proposal was one variation.

The conspicuousness of a labeling statement depends on a variety of factors, including the location of the statement on the package and the types of printed material in proximity to it. While ''color-blocking'' is one technique to assure that labeling is conspicuous, the Commission believes that the use of this method in all cases may be unnecessary to accomplish the objectives of the CSPA. As is discussed below, two provisions of the existing conspicuousness regulations provide adequate assurance that labels required by the CSPA will be conspicuous without requiring the use of color-blocking.

The Commission's existing policy in 16 CFR 1500.121(b)(2)(ii) requires that labeling statements that appear on a principal display panel be blocked together within a square or rectangular area with or without a border. The statements must be separated on all sides from other printed or graphic matter by a space no smaller than the minimum allowable height of the type size for precautionary labeling other than signal words and statements of principal hazard (e.g. the statement ''Not for children under three yrs.'' in the CSPA). If not separated by that distance, the labeling statements must be surrounded by a border line. With regard to other cautionary material, 16 CFR 1500.121(d)(2) specifies that the label design, the use of vignettes, or the proximity of other labeling or lettering shall not be such that any cautionary labeling statement is obscured or rendered inconspicuous.

The Commission has revised the final regulation to eliminate the requirement for color-blocking. Instead, the labeling must also conform to the spacing/borderline requirements of 16 CFR 1500.121(b)(2)(ii) for principal display panel labeling. This means that, if a border line is used, it must be rectangular or square in shape. If no border line is used, other printed or graphic material should be separated from the cautionary labeling statements in a manner that makes the precautionary statements appear in a square or rectangular area. If other printed or graphic material appears on less than four sides of the cautionary material, the other printed or graphic material on any side should be laid out in a manner that creates the appearance of a vertical or horizontal line of separation, as appropriate, between that material and the cautionary labeling.

The Commission believes that the latter measures will adequately assure the conspicuousness of labeling for almost every product subject to the CSPA. Recognizing, however, that it is impossible to anticipate the design or lithography of every package, the final regulation includes a provision similar to that of 16 CFR 1500.121(d)(2) relating to interference with precautionary labeling by label design, the proximity of other labeling, or vignettes. The practical effect of this provision is that all labeling mandated by the CSPA must appear on a solid background, although the color of that background need not differ from the background color of the rest of the package label as long as the precautionary statements appear conspicuously. The inclusion of this provision will also permit the Commission to take action, should the spacing/borderline provisions be inadequate in a specific case to make the labeling required by the CSPA conspicuous.

b. Principal Display Panel/Multiple Type Sizes

The proposed rule established minimum type sizes for the various labeling statements required by the CSPA based upon the area of the display panel upon which those statements appear. For smaller packages with display panels of less than 100 square inches, the regulation followed the type size charts of Table 1 of 16 CFR 1500.121(c)(2) which generally apply to the labels of hazardous substances packaged in containers up to one gallon in volume. For larger packages, the regulation followed the minimum lettering heights of 16 CFR 1505.3(d)(2) which apply to labels on packages for electrically operated toys.

1. *See-Through Features:* Several commenters requested clarification of the definition and the measurement of the area of principal display panels. A number argued that the measurement of the area of the principal display panel should exclude the area of see-through features, contending that including this area in the measurement would result in labels that are too large. The Commission declines to accept this recommendation.

The Commission's existing policies require that the area of a see-through feature be included in measuring the area of a principal display panel. This is because see-through features are incorporated into packages to permit consumers to see the item for sale in conjunction with the labeling that accompanies the item. Such a feature often includes background graphics designed to promote specific attributes of the item that is visible through the feature or to show the item in an action setting. Like written descriptions or printed depictions of the products that generally appear on the packages of toys or games, see-through features communicate to prospective purchasers details about the products contained therein. Accordingly, the Commission views see-through features as functioning as part of the label of the product. To assure that the precautionary statements required by the CSPA are conspicuous and that a see-through feature does not direct a prospective purchaser's attention away from those statements, the area of the see-through feature is included in computing the area of the principal display panel to determine the proper type size.

The Commission, however, distinguishes packages with see-through features from peg-board packages consisting of a cardboard header with an attached plastic bag containing the item for sale. In the latter instance, all of the graphic material typically appears on the cardboard header separated from the item, making the header the principal display panel of the package. If a manufacturer chooses to place precautionary labeling on the header, the area of the surface of the header designed to face outward at retail controls the type size of the labeling. If, however, a manufacturer chooses to place precautionary labeling on the plastic bag, the bag itself becomes part of the principal display panel and its area is included along with that of the header in determining the appropriate type size. For peg board packages consisting of a header and a plastic bag which contains multiple individually packaged products, some of which may

require labeling, labeling each individual package that contains a product requiring labeling is sufficient to comply with the law, as long as the label is visible through the outer bag and is conspicuous. The type size of the statement would be based on the area of the individual bag containing the item, rather than on the area of the outer plastic bag.

2. *Vending Machine Display Panels:* Representatives of vending machine interests questioned what the principal display panel of a vending machine is, noting that, generally, labeling may appear either on the glass or clear plastic container of the machine or on a display card intended to be inserted in a holder in the machine. The commenters suggested that, if the machine has a display card that contains graphic material, the card itself constitutes the principal display panel. In the absence of such a card, the front of the container would be the principal display panel. The type size of the required labeling statements would depend on the area of the surface treated as the principal display panel. The Commission agrees that this approach is appropriate and has revised the final regulation accordingly.

3. *Type Size for Large Packages:* Some commenters objected to the use of letter sizes specified in the electrical toy regulation for large packages. The commenters contended that the type sizes prescribed for packages with an area in excess of 30 square inches (approximately the size of a gallon container) in 16 CFR 1500.121(c)(2) are adequate for larger packages, including those with an area in excess of 400 square inches. One commenter argued that the larger type sizes prescribed in the proposed regulation are inappropriate for products subject to the CSPA which, unlike electrical toys, do not present a hazard to the intended user. That commenter also submitted mock-up labels which purported to represent how the labels would actually appear if they complied with the larger type size requirements of the proposed regulation. It also submitted other mock-up labels purporting to demonstrate that the use of smaller type size on large packages could still result in conspicuous labels. As was argued with color-blocking, other commenters contended that the use of larger type sizes would increase the size of blister packaging for small products and would hinder tri-lingual labeling under NAFTA.

The Commission believes that the commenters' objections and concerns are unfounded and has adopted the proposed type size requirements in the final rule. Labeling cannot be effective unless it attracts the attention of consumers. Both 16 CFR 1500.121 and the labeling provisions of the electrical toy regulation follow the established principle that scaling the size of type to the display panel area on which it appears is essential to accomplish this objective. The type size requirements of 16 CFR 1500.121 are designed to accommodate the relatively small packages used for products such as household cleaners. The electrical toy regulation, which has been in effect for over twenty years, expressly addresses the issue of the size of labeling for larger packages similar to those in which many products covered by the CSPA are marketed. The commenters did not adequately explain why the Commission should accede to smaller type sizes for products in large packages which could, in many cases, make labeling statements required by the CSPA inconspicuous. The Commission notes that the commenters' attempt to distinguish the electrical toy labeling requirements from those required by the CSPA on the basis of hazard to the intended user is not persuasive. The labeling required by the electrical toy regulation states in part ''CAUTION—ELECTRIC TOY: Not recommended for children under _____ years of age * * *'', a statement which has substantially the same purpose as the labels prescribed by the CSPA.

With respect to the ''mock-up'' labels submitted by one commenter, the proposed regulation only specified the minimum height of the letters in a precautionary labeling statement. However, the conspicuousness of a label statement also depends on the style of type used, as well on the ratio of the height of the letters in the statement to their width and the spacing between the letters. The ''mock-up'' labels that the commenter submitted to demonstrate that the type size in the proposed rule for packages with a display panel in excess of 100 square inches was ''too large'' used a heavy, bold-faced type, with an approximate two-to-one height-to-width ratio for the letters, and normal spacing between the letters. In contrast, the labeling requirements of 16 CFR 1500.121(c)(3), incorporated by reference in the proposed rule, only require that the height-to-width ratio not exceed three to one, and are silent on type style and letter spacing. Thus, while a manufacturer is free to use a label similar to the ''mock-up'' labels presented by the commenter, the regulation does not require it, nor would following the provisions of the proposed rule with respect to large packages necessarily produce the result displayed by the mock-up labels that the commenter viewed as undesirable.

The same commenter also submitted other mock-up labels purporting to demonstrate that the use of smaller type size on large packages could still result in conspicuous labels. Again, in addition to letter height, type style, height-to-width ratio, and spacing all play a major role in making labels conspicuous. The Commission agrees that certain combinations of these factors coupled with sharply contrasting colors may tend to make smaller type more conspicuous. However, in the absence of requirements in the regulations specifying type style, spacing, etc., there is no assurance that the use of smaller type will result in a conspicuous label.

With respect to the allegation that the type sizes specified in the rule for large packages will require that the size of blister packaging for small products be increased, those type sizes have, for years, been accepted as striking a reasonable balance to assure that warnings are conspicuous while providing ample space for other graphic material. In the Commission's view, while changes in lithography may be required to meet the requirements of the CSPA, there is no evidence that compliance will require increasing package sizes.

4. *Blister Cards:* One commenter suggested that the Commission permit blister cards to be labeled either on the front of the card or the back, reasoning that parents are just as likely to read the information on the back of the card as they are the information on the front. The Commission declines to accept this suggestion. The law requires that the principal display panel—the front of a blister card—be labeled. Moreover, the intent of the CSPA is to provide point-of-purchase warnings. There is no evidence that parents will read the back of a blister card prior to purchase. Moreover, in the case of articles like dolls or toy cars which are generally not accompanied by instructions, the Commission believes it unlikely that purchasers will read the back of the card at all.

c. *Multiple Label Statements*

Several commenters expressed concern that the proposed rule would require a toy or game that contained multiple articles subject to the labeling requirements of the CSPA to bear the complete text of each label specified in the act addressing the hazard associated with each article. The proposed regulation did not address this issue. For clarity, the Commission has revised

the final regulation to incorporate a provision similar to 16 CFR 1500.127(b) which permits labeling information relating to multiple hazards to be condensed as long as the resulting statement contains all of the information necessary to deal with the specific hazard presented by each article. The Commission notes, however, that the message contained in the balloon label specified in the CSPA differs substantially from those in the labels for balls, marbles, and toys and games with small parts. Therefore, the label of a package that contains a balloon and another item subject to the CSPA may only have a combined signal word and statement of hazard. The remaining statements required by the act with respect to each of the products in the package must appear on the label of the package.

d. *Label Justification, Layout and Spacing*

The proposed rule required that labels required by the CSPA appear in the same format and layout as that prescribed in the legislation itself. Several commenters objected to this requirement, noting the Senate Report on the legislation would have permitted labels to vary from the precise format specified in the law. One commenter questioned whether the statutory format requirements included margin justification.

The requirement in the proposed rule was based on the precision with which the law identifies the text and format of the various labeling statements. The rule construed that precision as an express indication of how Congress intended those statements to appear on package labels. However, when taken in conjunction with the Congressional mandate that the Commission's regulations for the conspicuousness of labeling required by the CSPA be consistent with 16 CFR 1500.121, the Commission believes that a more valid reading of the legislation would treat the format and layout of the various labeling statements in the law as exemplary, rather than mandatory.

While the label format set forth in the law is more than adequate to meet the Commission's existing conspicuousness regulations, it does not take into account variations in packaging design and lithography that the Commission can expect to encounter for products subject to the CSPA. On balance, the existing policies implementing the labeling requirements of the FHSA have proven adequate to ensure that labels are prominent and conspicuous. Thus, the Commission has revised the proposed rule to delete the requirement that manufacturers follow the precise format in the statute and instead will follow its existing labeling policies with respect to format and layout. The Commission however notes that one existing policy states that labeling statements shall appear blocked together within a square or rectangular area. This means that the labeling statements required by the act must appear on at least two lines. Since the resolution of the overall issue of format also resolves the question of margin justification, no response to that comment is necessary.

5. Descriptive Material

The CSPA requires the statutory warnings to appear on descriptive material accompanying a product that requires labeling under the act. The proposed regulation defined the term ''descriptive material'' as ''any instruction (whether written or otherwise) for the use of the product, any depiction of the product, and any promotional material, advertisement, or other written literature that describes any function, use, warnings, user population, or other characteristic of the product, including its suitability for use with or relationship to other games, products, or toys.'' The proposed regulation also noted that descriptive material ''accompanies'' a product when it is packaged with the product or is intended to be distributed with the product at the time of sale or delivery to the purchaser. As is discussed below, the final rule retains much of the definition, but clarifies that catalogs and marketing materials that describe products other than a regulated product generally need not be labeled.

a. Meaning of ''Accompanies''

Several commenters expressed concern that the definition of the term ''descriptive material'' in the proposed regulation might require multiple labels on product packages such as blister cards that, for example, contain instructions for use or recommended age labeling on the back of the cards. As the discussion of the term ''accompanies'' in the proposed rule indicates, the Commission believes that Congress intended labeling requirements for descriptive material to apply to material separate from the package of the article itself, such as an instruction sheet. The final regulation clarifies this point.

Another commenter questioned whether material such as mail order catalogs or newspaper advertisements depicting items subject to the CSPA are required to bear the required warning statements. The act only requires descriptive material which accompanies a regulated product to be labeled. According to the proposed regulation, descriptive material ''accompanies'' a product when it is packaged with the product or when it is intended to be distributed with the product at the time of sale or delivery to the purchaser. A catalog or advertisement that does not meet either of these criteria would not require labeling.

b. Instructions for Use

Several commenters contended that the definition of the term ''descriptive material'' in the proposed rule was too expansive. Some requested that the definition be limited to material containing instructions for use.

Section 2(n)(2) of the FHSA expressly requires that labeling required by the act appear ''* * * on all accompanying literature where there are instructions for use, written or otherwise.'' Inasmuch as the CSPA follows the general labeling scheme of the FHSA, the Commission believes that the use of the term ''descriptive material'' without the limitation contained in section 2(n) indicates a Congressional intention that CSPA labeling not be limited to material containing instructions for use. Accordingly, the Commission declines to adopt the revision requested by the commenter to limit the labeling requirements to written material containing instructions for use.

The Commission notes that the great majority of material that accompanies the products subject to the CSPA contains instructions for use, either with or without other descriptions. Moreover, each discrete piece of material accompanying a regulated product need only have one label. Thus, if a piece of accompanying literature contained, for example, instructions for use, a statement of the age of the children for whom an item is intended, and a depiction of the product, only one precautionary statement would be required. Therefore, the Commission believes that defining the term ''descriptive material'' broadly to include the variety of ways that accompanying material can describe or depict a regulated product should have little practical effect.

c. Catalogs and Marketing Materials

Many industry commenters contended that catalogs and marketing materials depicting other products, as well as the regulated products that such materials accompany, should be exempt from the labeling requirements. Under their rationale, the purpose of such catalogs is to focus the attention of the purchaser on the other products rather

than on the regulated product he or she has just purchased.

First, the law only applies to descriptive material that accompanies a product that requires labeling. A catalog that accompanies an unregulated product need not bear any labeling, even though the packages of other products described in the catalog might require labeling.

The status under the CSPA of a marketing material such as a catalog that depicts or advertises other items *in addition to* the regulated product that the catalog accompanies is a question of interpretation. Although a depiction of a regulated product in a catalog would appear to meet the plain meaning of the term ''descriptive material,'' the Commission believes that requiring labeling in such a circumstance will do little to increase the protection provided by the point-of-purchase warning on the product's label. Accordingly, the Commission has excluded such catalogs and similar marketing materials from the definition of ''descriptive material,'' unless they contain additional information, such as instructions for use of the regulated product it accompanies or a list of accessories intended to be used solely with that product.

d. Descriptive Material Intended for Use by Children

Some commenters recommended that descriptive material intended for use by children not require precautionary labeling, if the warnings are included on a separate package insert intended for adults. The commenters, citing the Senate report, reasoned that the statutory warnings are intended for adult purchasers and that young children would be unable to understand and appreciate the hazards. Consumer advocates, however, favored requiring that such material be labeled, noting that the material is often read by adults even though it is intended for children and that many children are capable of reading and understanding the warnings.

The Commission believes that the inclusion of a properly labeled insert in addition to instructions for children is adequate to satisfy the objectives of the legislation without compromising safety. The final rule exempts from the labeling requirements descriptive material intended solely for use by children, provided that the package of the product also contains a properly labeled insert intended for adults that is prominently identified as a warning for parents.

6. Definition of Package

The proposed regulation defined the term ''package'' as the immediate package in which a product subject to labeling is sold or is intended to be stored, as well as to any outer container or wrapping. Commenters expressed concern that this definition could require labeling to appear on shrink wrap or cellophane applied over an immediate package, as well as on components of toys such as doll houses, toy medical bags, etc. that are themselves used to store other components. One commenter also suggested that the labeling requirements not apply to containers used to ship packaged products to retailers because consumers generally do not see or read information on such containers.

In response to the latter comment, the Commission notes that the CSPA only applies to retail packages intended to be distributed to consumers or to containers used to display bulk unpackaged and unlabeled items at retail. The Commission also notes that, for unpackaged, unlabeled products sold in bulk, unlabeled shrink wrap film intended to keep a toy clean or plastic ''eggs'' designed to permit toys to be dispensed from vending machines is not ''packaging'' which would require labeling under the CSPA.

With respect to the other comments, the reference to the outer container or wrapper of a product in the proposed rule tracks section 2(n) of the FHSA which requires that any labeling required under that act shall appear on the outside container or wrapper of a hazardous substance, unless the labeling is easily legible through the outside container or wrapper. This provision is equally applicable to the labeling required by the CSPA. With respect to functional components of toys that are used to store other components, the CSPA only requires that packaging intended for retail inspection must bear labeling. Thus, while cardboard boxes for games may require labeling if they have a surface that functions as a principal display panel, the Commission believes that Congress did not intend labeling to be applied directly to toys or components of toys that already bear labeling on their packaging or that are not part of the retail display. However, if such items are displayed at retail without any packaging, the items themselves would have to bear a hang tag containing the required labeling. The final regulation has been revised to clarify both of these issues.

7. Definition of ''Toy or Game''

The proposed rule did not include a definition of ''toy'' or ''game.'' However, commenters requested that the Commission clarify the scope of these terms, questioning whether arts and crafts materials, such as paint sets or bead stringing kits, are subject to the labeling requirements. Representatives of the Art and Creative Materials Institute cited a decision of the United States Court of Appeals for the Second Circuit to support the proposition that art materials are not necessarily included in the definition of a toy. This decision, however, addressed the issue of whether a flammable children's article was an educational material that was exempt from the banning requirements of the FHSA.

Past Commission actions have generally addressed the hazards associated with articles intended for use by children, including toys and games. The agency, therefore, has not previously undertaken to define either term. In the absence of a regulatory definition, however, the Commission generally looks to common dictionary definitions of terms for guidance. For example, a toy is ''an object for children to play with; especially something made for the amusement of a child or for his use in play.'' A game is ''an article for use in a physical or mental competition conducted according to rules in which the participants play in direct opposition to each other.* * *'' (In the Commission's view, the latter definition also includes games in which children compete with an item itself rather than other children.) The Commission has elected not to include definitions of the terms ''toy'' and ''game'' in the final rule, but will continue to draw upon on common dictionary definitions of these terms for guidance in administering the CSPA.

With respect to the specific applicability of the term ''toy'' to arts and crafts sets intended for children three to five, these products are primarily intended for use in play and for the amusement of such children. The Commission therefore considers them to be ''toys.'' Such items would require labeling under the CSPA, even though a child, in the course of play, might produce a ''functional'' item for display or use. However, items such as pens and pencils for general use which might incidentally be used in play would not be considered toys.

The Commission has also received inquiries concerning the status of ''hybrid'' items, such as children's toiletries which include toys or other items subject to the CSPA. If any part of

such an item is an article subject to the CSPA, the package of the item requires labeling.

8. Educational Materials and Mail Order Sales

a. Sales to Educational Institutions

One commenter questioned whether packages of toys or games sold exclusively to schools through catalogs require labeling. The primary purpose of the CSPA is to provide a point-of-purchase warning of the hazards that products intended for older children present to children under three. Inasmuch as children under three are not typically present in a traditional school setting, requiring labeling on toys and games sold by mail *solely* to educational institutions such as kindergartens and elementary schools for use *exclusively* in those institutions would not accomplish the purposes of the CSPA. Accordingly, such items are excluded from the scope of the regulation, as long as the items are intended for children five and up. This age limitation is specified because products intended for three and four year old children may be sent to pre-schools or institutions such as day care centers where children under three may be present.

b. Mail Order Sales

A few commenters questioned whether the CSPA applies to products distributed to consumers through the mail, and, if so, whether it is sufficient to label just the mailing wrapper or whether both the product package and outer wrapper require labeling. Products exclusively distributed by mail are subject to the CSPA. Since the CSPA contemplates point-of-purchase inspection, firms can comply with the law by conspicuously labeling either the immediate product package or the outer wrapper. Such labeling need not be lithographed or printed on the wrapper. The use of a stamped label will suffice. The Commission notes that, if a product sold by mail is also sold in retail outlets, the retail package itself must be labeled.

9. Practices Under the Small Parts Regulation

The Commission's regulations addressing the choking hazards associated with toys and articles intended for children under three that contain small parts establish tests to determine whether such products will emit small parts under reasonably foreseeable conditions of use or abuse. They also exempt from the banning provisions specific items including writing materials (such as crayons, chalk, pencils and pens), books and other articles made of paper, modeling clay, and finger paints, watercolors, and other paint sets. Commenters questioned whether these policies apply to items regulated under the CSPA.

a. Use and Abuse Testing

The proposed rule did not include a requirement for ''use and abuse'' testing of toys and games. The rule noted that the Commission lacked sufficient information to establish the need to apply use and abuse tests to toys and games intended for children between three and six years of age, or on the costs associated with imposing such requirements. In addition, the decision not to require use and abuse testing was based on the language of the CSPA which referred to toys or games that ''include'' a small part.

Commenters split on the issue of applying use and abuse tests to toys and games. Consumer advocates favored requiring such tests, arguing that the failure to do so might mislead parents into believing a product without labeling is safe, even though small parts might detach from the product during play. Industry commenters, arguing against the requirement, contended that hazard and injury data do not support the need to impose such testing.

Given the absence of data relating to the costs of imposing such requirements and any potential benefits, the final rule retains the position expressed in the proposed rule and does not require use and abuse testing. Moreover, the Commission continues to believe that a reasonable reading of the phrase ''includes a small part'' provides a basis for concluding that Congress did not intend to require use and abuse testing.

The Commission notes that commenters exhibited confusion about the applicability of use and abuse tests to solid items that are intended to be removed or separated from toys or games during play or use, such as accessories for action figures and battery covers that are not screwed shut, or to items such as strip magnets that are designed to be divided into individual components. Under the Commission's existing policies, such items are evaluated by detaching them without applying use and abuse testing and placing them in the test cylinder. Similarly, if, as is discussed *infra.*, the Commission decides that products that are currently exempt from the small parts regulation require labeling, items such as modeling clay and play dough, which separate into multiple pieces of varying sizes during use, will be evaluated without compression in the form and shape in which they are sold at retail.

b. Exempt Products

The proposed rule was silent on the applicability of the CSPA to products that are exempt from the small parts regulation under 16 CFR 1501.3. Furthermore, there is no express reference in the CSPA or its legislative history to the status of products that are exempt from the small parts requirements. Commenters argued that the inclusion of balloons, which are expressly exempt from the small parts regulation, in the CSPA could be construed as an indication that Congress knew how to include exempt products within the scope of the statute when it wanted to. Since Congress only singled out balloons for coverage, other exempt products would not require labeling. Others contended that requiring products exempt from small parts testing to be labeled would also create an apparent inconsistency. For example, a felt tip marker intended for children between three and six years of age with a cap that is a small part would require labeling (assuming, of course, that the item is a toy), but the same item would require neither labeling nor compliance with the small parts regulation if it were intended for children under three.

Other commenters noted that the purpose of the exemptions to the small parts regulation was to avoid banning functional products which could not be produced in compliance with the small parts requirements. These commenters argued that labeling provides a reasonable alternative to alert parents purchasing toys and games for older children to the potential hazards such products may present to younger children. Furthermore, unlike the small parts performance requirements, labeling such items would not affect their ability to be produced and sold.

In its vote on the final rule, the Commission divided on the issue of whether toys and games that are exempt from the small parts regulation, if they are intended for children under three, require labeling under the CSPA, if they are intended for children three through five years of age. Accordingly, that issue will remain unresolved until such time as a majority of the Commission concurs on its resolution. Pending that resolution, toys and games that are exempted from the requirements of the small parts regulation by 16 CFR 1501.3 are not required to bear labeling under the act. However, even if the Commission elects to require labeling for exempt products, paper punch-out toys and games will still be exempt from the labeling requirements, since there is

no data to indicate that such items present a risk to children under three.

10. Bulk Sales

The CSPA requires that labeling appear not only on retail packages, but also on bins from which unpackaged and unlabeled regulated products are sold in bulk, containers for the retail display of such items, and vending machines from which they are dispensed. The labels must appear conspicuously. Administering labeling requirements of this nature is a matter of first impression for the Commission, since the FHSA and its regulations require an unpackaged hazardous substance to bear a label on the item itself or on a hang tag attached to the item.

a. Obligation to Apply Labels

One commenter questioned whether retailers are required to label store displays of items subject to the CSPA which are sold in bulk and without packaging. The CSPA requires labeling on bins, containers for retail display, and vending machines from which unpackaged items subject to the act are sold or dispensed. A retailer who fails to comply with these requirements may be subject to penalties for violating section 4(c) of the FHSA. To assist retailers in complying with the CSPA, the Commission suggests that manufacturers include, in the shipping containers for bulk products, labels for the retailer to post. For example, an 7″ × 5″ card containing the required labeling in the type size specified by 16 CFR 1500.121 would generally suffice to assure that large bins are conspicuously labeled. Smaller cards, e.g. 3″ × 5″, 2″ × 4″ would generally be adequate for smaller containers for bulk display. To provide an incentive for displaying the cards, such cards could include an area for displaying the price of the item. As an alternative to providing such labels, the invoice that accompanies bulk products or the shipping container of such products could contain a clear statement of the requirements of the law.

b. Definition of Bin or Container for Retail Display

The applicability of the CSPA to traditional dump display bins, gold fish bowls, and similar containers that contain loose merchandise to be inspected and selected by purchasers themselves is clear. However, many commenters questioned whether the law applies to a showcase or counter at which items are displayed for inspection by purchasers but are selected by a clerk or sales person at the direction of the purchasers. Examples include arcades in which premiums are redeemed for coupons, carnival booths, and fast food outlets.

In the absence of any clear indication in the legislation or its history that Congress intended to cover display cases and similar counters, the Commission interprets the CSPA as requiring labeling only for those bins and containers from which consumers select items displayed in bulk. The final rule reflects this determination.

11. Small Balls and Marbles

a. Implied Upper Age Limit—Small Balls and Marbles

The CSPA requires that packages of small balls and marbles intended for children three years of age or older, and of toys and games containing such balls and marbles, bear precautionary labeling. The proposed rule tracked the statutory language. Several commenters requested that the Commission establish an upper age limit for the purposes of labeling such products. Some suggested that an upper age limit of eight years (96 months) would be consistent with the provisions of 16 CFR 1500.53 which establishes use-and-abuse testing requirements for toys intended for children in this age group. Another comment recommended twelve or fourteen years as the upper limit, based on the age at which children reach puberty.

Individual small balls or marbles are generally used in play by children of all ages—that is, they are as likely to be used by five to seven year olds as they are by nine to eleven year olds. Because there is no distinction between the ages of the children who will use them, all such products require labeling under the CSPA.

The Commission, however, distinguishes balls and marbles contained in toys and games from those intended for general use. The former are often intended for children of a specified age based on the level of intellectual or physical development of children in that age group. Even in the absence of precautionary labeling, the Commission believes it highly unlikely that a parent would consider purchasing a toy or game containing a small ball or marble intended for a child over eight years of age for a child under three. For example, as the Commission's age grading guidelines recognize, nine to twelve year olds have developed sufficient fine motor coordination for labyrinth or maze games that require maneuvering a marble along a pathway and for games requiring careful shooting or aiming of markers. Such games, however, would have virtually no play value for children under three. The final rule therefore only requires labeling for toys and games containing a small ball or marble that are intended for children under 8 years of age. This age limit also follows the maximum age limit specified in the Commission's regulations prescribing tests to determine whether a children's article presents a hazard during reasonably foreseeable use or abuse.

b. Balls for General Use in Sports

One commenter questioned whether ping pong balls and golf balls require labeling under the CSPA, reasoning that, since children utilize such products, the products qualify as a toy or game intended for children under seven years of age. The commenter, however, did not address the issue of status of these items as small balls under the CSPA.

The Commission believes that the CSPA was not designed to cover balls generally intended for use in sports such as golf or ping pong which might incidentally be used by children over three. If, however, such a ball is labeled or marketed as being intended for children or is part of toy, game, or equipment set specifically intended for children over three years of age but less than eight years old, the labeling requirements apply.

c. Definition of Ball

The proposed rule defined a ''ball'' as a spheroid, ovoid, or elliptical object that is designed or intended to be thrown, hit, kicked, rolled, or bounced. One commenter requested that the definition of the term ''ball'' be expanded to include items that are dropped, commenting that some toys or games incorporate such a feature. The Commission believes that this comment has merit and has revised the final rule accordingly. Another commenter questioned whether tethered balls are subject to the CSPA only if they fail use and abuse testing. Unlike small parts which only present a hazard when they detach during use or abuse, small balls present a choking hazard even when tethered. Thus, tethered balls are subject to the labeling requirements, regardless of whether they pass use or abuse tests. A third commenter questioned how to determine whether a ball is permanently enclosed in a maze. As discussed previously, the rule does not require use or abuse testing to determine whether small parts are present for the purposes of CSPA labeling. However, the final rule does reflect a limited exception to this determination. The determination of whether a ball is permanently enclosed in a maze or similar container

is made by subjecting the container to the appropriate test in 16 CFR 1500.52 or 53 simulating the use and abuse of a toy or article intended for use by children under three, in the case of banned small balls, or three or over for labeling purposes.

d. Marbles

Since marbles are primarily intended for use by children, the labeling requirements generally apply to all packages, games, or toys containing marbles. Marbles that are not intended for children include collectors' marbles and marbles for ornamental or industrial use. In addition, the Commission has excepted from the labeling requirements marbles that are permanently enclosed in a game or toy. As is the case with small balls, the determination of accessibility can be made by applying the tests of 16 CFR 1500.53.

e. Template for Testing Balls

The proposed regulation bans any ball intended for children under three years of age that, under the influence of its own weight, passes, in any orientation, through a circular hole with a diameter of 1.75 inches in a rigid template. One commenter questioned whether the template must have the same dimensions as the template used to test rattles. The pacifier regulation, 16 CFR 1511 provides a better point of reference for testing than the rattle regulation, since the procedure for testing pacifiers is similar to that used to test small balls. While the final rule does not incorporate all of the external dimensions of the pacifier test fixture, to assure that the template is rigid, the rule indicates that the depth of the template for testing small balls must be at least ¼ inch (6mm.), consistent with that of the pacifier test fixture.

12. Balloons

The CSPA requires that the packaging of any latex balloon and any descriptive material which accompanies such a balloon bear specific labeling statements warning that uninflated balloons or pieces of balloons can choke or suffocate children under eight years of age. In the case of bulk sales of balloons, the bin, container for retail display, or vending machine from which the balloons are sold or dispensed must bear the required labeling statements.

a. Unpackaged Balloons Distributed Individually

One commenter expressed concern that the CSPA may require performers, such as professional magicians, who distribute individual unpackaged balloons to members of their audiences either to label the individual balloons or wear a tag or sign containing the required warnings. The law imposes neither requirement feared by the commenter.

Packages of balloons must bear precautionary labeling. However, the bulk sale requirements of the law are designed to require labeling on containers in which multiple products are held for retail sale. The Commission does not believe that Congress intended these provisions to extend to individuals who distribute unpackaged balloons that are not held in some form of container for retail display. Thus, unpackaged individual balloons distributed as part of a professional performance are not subject to the requirement. The same is true for balloons used in commercial birthday programs which are blown up prior to arrival of the children and are used to decorate the table and party area, even though individual balloons may be given to the children as they leave.

If, however, a performer receives packages of balloons that are unlabeled and distributes the packages to the public, the performer must take steps to assure that the packages are properly labeled. A performer can comply with these requirements by purchasing packages of balloons that are properly labeled or by placing a sticker label containing the required labeling on unlabeled balloon packages prior to distributing them to the public.

b. Books and Videos

The same commenter questioned the applicability of the labeling requirements to books and videos describing balloon sculpture. Descriptive material such as a book or videotape would only require precautionary labeling when that material is packaged with a package of balloons or when the material is intended to be distributed at the same time such a package is sold or delivered to a purchaser. The fact that a consumer who receives an instructional videotape or book may subsequently purchase balloons does not bring the tape or book within the ambit of the law. If an individual or company packages or distributes to the public a package of balloons together with a videotape, instruction sheet, or book that is classified as descriptive material, that individual or company has the obligation to assure that the descriptive material is properly labeled.

13. Exports

Some commenters questioned whether the CSPA requirements apply to products manufactured in the United States exclusively for export. Products intended for export that are labeled in accordance with the specifications of the foreign purchaser and with the laws of the country to which they are to be exported do not require labeling under the CSPA, as long as the shipping container is clearly marked that the product is for export and the product is, in fact, exported. 15 U.S.C. 1264(b)(3). However, under existing Commission policy, the manufacturer or exporter of the product must comply with the export notification requirements of 15 U.S.C. 1273(d) and 16 C.F.R. 1019.

14. Products Manufactured Outside the United States

The CSPA includes an alternative to labeling descriptive materials for products manufactured outside the United States and shipped directly to consumers. Under the alternative, if the shipping container contains other accompanying material that is labeled conspicuously, the descriptive material need not be labeled. One commenter requested clarification that products packaged abroad and shipped to a U.S. affiliate for shipment to consumers be included in the scope of this exception. The commenter noted that the Senate Report contemplated this type of arrangement. The Commission accepts this suggestion and has revised the final regulation accordingly.

15. Effective Date

Several commenters requested that the Commission delay the effective date of the final rule to permit package labels to be redesigned and printed. Some suggested a delay of six months, while others requested a year. However, no commenter provided a detailed breakdown of the time frames involved.

Based on its experience with administering the prominence and conspicuousness requirements of 16 CFR 1500.121, the Commission agrees that a delayed effective date is appropriate. Accordingly, the final regulation becomes effective with respect to products manufactured in or imported into the United States six months after publication of the final rule. However, since the effective date of the law was January 1, 1995, the labeling statements required by the act must appear on the principal display panel of product packages in advance of publication of the final rule. In recognition of this fact, packages with labels lithographed or printed before the effective date of the rule may be used for a period of up to six months after the effective date if they display the specific statements prescribed in the statute on the principal display panel in a manner

that is generally conspicuous. This approach will permit packages containing labeling that may not meet some of the more technical aspects of the rule, but are in substantial compliance with the requirements of the law, to be exhausted. It will also save the unnecessary expense associated with destroying such packaging, without compromising safety.

C. Impact on Small Businesses

In accordance with section 3(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this regulation will not have a significant economic impact upon a substantial number of small entities. Any obligations imposed upon such entities arise under the express provisions of section 24 of the FHSA. This regulation simply clarifies the obligations imposed by that law on certain toys, games, balloons, marbles, and balls. The regulation itself, therefore, will have no significant economic impact on small businesses, either beneficial or negative, beyond that which results from the statutory provisions.

D. Environmental Considerations

The proposed rule falls within the provisions of 16 C.F.R. 1021.5(c) which designates categories of actions conducted by the Consumer Product Safety Commission that normally have little or no potential for affecting the human environment. The Commission does not believe that the rule contains any unusual aspects which may produce effects on the human environment, nor can the Commission foresee any circumstance in which the rule proposed below may produce such effects. For this reason, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1500

Business and industry, Consumer protection, Hazardous materials, Infants and children, Labeling, Packaging and containers.

E. Conclusion

Therefore, pursuant to the authority of the Child Safety Protection Act of 1994 (Pub. L. 103–267), sections 10(a) and 24(c) of the Federal Hazardous Substances Act, (15 U.S.C. 1269(a) and 1278(c)), and 5 U.S.C. 553, the Consumer Product Safety Commission amends Title 16 of the Code of Federal Regulations, Chapter II, Subchapter C, Part 1500 as set forth below.

Part 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority for Part 1500 is revised to read as follows:

Authority: 15 U.S.C. 1261–1278, 2079.

2. Section 1500.18 is amended by revising paragraph (a) introductory text and adding paragraph (a)(17) to read as follows:

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) *Toys and other articles presenting mechanical hazards.* Under the authority of sections 2(f)(1)(D) and 24 of the act and pursuant to the provisions of section 3(e) of the act, the Commission has determined that the following types of toys or other articles intended for use by children present a mechanical hazard within the meaning of section 2(s) of the act because in normal use, or when subjected to reasonably foreseeable damage or abuse, the design or manufacture presents an unreasonable risk of personal injury or illness:

* * * * *

(17) Any ball intended for children under three years of age that, under the influence of its own weight, passes, in any orientation, entirely through a circular hole with a diameter of 1.75 inches (44.4 mm.) in a rigid template ¼ inches (6 mm.) thick. In testing to evaluate compliance with this paragraph, the diameter of opening in the Commission's test template shall be no greater than 1.75 inches (44.4 mm.).

(i) For the purposes of this paragraph, the term ''ball'' includes any spherical, ovoid, or ellipsoidal object that is designed or intended to be thrown, hit, kicked, rolled, dropped, or bounced. The term ''ball'' includes any spherical, ovoid, or ellipsoidal object that is attached to a toy or article by means of a string, elastic cord, or similar tether. The term ''ball'' also includes any multi-sided object formed by connecting planes into a generally spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball, and any novelty item of a generally spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball.

(ii) The term ''ball'' does not include dice, or balls permanently enclosed inside pinball machines, mazes, or similar outer containers. A ball is permanently enclosed if, when tested in accordance with 16 CFR 1500.52, the ball is not removed from the outer container.

(iii) In determining whether such a ball is intended for use by children under three years of age, the criteria specified in 16 CFR 1501.2(b) and the enforcement procedure established by 16 CFR 1501.5 shall apply.

* * * * *

3. A new section 1500.19 is added, to read as follows:

§ 1500.19 Misbranded toys and other articles intended for use by children.

(a) *Definitions.* For the purposes of this section, the following definitions shall apply.

(1) *Ball* means a spherical, ovoid, or ellipsoidal object that is designed or intended to be thrown, hit, kicked, rolled, dropped, or bounced. The term ''ball'' includes any spherical, ovoid, or ellipsoidal object that is attached to a toy or article by means of a string, elastic cord, or similar tether. The term ''ball'' also includes any multi-sided object formed by connecting planes into a generally, spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball, and any novelty item of a generally spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball. The term ''ball'' does not include dice, or balls permanently enclosed inside pinball machines, mazes, or similar outer containers. A ball is permanently enclosed if, when tested in accordance with 16 CFR 1500.53, it is not removed from the outer container.

(2) *Small ball* means a ball that, under the influence of its own weight, passes, in any orientation, entirely through a circular hole with a diameter of 1.75 inches (44.4 mm.) in a rigid template ¼ inches (6 mm.) thick. In testing to evaluate compliance with this regulation, the diameter of opening in the Commission's test template shall be no greater than 1.75 inches (44.4 mm.).

(3) *Latex balloon* means a toy or decorative item consisting of a latex bag that is designed to be inflated by air or gas. The term does not include inflatable children's toys that are used in aquatic activities such as rafts, water wings, swim rings, or other similar items.

(4) *Marble* means a ball made of a hard material, such as glass, agate, marble or plastic, that is used in various children's games, generally as a playing piece or marker. The term ''marble'' does not include a marble permanently enclosed in a toy or game. A marble is permanently enclosed if, when tested in accordance with 16 CFR 1500.53, it is not removed from the toy or game.

(5) *Small part* means any object which, when tested in accordance with the procedures contained in 16 CFR

1501.4(a) and 1501.4(b)(1), fits entirely within the cylinder shown in Figure 1 appended to 16 CFR part 1501. The use and abuse testing provisions of 16 CFR 1500.51 through 1500.53 and 1501.4(b)(2) do not apply to this definition.

(6) *Package* or packaging refers to the immediate package in which a product subject to labeling under section 24 of the act is sold, as well as to any outer container or wrapping for that package.

(7) *Descriptive material* means any discrete piece of written material separate from the label of the package that contains an instruction (whether written or otherwise) for the use of a product subject to these labeling requirements, any depiction of the product, and any written material that specifically describes any function, use, warnings, user population, design or material specification, or other characteristic of the product. A catalog or other marketing material or advertisement that depicts other products in addition to the product it accompanies is not ''descriptive material'' unless it contains additional information, such as instructions for use of the product it accompanies or lists of accessories exclusively for use with that product, that are designed to focus the purchaser's attention on the product. Descriptive material ''accompanies'' a product subject to the labeling requirements when it is packaged with the product or when it is intended to be distributed with the product at the time of sale or delivery to the purchaser. ''Descriptive material'' does not include statements that appear on the package of a product subject to the labeling requirements. ''Descriptive material'' does not include material intended solely for use by children if the package it accompanies contains a separate package insert prominently identified as a warning for parents that contains the required precautionary statements.

(8) *Bin* and *container for retail display* mean containers in which multiple unpackaged and unlabeled items are held for direct selection by and sale to consumers.

(b) *Misbranded toys and children's articles.* Pursuant to sections 2(p) and 24 of the FHSA, the following articles are misbranded hazardous substances if their packaging, any descriptive material that accompanies them, and, if unpackaged and unlabeled, any bin in which they are held for sale, any container in which they are held for retail display, or any vending machine from which they are dispensed, fails to bear the labeling statements required in paragraphs (b) (1) through (4) and paragraph (f)(3) of this section, or if such labeling statements fail to comply with the prominence and conspicuousness requirements of paragraph (d) of this section.

(1) With the exception of paper products such as punch-out games and similar items, any toy or game that is intended for use by children who are at least three years old but less than six years of age shall bear or contain the following cautionary statement if the toy or game includes a small part:

BILLING CODE 6355–01–P

WARNING:

CHOKING HAZARD--Small parts
Not for children under 3 yrs.

BILLING CODE 6355–01–C

(2) Any latex balloon, or toy or game that contains a latex balloon, shall bear the following cautionary statement:

BILLING CODE 6355–01–P

WARNING:

CHOKING HAZARD--Children under 8 yrs. can choke or suffocate on uninflated or broken balloons. Adult supervision required.

Keep uninflated balloons from children. Discard broken balloons at once.

(3)(I) Any small ball intended for children three years of age or older shall bear the following cautionary statement:

BILLING CODE 6355–01–P

WARNING:

CHOKING HAZARD--This toy is a small ball.
Not for children under 3 yrs.

BILLING CODE 6355–01–P

(ii) Any toy or game intended for children who are at least three years old but less than eight years of age that contains a small ball shall bear the following cautionary statement:

BILLING CODE 6355–01–P

WARNING:

CHOKING HAZARD--Toy contains a small ball.
Not for children under 3 yrs.

BILLING CODE 6355–01–C

(4)(i) Any marble intended for children three years of age or older shall bear the following cautionary statement:

BILLING CODE 6355–01–P

WARNING:

CHOKING HAZARD--This toy is a marble.
Not for children under 3 yrs.

BILLING CODE 6355–01–C

(ii) Any toy or game intended for children who are at least three years old but less than eight years of age that contains a marble shall bear the following cautionary statement:

BILLING CODE 6355–01–P

WARNING:

CHOKING HAZARD--Toy contains a marble.
Not for children under 3 yrs.

BILLING CODE 6355–01–C

(c) *Age of intended user.* In determining the ages of the children for which any toy or article subject to this section is intended, the following factors are relevant: the manufacturer's stated intent (such as the age stated on a label) if it is reasonable; the advertising, marketing, and promotion of the article; and whether the article is commonly recognized as being intended for children in this age group. In enforcing this provision, the Commission will follow the procedures set forth in 16 CFR 1501.5.

(d) *Prominence and conspicuousness of labeling statements.* The requirements of 16 CFR 1500.121 relating to the prominence and conspicuousness of precautionary labeling statements for hazardous substances shall apply to any labeling statement required under § 1500.19(b) and (f), with the following clarifications and modifications.

(1) All labeling statements required by § 1500.19(b) and (f) shall be in the English language. The statements required by paragraph (b) need not appear in the format and layout depicted in paragraph (b). The statements required by 16 CFR 1500.19(b) and (f) shall be blocked together within a square or rectangular area, with or without a border. This means that the statements must appear on at least two lines. The statements shall be separated from all other graphic material by a space no smaller than the minimum allowable height of the type size for other cautionary material (e.g., the phrase ''Not for children under 3 yrs.''). If not separated by that distance, the labeling statements must be surrounded by a border line. Label design, the use of vignettes, or the proximity of other labeling or lettering shall not obscure or render inconspicuous any labeling statement required under § 1500.19(b) and (f). This means that such statements shall appear on a solid background, which need not differ from the background color or any other color on the package label.

(2) The words ''WARNING'' or ''SAFETY WARNING'' required by section 24 of the FHSA shall be regarded as signal words.

(3) The statement ''CHOKING HAZARD'' shall be regarded as a statement of the principal hazard associated with the products subject to this section.

(4) All other remaining statements required by this section shall be regarded as ''other cautionary material'' as that term is defined in 16 CFR 1500.121(a)(2)(viii).

(5) The principal display panel for a bin, container for retail display, or vending machine shall be the side or surface designed to be most prominently displayed, shown, or presented to, or examined by, prospective purchasers. In the case of bins or containers for retail display, the cautionary material may be placed on a display card of a reasonable size in relationship to the surface area of the bin or container. The area of the display card shall constitute the area of the principal display panel. In the case of vending machines that contain a display card, the cautionary label may be placed either on the display card, on the coinage indicator decal, or on the glass or clear plastic of the machine. If there is no display card inside a vending machine, the size of the principal display panel will be calculated in accordance with 16 CFR 1500.121(c) based on the size of the front of the container from which items are dispensed, exclusive of the area of metal attachments, coin inserts, bases, etc. Any other side or surface of such a bin, container for retail sale, or vending machine that bears information, such as price or product description, for examination by purchasers shall be deemed to be a principal display panel, excluding any side or surface with information that only identifies the company that owns or operates a vending machine.

(6) All of the labeling statements required by this section, including those classified as ''other cautionary material,'' must appear on the principal display panel of the product, except as provided for by § 1500.19(f). Any signal word shall appear on the same line and in close proximity to the triangle required by section 24 of the act. Multiple messages should be provided with sufficient space between them, when feasible, to prevent them from visually blending together.

(7) All labeling statements required by this section shall comply with the following type size requirements. 16 CFR 1500.121(c)(1) explains how to compute the area of the principal display panel and letter height.

Area sq. in	0–2	+2–5	+5–10	+10–15	+15–30	+30–100	+100–400	+400
Type Size								
Sig. Wd	3/64″	1/16″	3/32″	7/64″	1/8″	5/32″	1/4″	1/2″
St. Haz	3/64″	3/64″	1/16″	3/32″	3/32″	7/64″	5/32″	1/4″
Oth. Mat	1/32″	3/64″	1/16″	1/16″	5/64″	3/32″	7/64″	5/32″

(8) Labeling required by this section that appears on a bin, container for retail display, or vending machine shall be in reasonable proximity to any pricing or product information contained on the principal display

panel, or, if such information is not present, in close proximity to the article that is subject to the labeling requirements.

(9) Descriptive material that accompanies a product subject to the labeling requirements, including accompanying material subject to the alternative allowed by § 1500.19(f), shall comply with the requirements of 16 CFR 1500.121(c)(6) relating to literature containing instructions for use which accompanies a hazardous substance. If the descriptive material contains instructions for use, the required precautionary labeling shall be in reasonable proximity to such instructions or directions and shall be placed together within the same general area (see 16 CFR 1500.121(c)(6)).

(10) In the case of any alternative labeling statement permitted under § 1500.19(e), the requirements of 16 CFR 1500.121(b)(3) and 1500.121(c)(2)(iii) shall apply to statements or indicators on the principal display panel directing attention to the complete cautionary labeling that appears on another display panel.

(11) Any triangle required by this section shall be an equilateral triangle. The height of such a triangle shall be equal to or exceed the height of the letters of the signal word ''WARNING''. The height of the exclamation point inside the triangle shall be at least half the height of the triangle, and the exclamation point shall be centered vertically in the triangle. The triangle shall be separated from the signal word by a distance at least equal to the space occupied by the first letter of the signal word. In all other respects, triangles with exclamation points shall conform generally to the provisions of 16 CFR 1500.121 relating to signal words.

(e) *Combination of labeling statements.* The labels of products that contain more than one item subject to the requirements of this section may combine information relating to each of the respective hazards, if the resulting condensed statement contains all of the information necessary to describe the hazard presented by each article. However, in the case of a product that contains a balloon and another item subject to the labeling requirements, only the signal word and statement of hazard may be combined.

(f) *Alternative labeling statements for small packages.* Any cautionary statement required by section 1500.19(b) may be displayed on a display panel of the package of a product subject to the labeling requirement other than the principal display panel only if:

(1) The package has a principal display panel of 15 square inches or less,

(2) The full labeling statement required by paragraph (b) of this section is displayed in three or more languages on another display panel of the package of the product, and

(3)(i) In the case of a toy or game subject to § 1500.19(b)(1), a small ball subject to § 1500.19(b)(3), a marble subject to § 1500.19(b)(4), or a toy or game containing such a ball or marble, the principal display panel of the package bears the statement:

BILLING CODE 6355–01–P

SAFETY WARNING

BILLING CODE 6355–01–C

and bears an arrow or other indicator pointing toward or directing the purchaser's attention to the display panel on the package where the full labeling statement appears, or

(ii) In the case of a balloon subject to § 1500.19(b)(2) or a toy or game containing such a balloon, the principal display panel bears the statement:

BILLING CODE 6355–01–P

WARNING--CHOKING HAZARD

BILLING CODE 6355–01–C

and bears an arrow or other indicator pointing toward or directing the purchaser's attention to the display panel on the package where the full labeling statement appears.

(g) *Alternative for products manufactured outside the United States.* In the case of a product subject to the labeling requirements of § 1500.19(b) which is manufactured outside the United States and is shipped directly from the manufacturer to the consumer by United States mail or other delivery service in an immediate package that contains descriptive material, the descriptive material inside the immediate package of the product need not bear the required labeling statement only if the shipping container of the product contains other accompanying material that bears the required statements displayed in a prominent and conspicuous manner. Products shipped from abroad to a U.S. affiliate for shipment to consumers are included within the scope of this exception.

(h) *Preemption.* Section 101(e) of the Child Safety Protection Act of 1994 prohibits any state or political subdivision of a state from enacting or enforcing any requirement relating to cautionary labeling addressing small parts hazards or choking hazards associated with any toy, game, marble, small ball, or balloon intended or suitable for use by children unless the state or local requirement is identical to a requirement established by section 24 of the FHSA or by 16 CFR 1500.19. Section 101(e) allows a state or political subdivision of a state to enforce a non-identical requirement relating to cautionary labeling warning of small parts hazards or choking hazards associated with any toy subject to the provisions of section 24 of FHSA until January 1, 1995, if the non-identical requirement was in effect on October 2, 1993.

Dated: February 17, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–4484 Filed 2–24–95; 8:45 am]

BILLING CODE 6355–01–P

federal register

Monday
February 27, 1995

Part VIII

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

Section 111(a) of Housing and Community Development Act of 1974; Interpretive Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R–95–1773; FR–3787–I–01]

RIN 2506–AB70

Section 111(a) of Housing and Community Development Act of 1974; Interpretive Rule

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interpretive rule.

SUMMARY: This interpretive rule sets forth HUD's interpretation of section 111(a) of the Housing and Community Development Act of 1974 (the HCDA of 1974), as to whether this section's procedural protections apply when HUD terminates a city's Urban Development Action Grant (UDAG) agreement prior to final approval and funds disbursement. The United States Court of Appeals for the District of Columbia Circuit instructed HUD to provide a reasonable construction of this statute. HUD determines that section 111(a) does not mandate procedural protections when a UDAG grant is terminated prior to final approval and funds disbursement.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Roy O. Priest, Director of the Office of Economic Development, Department of Housing and Urban Development, Room 7136, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 708–2290. The TDD number is (202) 708–2565. (These are not toll-free telephone numbers).

SUPPLEMENTARY INFORMATION:

Background

The Urban Development Action Grant (UDAG) program, which was enacted in 1977 under a Congressional amendment to the Housing and Community Development Act of 1974 (HCDA of 1974), was designed to encourage new or increased private investment in cities and urban counties experiencing severe economic distress. The availability of UDAG funds permitted local officials to capitalize on opportunities to stimulate economic development activity to aid in economic recovery. UDAG funds, awarded on a competitive basis, were available to carry out projects in support of a wide variety of economic development activities that involved the private sector. UDAG grants could be used in the form of equity funding, loans, interest subsidy, or other forms of necessary financing. Although Congress has not appropriated any new funds for the UDAG program since Fiscal Year 1988, many grants preliminarily approved by HUD pursuant to—or even prior to—the last funding competition still have not reached the final close-out stage. The termination of the grant agreements of recipients who fail to submit acceptable evidentiary materials or amendments to their grant agreements will be subject to the determination set forth herein regarding the opportunity for a formal hearing under section 111(a) of the HCDA of 1974.

Section 111 of the HCDA of 1974 is entitled ''Remedies for Noncompliance,'' and applies both to the Community Development Block Grant program created in 1974 and the subsequently created UDAG program. Section 111(a) provides as follows:

> If the Secretary finds after reasonable notice and opportunity for hearing that a recipient of assistance under this title has failed to comply substantially with any provision of this title, the Secretary, until he is satisfied that there is no longer any such failure to comply, shall—
>
> (1) terminate payments to the recipient under this title, or
>
> (2) reduce payments to the recipient under this title by an amount equal to the amount of such payments which were not expended in accordance with this title, or
>
> (3) limit the availability of payments under this title to programs, projects, or activities not affected by such failure to comply.

(This provision is codified at 42 U.S.C. 5311(a), and applicable regulations are contained in 24 CFR 570.913, which also describe the notice and hearing proceedings.)

The United States Court of Appeals for the District of Columbia Circuit found that section 111(a) of the HCDA of 1974 is unclear and ambiguous as to whether HUD, before such time as any grant funds have been disbursed, must provide an opportunity for a formal hearing to a city or urban county that has a grant agreement with HUD under the UDAG program, when HUD has decided to terminate the grant agreement due to failure to comply substantially with the HCDA of 1974, applicable regulations, or the grant agreement itself. *City of Kansas City, Missouri* v. *HUD,* 923 F.2d 188, 191 (D.C. Cir. 1991). The court also found that the HCDA of 1974 contains an implicit delegation of authority to HUD to interpret the applicability of section 111 under these circumstances. *Id.* at 191–92.

The Interpretive Rule

Under its implied interpretive authority as delegated by the HCDA of 1974, HUD interprets section 111(a) of the HCDA of 1974 as not requiring HUD to provide an opportunity for a hearing to a recipient under the UDAG program pertaining to the recipient's failure to comply substantially with any provisions of the HCDA of 1974, the regulations, or the grant agreement, which results in the termination of a grant agreement by HUD before final grant approval and payment of the grant funds to a recipient under its line of credit.

HUD has consistently maintained this interpretation of this section since the inception of the UDAG program in 1977. Accordingly, HUD has not voluntarily offered an opportunity for a formal section 111(a) hearing under the HCDA of 1974 to any recipient before acting to terminate a grant agreement. By judicial direction, HUD has now reconsidered the reasonableness of its construction of the HCDA of 1974, and has concluded that its long-standing interpretation remains correct and reasonable.

It is HUD's position that the reference in the HCDA of 1974 to HUD's ''terminat[ion of] payments'' to the recipient due to the recipient's failure to comply substantially with the provisions of Title I of the HCDA of 1974 means that the opportunity for a hearing before HUD acts to terminate a UDAG grant agreement shall be given to a recipient only after such time as funding has been finally approved and released (i.e., after payments have been made) to a recipient under its line of credit. In other words, the actual language of the statute has been interpreted by HUD not to require a formal hearing in order to effectuate HUD's termination of a grant agreement prior to such time as the recipient obtains from HUD an increase in the amount of money available under its line of credit. The primary basis for this position is the simple logic that HUD cannot possibly ''terminate payments'' that HUD has not yet made. Since entitlement to the use of grant funds is dependent upon satisfactory performance by the recipient in providing HUD with legally binding commitments that comply with the requirements of the grant agreement, there is no need to impose the procedural burden of a formal hearing upon HUD in order to terminate a grant agreement when the recipient, due to its failure to submit acceptable and timely legally binding commitments, has not become entitled to the funds by having its line of credit increased.

The use of the word ''recipient'' in the HCDA of 1974 and the UDAG regulations, beginning at 24 CFR 570.460(c), does not endow a grant applicant who receives preliminary grant approval with an unconditional entitlement to payment of the grant funds. Rather, the term ''recipient'' is intended merely to describe cities and urban counties that have entered into a grant agreement with HUD under the UDAG program. The term does not signify any absolute right to, let alone actual receipt of, the grant funds; it merely evidences conditional authority for the funds. Indeed, the regulations specifically provide at § 570.460(c)(5) that:

> Preliminary approval does not become final until legally binding commitments between the recipient and the private and public participating parties have been submitted and approved by HUD. Release of grant funds is contingent upon the recipient's meeting each and every condition set forth in the grant agreement.

Approved legally binding commitments, as required by the regulations and the grant agreement, are the touchstone that the project is fully financed and has met all conditions necessary for it to move forward to completion with the assistance of the grant funds. In other words, the recipient has no authority or right to receive any grant money until and unless it submits on a timely basis acceptable legally binding commitments that HUD approves.

Also supporting HUD's position is the fact that recipients knowingly invest in a UDAG project at their peril with regard to receiving federal grant funds until legally binding commitments are approved and their line of credit is funded. Each recipient is afforded every opportunity to know that its investment in the project in connection with an activity to be paid for, in whole or in part, with grant funds may not be recoverable if the recipient incurs costs before HUD's approval of the legally binding commitments and the funding of the recipient's line of credit. The regulations at 24 CFR 570.462(b) specifically state that:

> The recipient and participating parties may voluntarily, at their own risk, and upon their own credit and expense, incur costs as authorized in paragraph (a) of this section, but their authority to reimburse or to be reimbursed out of grant funds shall be governed by the provisions of the grant agreement applicable to the payment of costs and the release of funds by the Secretary.

The regulations, as well as the grant agreement, thus make it clear that any authorized costs incurred by a recipient or by a participating party to the project that is the subject of the grant shall be incurred at the risk of the recipient or other party, without any assurance of reimbursement out of grant funds. Accordingly, every reasonable effort should be made by a recipient to submit acceptable evidentiary materials in order that the grant funds contingently set aside at the time of preliminary approval of the grant may expeditiously be provided to the project and not remain dormant and unavailable for use by HUD. HUD's experience clearly indicates that the primary cause of recipients' failure to comply with the provisions of the HCDA of 1974, the regulations, and the grant agreement has been their failure to submit satisfactory legally binding commitments to HUD within the time agreed under their grant agreements.

The fact that termination of grants is more likely to occur before disbursement of the funds, rather than after, does not serve to alter HUD's determination in this interpretive rule. A potential practical effect cannot undo HUD's reasonable interpretation of Congress' chosen statutory language, made in light of the overall program operation discussed above. Moreover, even as to practical considerations, there have been, to date, more than 263 terminations of grants for cause before the legally binding commitments have been approved and the recipient's line of credit funded. Requiring a formal hearing prior to termination would thus be extremely burdensome upon HUD's limited resources.

While HUD determines that recipients lack a formal hearing right under section 111(a) prior to final approval of the grant, it is significant that HUD nevertheless provides extensive notice and opportunities to resolve the problems. HUD consistently makes every effort to resolve problems that a recipient is experiencing in its attempt to comply with requirements of the HCDA of 1974, the regulations, or the grant agreement before giving final notice of termination to the recipient. Efforts include an invitation to the recipient's representatives to meet with HUD officials to discuss the issues and attempt to correct the problems that may be causing noncompliance. It has been HUD's practice to afford a recipient every reasonable opportunity to comply substantially with the requirements of the HCDA of 1974, the regulations, and the grant agreement. Only after HUD has exhausted all available means to resolve the issues has it been compelled to advise the recipient that its failure to correct the default may result in termination of a grant agreement by HUD. Often a recipient has responded favorably to HUD's efforts to assist in clearing the noncompliance and the project has been timely funded.

If HUD's attempts to work with the recipient to resolve the issues ultimately do not succeed, HUD will provide the recipient a written notice of its intention to terminate the grant agreement at least 35 days before taking action to terminate the grant agreement. Often this period of time is extended by HUD to provide additional opportunities to the recipient to remedy the noncompliance. Thus, recipients are not, in fact, deprived of procedural protection at the stage when, according to the U.S. Court of Appeals for the District of Columbia Circuit, it is arguably most needed. *City of Kansas City, Missouri* v. *HUD*, 923 F.2d 188, 193 (D.C. Cir. 1991). To the contrary, HUD provides extensive notice and opportunities to resolve the dispute, albeit not through a formal hearing.

Accordingly, this interpretive rule sets forth HUD's determination that, before such time as the UDAG grant has received final approval by HUD and the grant funds have been paid to the recipient under its line of credit, the HCDA of 1974 does not require that a UDAG recipient be entitled to an opportunity for a hearing concerning the recipient's failure to comply substantially with any provision of the HCDA of 1974, the regulations, or the grant agreement that HUD has decided to terminate. In addition, it has been determined that an opportunity for a hearing will be available to a recipient with regard to the termination of a grant that has been partially funded, but only with regard to the grant funds covered by legally binding commitments that HUD approved before the termination of a grant (or part of a grant) due to the failure of a recipient to comply substantially with any provision of the HCDA of 1974, the regulations, or the grant agreement.

This interpretive rule shall not apply to recipients who have received grants in states under the jurisdiction of the U.S. Court of Appeals for the First Circuit. In *City of Boston* v. *HUD*, 898 F.2d 828 (1st Cir. 1990), the court held that the recipient City of Boston was entitled to notice and opportunity for a hearing prior to termination of its UDAG grant, even though the City of Boston had not received final approval by HUD for its grant, let alone received any disbursement of funds.

Authority: 42 U.S.C. 3535(d).

Dated: February 17, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 95–4745 Filed 2–24–95; 8:45 am]

BILLING CODE 4210–29–P

federal register

Monday
February 27, 1995

Part IX

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3500

Real Estate Settlement Procedures Act; Business Purpose Loans; Interpretive Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R–95–1774:FR–3805–I–01]

Real Estate Settlement Procedures Act; Business Purpose Loans; RESPA Interpretive Rule 1995–1

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interpretive rule 1995–1.

SUMMARY: This interpretive rule sets forth the Department's interpretation regarding Section 312 of the Riegle Community Development and Regulatory Reform Act of 1994 which amended the Real Estate Settlement Procedures Act (RESPA) by adding a new Section 7.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, RESPA Enforcement Staff, Room 5241, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–4560. Hearing or speech-impaired individuals may call (202) 708–9300 (TDD) or 1–800–877–8339 (Federal Information Relay Service TDD). (Other than the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: Section 312 of the Riegle Community Development and Regulatory Reform Act of 1994 (Pub. L. 103–324, 108 Stat. 2160, approved September 23, 1994) (the 1994 Act) added a new Section 7 to the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 *et seq.*) which states in relevant part: ''This Act [RESPA] does not apply to credit transactions involving extensions of credit—(1) primarily for business, commercial, or agricultural purposes. * * * *''

The legislative background of the amendment states:

The language of the amendment is modeled after § 226.3 of Regulation Z, the Truth in Lending Act regulation. The Conferees intend the Department of Housing and Urban Development, the agency responsible for RESPA regulation, to use the Truth in Lending Act as a basis for its regulations but also to retain discretion to define what constitutes a transaction ''primarily for a business, commercial or agriculture purpose.'' House Report 103–652, to accompany H.R. 3474, August 2, 1994, at page 172.

On February 10, 1994, the Department published an amendment to Regulation X (59 FR 6505, revised on March 30, 1994, 59 FR 14748) (the 1994 amendments) which implemented the Housing and Community Development Act of1992, and also created certain exemptions from coverage of RESPA. Under § 3500.5 of that rule the exemption for business purpose loans is described as follows:

(2) An extension of credit primarily for a business, commercial, or agricultural purpose. The definition of such an extension of credit for purposes of this exemption generally parallels Regulation Z, 12 CFR 226.3(a)(l), and persons may rely on Regulation Z in determining whether the exemption applies. Notwithstanding the foregoing, the exemption in this section for business purpose loans does not include any loan to one or more persons acting in an individual capacity (natural persons) to acquire, refinance, improve, or maintain 1- to 4-family residential property used, or to be used, to rent to other persons. An individual who voluntarily chooses to act as a sole proprietorship is not considered to be acting in an individual capacity for purposes of this part.

Thus, the Department has already adopted the business, commercial and agricultural exemptions of RESPA as required by the new Section 7, with the exception of an ''individual'' undertaking financing transactions regarding 1–4 family residential rental properties. The RESPA statute and regulations had always covered 1 to 4 family residential properties, and presumably the second, third or fourth units were predominately used for rental purposes. In revising the RESPA rule in February 1994, the Department concluded that all 1 to 4 family investment transactions by individuals, whether or not for owner-occupied properties, were substantially similar in character to the purchase or refinance transactions of individuals for occupancy purposes. Therefore, the Department determined that the RESPA protections ordinarily should be afforded to individual consumers (natural persons) in transactions involving 1 to 4 family residential mortgage loans. However, if an individual applies for the loan in the name of a sole proprietorship, and the lender will allow the loan to be closed in such name, the transaction is a business purpose loan and exempt from RESPA coverage.

Accordingly, the Department is issuing Interpretive Rule–1995–1, to read as follows:

Section 3500.5(b)(2) Coverage of RESPA

After consideration of Section 312 of the Riegle Community Development and Regulatory Reform Act of 1994 (September 23, 1994), the Department reaffirms the determination set forth in its RESPA rule published on February 10, 1994, and amended on March 30, 1994, effective August 9, 1994, that transactions by individuals involving 1–4 family residential rental properties are covered by RESPA. The Department concludes that this position as set forth in § 3500.5(b)(2) is consistent with Section 7 of RESPA and its legislative history.

Authority: 42 U.S.C. 3535(d).

Dated: February 14, 1995.

Nicolas Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 95–4744 Filed 2–24–95; 8:45 am]

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federal register

Monday
February 27, 1995

Part X

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Grants and Cooperative Agreements; Notice of Funding Availability for Service Coordinators for Public Housing Agencies for Elderly and Non-Elderly Disabled Residents; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3854; FR–3785–N–01]

Notice of Funding Availability for Service Coordinators for Public Housing Agencies

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year 1994 and Fiscal Year (FY) 1995.

SUMMARY: This NOFA announces the availability of up to $46.043 million in funding for service coordinators and supportive services for elderly and non-elderly disabled residents in public housing. The service coordinators in public housing program is a comprehensive effort to ensure that elderly and non-elderly disabled residents have access to the services they need to enhance the quality of life, to live independently, and to avoid premature or unnecessary institutionalization.

In this NOFA, a new and streamlined grant application/award process is implemented. HUD headquarters will conduct a national lottery competition for public housing agencies (PHAs) to determine funding awards. In this lottery competition, eligible PHAs must submit an application with a minimum amount of documentation to pass screening and selection criteria for inclusion in the lottery competition.

In the body of this NOFA is information concerning:

(1) The principal objectives of the competition, the funding available, eligible applicants, and screening and selection criteria;

(2) The application process, including how to apply and how selections will be made; and

(3) A checklist of application submission requirements.

DATES: The due date for submission of applications in response to this NOFA is April 28, 1995. Applications must be postmarked by midnight, or hand-delivered to the local HUD Office by 3:00 p.m. on April 28, 1995. A Fax copy is not acceptable. The above-stated application deadline is firm as to date, hour and place. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR FURTHER INFORMATION CONTACT: Bertha M. Jones, Office of Community Relations and Involvement, Department of Housing and Urban Development (HUD), 451 7th Street, SW., Room 4112, Washington, DC 20410; telephone (202) 708–4214, Ext. 282. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than ''800'' TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (USC 3501–3520). The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

No person may be subjected to a penalty for failure to comply with the information collection requirements until they have been approved and assigned an OMB control number. The public reporting burden for the collection of information requirements is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Interested persons may submit comments on the paperwork burden proposals to Joseph F. Lackey, Jr. OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

I. Purpose and Substantive Description

(A)(1) Authority

This program is authorized by section 673 of the Housing and Community Development Act of 1992 (codified at 42 USC 13631; hereafter referred to as ''1992 HCD Act'').

(A)(2) 24 CFR Part 135

Section 3 of the Housing and Urban Development Act of 1968 and the regulations at 24 CFR part 135 (see June 30, 1994 Interim Rule, 59 FR 33866) are applicable to funding awards made under this NOFA. One of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(B) Background

The service coordinators in public housing program is a comprehensive effort to ensure that elderly and non-elderly disabled residents have access to the services they need to live independently, regardless of the type of unit in which they reside in the public housing development, and to prevent placement in nursing homes or institutions.

A service coordinator is hired by a public housing authority (PHA) and is responsible for assuring that the elderly and disabled residents are linked to needed supportive services. Service coordination may be performed by: An on-site staff person hired by the PHA for a project or shared between PHA projects; an on-site staff person hired from a third party agency, and contracted to one or more projects; an on-site staff person hired by a third party agency, and contracted to one or more PHA projects; or a staff person hired by a third party agency hired by the PHA, who provides case management and services coordination for a PHA resident in concert with the distribution of that agency or another agency's funding.

The major functions of the service coordinator are:

—To provide general case management and referral services to all residents needing such assistance;
—To establish linkage with all agencies and service providers in the community;
—To set out a directory of providers for use by both PHA staff and residents;
—To refer and link the residents of the PHA to service providers in the general community;
—To educate residents on service availability, application, procedures, client rights;
—To develop case plans in coordination with assessment services in the community or with a Professional Assessment Committee (as defined in § 802(e)(3)(B) of the National Affordable Housing Act, codified at 42 U.S.C. 8011);
—To monitor the ongoing provision of services from community agencies and to keep the case management and provider agency current with the progress of the individual;
—To set up volunteer support programs with service organizations in the community;

—To help the residents build support networks with other residents, family and friends;
—To provide training to PHA residents in the obligation of tenancy or coordinate such training;
—To educate other staff on the management team on issues related to aging in place and service coordination, to help them to better work with and assist residents.

Each service coordinator shall be trained in the aging process, elder services, disability services, eligibility for and procedures of Federal and applicable State entitlement programs, legal liability issues relating to providing service coordination, drug and alcohol use and abuse by the elderly, and mental health issues.

In accordance with section 673 of the Housing and Community Development Act Amendments of 1992, the grant may include funding for up to 15 percent of the costs of eligible supportive services, in addition to the costs specifically associated with the service coordinator. The PHA will be required to show that at least 85 percent of the costs of related supported services will be paid with non-grant funds.

Eligible supportive services include health-related services, mental health services, services for non-medical counseling, meals, transportation, personal care, bathing, toileting, housekeeping, chore assistance, safety, group and socialization activities, assistance with medications (in accordance with any applicable State laws), case management, personal emergency response, and other appropriate services.

Finally, in accordance with section 673 of the 1992 HCD Act, supportive services funded by this competition may not be provided to any person receiving assistance under the Congregate Housing Services Act of 1978 or Section 802 of the Cranston-Gonzalez National Affordable Housing Act.

(C) Allocation Amounts

For FY 1994, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (Pub. L. 103–124, Approved October 28, 1993) made $30 million available for the service coordinators in public housing program. For FY 1995, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994) made $30 million available for the service coordinators in public housing program. Together these two appropriations bills make approximately $60 million available to PHAs for service coordinators in public housing. However, since some of the appropriated funds are to be derived from carryover funds or the recapture of prior year obligations, the actual amount available is $46.043 million.

In this competition, an eligible PHA may apply for a three year grant. The funding level is based on the number of elderly and disabled families in the PHA's occupied units:

Elderly/disabled families in PHA occupied units	Maximum dollars per PHA
250 to 499	90,000
500 to 999	150,000
1,000 to 9,999	675,000
10,000 +	1,875,000

The funds are to be used for: (1) The cost of employing or otherwise retaining the services of one or more service coordinators to coordinate the provision of supportive services for residents who are elderly families and disabled families; and (2) the expenses for the provision of services for such residents of the PHA. In addition, not more than 15 percent of the cost of providing supportive services is eligible for funding under this grant; however, the 15 percent cost for the provision of supportive services is an optional feature of this grant.

The amounts allocated under this NOFA will be awarded based on a national lottery for selection from all PHAs that pass both the screening and selection criteria. The Department reserves the right to award grants less than the amount requested by the PHA, as described below.

As PHAs are selected, the costs of funding the applications will be counted against the total funds available under this NOFA. Applications will be funded in full in accordance with this NOFA. However, when the remaining funds are insufficient to fund the last PHA application in full, HUD Headquarters may fund that application to the extent of the funding available and the PHA's willingness to accept a reduced award amount. PHAs that do not wish to have the size of their award reduced may indicate in their ''Letter of Intent'' (described below) that they do not wish to be considered for a reduced award of funds. HUD Headquarters will skip over these PHAs if assigning the remaining funding would result in a reduced funding level.

After the lottery, Headquarters will award grants to the local HUD offices under that jurisdiction by fund assignment for the total number of PHAs approved in the competition. Within the limits of available federal funds, HUD will make grant awards consistent with the statute and the requirements in this NOFA.

(D) Eligibility

(1) Eligible Applicants

(a) Eligible applicants are PHAs operating low-rent conventional public housing with at least 250 or more elderly, or disabled families. However, two or more PHAs, in the same geographical area with fewer than 250 elderly or disabled families, may submit a joint application.

(b) To be an eligible applicant, the PHA(s) must also have a good record of maintaining and operating public housing as determined by the Public Housing Management Assessment Program (PHMAP) (see 24 CFR Part 901). In this NOFA, a PHA can establish a ''good record of maintaining and operating public housing'' if (1) the PHA has earned a PHMAP score of 60 or more points; (2) the PHA has instituted an Improvement Plan that is acceptable to the local HUD Office; or (3) the PHA is operating under a Memorandum of Agreement (MOA). Local HUD Offices will verify that the PHA has complied with all requirements, including verification of a passing PHMAP score, or an Improvement Plan that is satisfactory to the local HUD Office or a MOA, and an explanation of the PHA's ability to implement the elderly service coordinator project as noted above.

(2) Ineligible Applicants

Ineligible applicants are PHAs for which:

(a) The Department of Justice has brought a civil rights suit against the applicant PHA, and the suit is pending;

(b) There has been an adjudication of a civil rights violation in a civil action brought against the PHA by a private individual, unless the PHA is operating in compliance with court order, or implementing a HUD approved tenant selection and assignment plan or compliance agreement designed to correct the areas of noncompliance;

(c) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance;

(d) HUD has deferred application processing by HUD under title VI of the

Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1) or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57); or

(e) There are serious unaddressed Inspector General Audit findings, Fair Housing and Equal Opportunity monitoring review findings, or local HUD office management review findings.

II. Application Process

(A) Application Deadline

The due date for submission of applications in response to this NOFA is April 28, 1995. Applications must be postmarked by midnight, or hand-delivered to the local HUD Office by 3:00 P.M. on April 28, 1995. A Fax is not acceptable. (See Appendix A for a listing of local HUD Offices.) The above-stated application deadline is firm as to date, hour and place. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

(B) Screening Criteria

All PHAs will automatically be notified by the local HUD Office of the receipt of their letter and accompanying documentation and will be informed if they pass the screening criteria. To ensure minimum standards of equity and fairness, the local HUD Office will screen all PHA applications for completeness to determine conformity to the requirements of this announcement. PHAs which do not pass the screening criteria will receive no further consideration for the lottery. PHAs that fail to submit any of the documents accompanying the ''Letter of Intent'' will not be eligible to participate in the lottery.

The screening criteria are as follows:

(i) The PHA submits an application package consisting of a ''Letter of Intent,'' and all required accompanying documentation set forth in section III(A) in a timely fashion in accordance with section II(A) of this NOFA;

(ii) The PHA meets the eligibility requirements set forth in section I(D) of this NOFA.

(C) Selection Criteria

PHAs that meet the eligibility requirements outlined in this NOFA, and submit all of the required information will pass the screening criteria. PHAs passing the screening criteria will be further reviewed by an independent review panel of at least two individuals in each local HUD Office to give each application a ''pass'' or ''fail'' determination in the following criteria:

(i) Proposed funding amount. The Standard Form 424—Application for Federal Assistance requests an amount of funds not to exceed the amount specified in the funding categories for PHAs in section I(C) of this NOFA; and Standard Form 424A—Budget Information—Non-Construction Programs.

(ii) Evidence of Need for Assistance. The PHA provides:

(a) Documentation evidencing the number of elderly/disabled families residing in the PHA that will be served by the grant;

(b) Documentation briefly describing key problem(s)/condition(s) relevant to the need for the grant;

(c) If optional supportive services will be provided in the grant, verification of access to pertinent supportive services to address the needs of the residents; and a discussion of the relevant supportive services that will be provided, and the PHA's ability to acquire other sources of funds to assist in the procurement of needed supportive services. (Other sources of funds may be ''in-kind'' services or other volunteer-type services from the community.)

(iii) Verification of PHMAP Score. Supporting documentation evidencing either a PHMAP score of at least 60 points, an approved Improvement Plan or MOA;

(iv) Forms. Submission of the following forms:

(1) Drug-Free Workplace Certification,

(2) Assurances—Non-Construction Programs—Standard Form SF–424B,

(3) Applicant/Recipient Disclosure/Update Report—Form HUD–2880, and

(4) Disclosure of Lobbying Activities—(SF-LLL Form), if applicable (see Section V.G of this NOFA).

(D) Selection Process

Headquarters will select all eligible PHAs to be funded based on a lottery. All PHAs identified by the local HUD Offices as passing the screening and selection criteria identified in this NOFA will be eligible for the national lottery selection process. Local HUD Offices will submit a memorandum with the amount of the grant, name and other basic information of eligible PHAs passing the screening and selection criteria to HUD Headquarters, Office of Public and Indian Housing, Office of Community Relations and Involvement, Room 4112, Attention: Bertha Jones. HUD will hold the lottery in the Office of Public and Indian Housing at HUD Headquarters, 451 7th street, S.W., Washington, DC 20410, upon receipt of the names of all ''passing'' PHAs. After Headquarters conducts the lottery, Headquarters will notify the local HUD Offices of the results of the lottery. Local HUD Offices will then notify the PHAs of the results of the Lottery.

III. Checklist of Application Submission Requirements

(A) Application Requirements.

Applicants must complete and submit applications in accordance with instructions contained in this NOFA. Each applicant may submit only one application under this announcement. If two or more PHAs are jointly making a request for funds and plan to share a service coordinator, one applicant must act as the ''lead PHA'' and submit a transmittal letter covering all requests, which must be submitted to HUD together. This insures that all multiple requests are reviewed as one package.

The following is a checklist of the application contents. Interested PHAs must submit a ''Letter of Intent'' to compete in the lottery. The ''Letter of Intent'' and supporting documentation described below should not exceed 15 pages, and must be arranged and identified in the application in the order in which it appears below.

Section I—Proposed funding amount.

(a) The Standard Form 424—Application for Federal Assistance should include the amount of funds being requested not to exceed the amount specified in the funding categories for PHAs in section I(C) of this NOFA.

(b) Standard Form SF–424A—Budget Information—Non-Construction Programs should also be included in Section I.

Section II—Evidence of need for assistance.

(a) Documentation providing evidence of the number of elderly/disabled families residing in the PHA that are eligible to be served by this grant. Documentation briefly describing key problem(s)/condition(s) relevant to the needs of the elderly and non-elderly disabled residents;

(b) Description of any optional supportive services that will be provided including the costs associated with providing the supportive services. Applicants should note that a PHA is not required to use any portion of the grant to cover the costs of the supportive

services. However, the grant may not be used to cover more than 15 percent of the costs of supportive services (i.e. if the PHA elects to provide supportive services for its eligible residents, then the PHA must provide or obtain other sources of funds to cover at least 85 percent of the costs of supportive services).

(c) If the PHA elects to use the grant to cover up to 15 percent of the costs of supportive services, then the PHA must also submit written commitments, contracts or letters of agreement evidencing: (1) The total costs of the proposed supportive services; (2) the availability of non-grant funds to cover at least 85% of the costs of the supportive services. (However ''in-kind'' services or other volunteer-type services from the community may be used in lieu of non-grant funds.) The written commitments, contracts or letters of agreement must be executed by an authorized individual on behalf of the organization or entity providing either the non-grant funding or the ''in-kind'' services.

Section III—Verification of passing PHMAP score or appropriate explanation.

If the housing authority received a PHMAP score of less than 60, it should include appropriate documentation of its Improvement Plan or MOA, and its ability to implement the elderly services coordinator project.

Section IV—Certifications, Assurances and Forms.

(a) Certification of compliance with all applicable civil rights laws and requirements;

(b) Drug-Free Workplace Certification;

(c) Assurances—Non-Construction Programs—Standard Form SF–424B;

(d) Applicant/Recipient Disclosure/Update Report—Form HUD–2880; and

(e) Disclosure of Lobbying Activities—(SF–LLL Form), if applicable (see Section V.G of this NOFA).

IV. Corrections to Deficient Applications

To be eligible for processing, an application must be received by the local HUD Office no later than the application deadline date and time specified in this NOFA. The local HUD Office will screen all applications and notify PHAs of technical deficiencies by letter. Allowable corrections relate only to technical items, as determined by HUD, such as a missing signature on a certification or a missing page from a required document. (However, failure to submit a required document will constitute a ''failure'' of the screening criteria, and the application will be rejected as incomplete.)

All PHAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency. Information received after 3:00 p.m. local time on the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as being incomplete.

V. Other Matters

A. Environmental Review

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(o)(4) of the HUD regulations, the policies and procedures contained in this NOFA relate only to the provision of supportive services, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have ''federalism implications'' within the meaning of the Order. The NOFA makes funds available to PHAs to employ or otherwise retain the services of service coordinators, and to provide for supportive services for elderly or disabled residents of the PHA. As such, there are no direct implications on the relationship between the Federal government and the states or on the distribution of power and responsibilities among various levels of government.

C. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this NOFA will not have a significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the social and other benefits expected from this program of assistance.

D. Documentation and Public Access Requirements: HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly Federal Register notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these requirements.)

E. Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the HUD Reform Act was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact the assistant general counsel for the geographical region or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

F. Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the

influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the Federal Register on May 17, 1991 (56 FR 22912). The final rule is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read part 86, particularly the examples contained in Appendix A of the regulation.

Any questions about the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–3000. Telephone: (202) 708–3815 TDD: (202) 708–1112. These are not toll-free numbers. Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: 42 U.S.C. 1437g(a)(1)(B).

Dated: February 17, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Appendix A

Names, Addresses and Telephone Numbers of Local HUD Offices Accepting Applications in Response to This NOFA

New England

Boston, Massachusetts Office

Public Housing Division, Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222–1092, (617) 565–5234

Hartford, Connecticut Office

Public Housing Division, 330 Main St. First Floor, Hartford, Connecticut 06106–1860, (203) 240–4522

Manchester, New Hampshire Office

Public Housing Division, Norris Cotton Federal Building, 275 Chestnut St., Manchester, New Hampshire 03101–2487, (603) 666–7681

Providence, Rhode Island Office

Public Housing Division, 330 John O. Pastore Federal Building & U.S., Post Office—Kennedy Plaza, Providence, Rhode Island 02903–1785, (401) 528–5351

New York/New Jersey

New York, New York Office

Public Housing Division, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–6500

Buffalo, New York Office

Public Housing Division, 465 Main Street, Lafayette Court, 5th Fl., Buffalo, New York 14203–1780, (716) 846–5755

Newark, New Jersey Office

Public Housing Division, Military Park Building, 60 Park Place, Newark, New Jersey 07102–5504, (201) 877–1662

Mid-Atlantic

Washington, D.C. Office

Public Housing Division, 820 First St. N.E., Suite 300, Washington, D.C. 20002–4502, (202) 275–9200

Philadelphia, Pennsylvania Office

Public Housing Division, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392

Baltimore, Maryland Office

Public Housing Division, City Crescent Building, 10 South Howard St., 5th Floor, Baltimore, Maryland 21202–2505, (410) 962–2520

Pittsburgh, Pennsylvania Office

Public Housing Division, Old Post Office Courthouse Building, 700 Grant St., Pittsburgh, Pennsylvania 15219–1939, (412) 644–6428

Richmond, Virginia Office

Public Housing Division, The 3600 Centre, 3600 West Broad St., P.O. Box 90331, Richmond, Virginia 23230–0331, (804) 278–4507

Charleston, West Virginia Office

Public Housing Division, 405 Capitol St., Suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000

Southeast/Caribbean

Atlanta, Georgia Office

Public Housing Division, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303–3388, (404) 331–5136

Birmingham, Alabama Office

Public Housing Division, Beacon Ridge Tower, 600 Beacon Parkway West, Suite 300, Birmingham, Alabama 35209–3144, (205) 290–7617

Louisville, Kentucky Office

Public Housing Division, P.O. Box 1044, 601 W. Broadway, Louisville, Kentucky 40201–1044, (502) 582–5251

Jackson, Mississippi Office

Public Housing Division, Dr. A.H. McCoy Federal Building, 100 West Capitol St., Room 910, Jackson, Mississippi 39269–1096, (601) 965–5308

Greensboro, North Carolina Office

Public Housing Division, 2306 W. Meadowview Rd., Greensboro, North Carolina 27407, (919) 547–4000

Caribbean Office

Public Housing Division, New San Juan Office Building, 159 Carlos E. Chardon Ave., San Juan, Puerto Rico 00918–1804, (809) 766–6121

Columbia, South Carolina Office

Public Housing Division, Strom Thurmond Federal Building, 1835 Assembly St., Columbia, South Carolina 29201–2480, (803) 765–5592

Knoxville, Tennessee Office

Public Housing Division, John J. Duncan Federal Building, 710 Locust St. 3rd Floor, Knoxville, Tennessee 37902–2526, (615) 549–4384

Nashville, Tennessee Office

Public Housing Division, 251 Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228–1803, (615) 736–5213

Jacksonville, Florida Office

Public Housing Division, 301 West Bay Street, Suite 2200, Jacksonville, Florida 32202–5121, (904) 232–2626

Midwest

Chicago, Illinois Office

Public Housing Division, Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, (312) 353–5680

Detroit, Michigan Office

Public Housing Division, Patrick V. McNamara Federal Building, 477 Michigan Ave., Detroit, Michigan 48226–2592, (313) 226–7900

Indianapolis, Indiana Office

Public Housing Division, 151 North Delaware St., Indianapolis, Indiana 46204–2526, (317) 226–6303

Grand Rapids, Michigan Office

Public Housing Division, 2922 Fuller Ave., N.E., Grand Rapids, Michigan 49505–3499, (616) 456–2100

Minneapolis-St.Paul, Minnesota Office

Public Housing Division, 220 2nd St. South, Bridge Place Building, Minneapolis, Minnesota 55401–2195, (612) 370–3000

Cincinnati, Ohio Office

Public Housing Division, Federal Office Building, Room 9002, 550 Main St., Cincinnati, Ohio 45202–3253, (513) 684–2884

Cleveland, Ohio Office

Public Housing Division, Renaissance Building, 1350 Euclid Ave., 5th Floor, Cleveland, Ohio 44115–1815, (216) 522–4058

Columbus, Ohio Office

Public Housing Division, 200 North High Street, Columbus, Ohio 44115–1815, (216) 522–4058

Milwaukee, Wisconsin Office

Public Housing Division, Henry S. Reuss Federal Plaza, 310 W. Wisconsin Ave., Suite 1380, Milwaukee, Wisconsin 53203–2289, (414) 297–3214

Forth Worth, Texas Office

Public Housing Division, 1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas 76113–2905, (817) 885–5401

Houston, Texas Office

Public Housing Division, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, Texas 77098–4096, (713) 653–3274

San Antonio, Texas Office

Public Housing Division, Washington Square Building, 800 Dolorosa St., San Antonio, Texas 78207–4563, (210) 229–6800

Southwest

Little Rock, Arkansas Office

Public Housing Division, TCBY Tower, 425 West Capitol Ave., Little Rock, Arkansas 72201–3488, (501) 324–5931

New Orleans, Louisiana Office

Public Housing Division, Fisk Federal Building, 1661 Canal St., Suite 3100, New Orleans, Louisiana 70112–2887, (504) 589–7200

Albuquerque, New Mexico Office

Public Housing Division, 625 Truman Street N.E., Albuquerque, NM 87110–6472, (505) 262–6463

Omaha, Nebraska Office

Public Housing Division, 10909 Mill Valley Rd., Omaha, Nebraska 68154–3955, (402) 492–3100

St. Louis, Missouri Office

Public Housing Division, 1222 Spruce St. Room 3207, St. Louis, Missouri 63103–2836, (314) 539–6583

Kansas City Office

Public Housing Division, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, Kansas 66101–2406, (913) 551–5462

Great Plains

Des Moines, Iowa Office

Public Housing Division, Federal Building, 210 Walnut St., Rm. 239, Des Moines, Iowa 50309–2155, (515) 284–4512

Rocky Mountains

Denver, Colorado Office

Public Housing Division, 633 17th Street, First Interstate Tower North, Denver, Colorado 80202–3607, (303) 672–5448

Pacific Hawaii

San Francisco, California Office

Public Housing Division, Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102–3448, (415) 556–4752

Honolulu, Hawaii Office

Public Housing Division, 7 Waterfront Plaza, 500 Ala Moana Blvd., Suite 500, Honolulu, Hawaii 96813–4918, (808) 541–1323

Los Angeles, California Office

Public Housing Division, 1615 W. Olympic Blvd., Los Angeles, California 90015–3801, (213) 251–7122

Sacramento, California Office

Public Housing Division, 777 12th St., Suite 200, Sacramento, California 95814–1997, (916) 551–1351

Phoenix, Arizona Office

Public Housing Division, Two Arizona Center, 400 N. 5th St., Suite 1600, Phoenix, Arizona 85004–2361, (602) 379–4434

Portland, Oregon Office

Public Housing Division, Cascade Building, 520 Southwest Sixth Ave., Portland, Oregon 97204–1596, (503) 326–2561

Northwest Alaska

Seattle, Washington Office

Public Housing Division, Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, Washington 98104–1000, (206) 220–5101

Anchorage, Alaska Office

Public Housing Division, University Plaza Building, 949 E. 36th Ave., Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4170

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federal register

Monday
February 27, 1995

Part XI

Department of Transportation

Office of the Secretary

Study on Interstate Commerce Commission Functions; Notice

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Study on Interstate Commerce Commission Functions

AGENCY: Department of Transportation.

ACTION: Notice.

SUMMARY: Section 210(b) of the ''Trucking Industry Regulatory Reform Act of 1994,'' (Act) requires the Secretary of Transportation to study possible organizational changes to the Interstate Commerce Commission (ICC), including some specified in the Act, that lead to government, transportation, or public interest efficiencies. A draft report to the Congress on this matter has been completed and the Department is presently seeking public comment on its recommendations.

DATES: Comments are due by March 13, 1995.

ADDRESSES: Comments may be mailed to Docket 49848, Office of Documentary Services (C–55), U.S. Department of Transportation, Plaza Level, 400 Seventh Street, S.W., Washington, D.C. 20590–0001. To expedite consideration of the Docket, please submit an original and five copies. The DOT study of ICC functions referenced in this notice may be obtained from the Documentary Services Division, U.S. Department of Transportation, Room PL–401, 400 7th Street, S.W., Washington, D.C. 20590, 202–366–9322. The Report is available on the World Wide Web Server as gopher.dot.gov/11/general/iccreprt.wp5. For the convenience of those without access to the computer network, the executive summary of the report is included herein.

FOR FURTHER INFORMATION CONTACT: Edward Rastatter, 202–366–4420; Robert Stein, 202–366–4846; or Paul Smith, 202–366–9285.

SUPPLEMENTARY INFORMATION: Section 210(b) of the Act requires DOT to study the feasibility and efficiency of merging the ICC into the DOT as an independent agency, combining it with other Federal agencies, retaining the ICC in its present form, eliminating the agency and transferring all or some of its functions to DOT or other Federal agencies, and other organizational changes that lead to government, transportation, or public interest efficiencies. DOT has already conducted extensive outreach effort beginning with a Federal Register notice of November 1, 1994, seeking comment on the ICC's report, required in Section 210(a) of the Act, and continuing with numerous meetings with carriers, shippers, and trade associations. This study by DOT considers the cost savings that might be achieved, the efficient allocation of resources, the elimination of unnecessary functions, and responsibility for regulatory functions. DOT must submit its findings for public comments, and then submit the results of its study, together with any recommendations to the Congress. Consequently, the Department is presently seeking public comment on its draft recommendations.

In order to make sure our report is most useful to the Congressional Committees, we expect to make a legislative proposal available to them on an expedited basis. Any changes resulting from the public comment period would be incorporated in our final report and modifications to our legislative proposal.

Executive Summary

Background

This report examines a range of policy issues dealing with the economic regulation of surface transportation service (primarily freight) in the United States.

Freight transportation represents a core element of our national economy. It provides U.S. manufacturers and consumers with access to domestic as well as global markets and has a dramatic impact on economic growth and on our international competitiveness.

The surface freight transportation industry includes many different sectors—trucking, railroads, barges, pipelines, buses, and intermediaries such as freight forwarders and brokers. The structure and performance of each sector have been considered in discussing options for economic regulation.

The industry has changed dramatically in the past several decades. Regulatory policy has both led and responded to these changes. A new regulatory principle, recognizing competition as the best regulator of transportation, has been embodied in bipartisan legislation enacted in each of the past three decades. Federal economic regulation has increasingly been reserved for glaring instances of market failure or as a tool to pursue broader social purposes.

Deregulation has resulted in more efficient operations for carriers and better service at lower rates for shippers. As a result of the Staggers Rail Act of 1980, the railroad industry—which teetered on the brink of financial failure in the late 1970's—has been revitalized and is now a viable competitive sector of the economy. Deregulation of air cargo, trucking, and ''piggyback'' traffic has led to spectacular growth in intermodal traffic.

The trucking industry has also been transformed. Many new firms have entered the industry, and both new and existing carriers have been given greater flexibility to meet customers' needs. Improvements in the reliability of trucking service have enabled manufacturers to enhance productivity by placing greater reliance on just-in-time manufacturing techniques.

The principal rationale for the remaining regulatory structure is to protect competition and the interests of shippers. However, ongoing changes in the nature of the transportation industry clearly indicate that the current level of Federal economic regulation of surface freight transportation burdens the public interest. Further reductions in regulation are needed.

The Process

This report is mandated by the Trucking Industry Regulatory Reform Act of 1994, P.L. 103–311 (TIRRA), which requires that the Interstate Commerce Commission (ICC) and the Department of Transportation (DOT) conduct studies to be used as the basis for considering further policy changes related to the regulation of surface transportation.

Section 210(a) of TIRRA requires the ICC to examine its functions and responsibilities and to report within 60 days of enactment recommendations on which of these functions should be continued, modified, or eliminated. The ICC report (completed on October 25, 1994), provides a detailed treatment and analysis of the full panoply of existing functions and responsibilities of the agency. Section 210(b) requires DOT to study the feasibility and efficiency of merging the ICC into DOT as an independent agency, combining it with other Federal agencies, retaining the ICC in its present form, eliminating the agency and transferring all or some of its functions to DOT or other Federal agencies, and other organizational changes that would be expected to lead to government, transportation, or public interest efficiencies.

The Department has given serious consideration to the recommendations of the Commission in assessing the merits of eliminating or restructuring the current functions and responsibilities of the ICC. This report reflects a different view from that taken by the ICC and generally concludes that government should retain fewer functions.

DOT's approach to conducting this study ensured full participation by all affected parties including carriers,

shippers, intermediaries, labor, the insurance industry, and government agencies identified as potential locations for necessary ICC functions. The Department solicited comment from the public on the ICC's study and held outreach meetings with all sectors of the industry, as well as government agencies.

DOT also sponsored a conference on the transportation industry of the future. The focus of this conference, which was open to the public, was to discuss the likely evolution of the transportation industry over the next fifteen years (1995–2010) and to identify and evaluate options for regulatory policies that would enable the industry to operate efficiently, as well as provide sufficient protection to the shipping public.

DOT Recommendations

Antitrust Immunity

Federal economic regulation of transportation predates the antitrust laws and has its roots in the late nineteenth century, when railroads had a virtual monopoly for most freight. Although the ''public utility'' model of regulation was subsequently applied to all of the other modes subject to the Interstate Commerce Commission's jurisdiction, it is now limited primarily to regulation of ''captive'' rail traffic.

The trucking, rail freight, household goods, intercity bus, water carrier, and other surface transportation industries still subject to economic regulation by the ICC and FMC are competitive (either entirely or with respect to most of the markets they serve). Over the past two decades, recognition of the intrinsic competitive nature of these industries has resulted in bipartisan legislative efforts to reduce regulation of surface transportation, including the number of activities that are accorded immunity from the antitrust laws by the ICC.

Because of the existence of competition between and within these industries, they bear little resemblance to utilities having local franchise monopolies. Even the freight railroads face vigorous competition, often from other modes, in the majority of the markets they serve. Accordingly, it is appropriate to rely on the antitrust laws rather than burdensome and unnecessary regulation to police these industries.

There are two categories of arrangements among firms to which the antitrust laws normally apply. The first is the cartel-type arrangement to fix prices or allocate markets, which has no redeeming value. Such activity should never be permitted to occur. The second category includes arrangements that can have beneficial aspects that may enhance competition. The legality of the latter type is evaluated under a ''Rule of Reason'' inquiry that weighs all its relevant effects. If the activity is, on balance, beneficial, it is not illegal and does not need immunity from the antitrust laws; if it is, on balance, beneficial, the antitrust laws will not prohibit it. Accordingly, we recommend *eliminating all antitrust immunity* for these industries.

Following are some examples of how certain types of transportation activities would be analyzed under the antitrust laws.

- *Rate setting.* A rate bureau agreement to impose a general rate increase on shippers is a classic horizontal price-fixing arrangement, a ''naked restraint'' on competition. There is no legitimate reason to continue to permit such *per se* unlawful collective activity.
- *Joint ventures.* Joint rate agreements between two or more firms providing similar services in different geographic markets do not generally, if ever, violate the antitrust laws; antitrust immunity is not needed in order for the activity to occur. As far as household goods van lines and their agents are concerned, as long as there are a sufficient number of other firms capable of performing the services in question, joint ventures between the van lines and their agents should not significantly lessen competition and should not violate the antitrust laws. Therefore their agreements do not need antitrust immunity.
- *Other joint operating activity.* The ''Rule of Reason'' standard used by the Department of Justice in analyzing most kinds of joint activity under the antitrust laws is not significantly different from the ''public interest'' standard used by the ICC. For example, the Commission may approve pooling arrangements among common carriers only where they are demonstrated to promote better service or efficiencies and will not ''unreasonably'' or ''unduly'' restrain competition. Arrangements that meet this test do not need antitrust immunity.
- *Industry guides and standards.* Compilations such as mileage guides can provide useful information to both shippers and carriers. On the other hand, collective agreement to adhere to such schedules could have anticompetitive effects. Such arrangements should be subject to the antitrust laws and deemed unlawful if their beneficial effects are outweighed by any anticompetitive effects. Activities that are no more restrictive than necessary to achieve the desired results are not likely to be challenged by the Department of Justice under the antitrust laws.
- *Information gathering and dissemination.* Carriers can use common entities to gather and publish information about demand, capacity, and unilaterally-established rates, without competitors agreeing on specific actions that would violate the antitrust laws.

Railroads

The Staggers Act of 1980 has transformed the railroads from a declining industry poised on the brink of financial ruin to a healthy one that provides excellent service to shippers at rates that are, on average, well below those of 25 years ago. The legislation introduced significant rate deregulation, allowing pricing flexibility where competition is effective to protect shippers from abuse. It also retained significant protections for shippers in situations where competition is either absent or weak. The critical freedoms of the Staggers Act must be maintained if the rail industry is to remain financially successful. Equally important, the basic shipper protections that were incorporated in 1980 are still needed today to ensure that rates and services for captive traffic are reasonable. However, there are many aspects of the rail regulatory system that can be revised, modified or even eliminated in light of today's, and tomorrow's, competitive realities. DOT believes that the following regulations are either outdated or unnecessary to accomplish the Staggers Act's objectives, and should be *eliminated:*

- *Antitrust immunity for industry agreements.* The antitrust laws provide sufficient flexibility to ensure smooth and efficient intercarrier operations.
- *Rail-shipper contract requirements.* Rail contracts should be treated in the same manner as contracts for other modes of transportation.
- *Rate discrimination regulation.* These restrictions are a holdover from the era of collective ratemaking, and are no longer necessary in today's competitive market.
- *Commodities clause.* This prohibition on carriers transporting their own commodities is an impediment to shipper ownership of short line carriers.
- *Rail car supply and interchange practices.* These practices can be established without antitrust immunity. However, the existing rules phasing-in car hire deregulation should be continued until deregulation is complete.

• *Oversight of rail financial practices such as interlocking directorates, issuance of securities, etc.* Regulations covering financial practices of railroads should be the same as those applied to other industries.

• *Rate caps on recyclables.* It is not equitable to require special treatment for particular classes of shippers.

• *Rail merger standards, line sales, transfers and trackage rights under the Interstate Commerce Act.* As with transactions in other US industries, these rail-related consolidations and sales should be reviewed by the Department of Justice, under the Standards of the Clayton Act.

The following rail function would, unless otherwise noted, be *retained and transferred to DOT:*

• *Maximum rate regulation* as provided by the Staggers Act.

• *Exemption authority* has been extremely useful for removing rail traffic from regulation.

• *Line construction authority* for new lines crossing another railroad.

• *Competitive access* provisions for captive shippers.

• *Labor protection* provisions would be administered by the Department of Labor.

• *Line sales* of non-carriers (determination of carrier/noncarrier status).

• *Reasonable practices* in cases where rate regulation is retained.

• *Abandonment* regulations, feeder-line development program, and financial assistance to facilitate purchases or subsidy agreements for lines proposed for abandonment.

• *Dispute resolution* between passenger and freight railroads.

• *Rails-to-trails* program for abandoned rail lines.

• *Preemption* of state regulation of rail rates, routes, and services.

• *Recordation of liens* would be continued, but administered differently.

Motor Carriers

Trucking. The interstate trucking reforms of 1980 have provided billions of dollars in annual savings and enhanced U.S. competitiveness in world markets. Another significant barrier to further efficiencies in the trucking industry was removed beginning in January 1995, as a result of Public Law 103–305, which prohibits the states from imposing economic regulation on trucking.

Most of the remaining trucking regulations administered by the ICC are needless and burdensome requirements that have no place in today's competitive, cost-conscious environment. Although TIRRA substantially reduced the requirements for entry into the business of hauling regulated commodities and removed the requirement that motor common carriers file their independently-set rates with the ICC, it stopped short of doing away with these requirements altogether.

Our reviews have found no useful function served by the remaining economic regulation of trucking by the ICC, and we recommend that it all be *eliminated,* except for those functions enumerated below. In particular, we recommend an end to all antitrust immunity, all filing of tariffs and rate regulation, all distinctions between common and contract carriers, and control over mergers and transfers.

We recommend that only the following regulations be *retained:*

• *Motor carrier licensing.* All interstate private and for-hire carriers would be subject to the same safety and insurance requirements, administered by DOT/FHWA.

• *Mexican carriers.* DOT, in conjunction with the states, would monitor Mexican carriers' safety and insurance compliance, as well as their access to U.S. markets, as NAFTA is phased in.

• *Undercharge resolution.* Adjudication of existing undercharge claims under the Negotiated Rates Act of 1993 (NRA) would be continued over a transition period until the issue ceases to exist. We also recommend that the NRA be amended to designate claims for undercharging as an ''unreasonable practice,'' as long as any tariff filing is required.

• *Household goods, household goods freight forwarders, and transporters of personally-owned automobiles.* Existing ICC consumer protection authority would be transferred to the Federal Trade Commission (FTC). FTC would not become involved routinely in individual cases, but would be able to monitor the industry and take action if there should be a pattern of abuses, as it does in other industries.

• *Owner-operator leasing rules.* These rules would also be transferred to the FTC, but there would be no agency involvement in adjudicating individual claims between carriers and owner-operators. There would be general FTC oversight, and owner operators would be given a right of private action to enforce the rules and the opportunity to collect treble damages in case of violations.

• *Loss and damage claims.* Convert the Carmack amendment into a Federal liability regime with a statutory liability limit, and eliminate ICC dispute settlement functions. Issues would be resolved privately, as with any other contract dispute.

Intercity Buses. Although the charter and tour sector of the bus industry has grown, the financial condition of the regular route carriers is marginal, reflecting intense competition with the airlines, the private automobile, and Amtrak. Continued regulation by either the ICC or state regulatory bodies can hurt, but cannot help this industry. We recommend that all ICC economic regulation of the intercity bus industry be eliminated. DOT/FHWA would be responsible for monitoring bus safety and insurance (with state enforcement authority), and the existing procedure for ICC preemption of state bus regulation would be amended to provide outright preemption, such as that provided for motor carriers of property by P.L. 103–305.

Transportation Intermediaries

Freight forwarders and brokers are only two types of a wide panoply of transportation intermediaries, including ocean freight forwarders and non-vessel operating common carriers (NVOCCs). This is an important segment of the industry that creates value for both shippers and carriers. The rather minimal regulation of all types of transportation intermediaries should be harmonized. We recommend that all regulation of surface freight forwarders and brokers be eliminated and that they be treated the same as air freight forwarders, which are free of any regulation of their rates, routes, or services, subject only to cargo liability rules—to the extent they are considered carriers.

Pipelines

ICC has authority to regulate transportation by pipelines of commodities such as coal and fertilizer. However, there is significant intermodal competition for such traffic and there have been virtually no complaints concerning competitive problems. We recommend that ICC regulation of pipelines be eliminated and any competitive problems be handled under the antitrust laws.

Intermodal Transportation

The ICC has the authority to prohibit the acquisition of a water carrier or a motor carrier by a rail carrier. ICC may also prescribe joint rates and through routes on intermodal rail-water movements. The deregulation legislation of 1977–80 has resulted in an enormous increase in intermodal traffic. However, there are still some remaining hindrances that could impede intermodal acquisitions. There is no

longer any economic rationale for these restrictions. We recommend elimination of all restrictions against intermodal ownership and removal of Federal jurisdiction over intermodal rates, routes, and practices.

Domestic Water Carriers

The ICC has authority to regulate water carriage both within the contiguous states and between the continental U.S. and its possessions (the domestic offshore trades). Most of the water traffic within the contiguous states is already exempt from regulation, and competition is sufficient to prevent abuses. We recommend an end to all ICC regulation of such traffic.

Regulatory authority over the domestic offshore trades is already shared between the ICC and the Federal Maritime Commission (FMC). When an offshore movement is intermodal and employs a joint through rate, ICC regulation applies, but is minimal. Other types of movements are regulated by the FMC. This bifurcation makes no sense. We recommend eliminating all economic regulation (including tariff filing) by both the ICC and the FMC in the contiguous states and in the domestic offshore trades. The provisions of the Intercoastal Shipping Act, 1933, should also be repealed. Any continuing jurisdiction over non-tariff-related malpractices in the domestic trades, such as boycotts of shippers by carriers, would be transferred to DOT.

Federal vs. State Interests

Surface transportation in the U.S. is a national system. The ''Commerce Clause'' of the Constitution of the United States (Article 1, Section 8, Paragraph 3) grants the power to Congress ''to regulate commerce with foreign nations and among the several States.'' This provisions allows Congress to regulate a huge volume of trade moved via land, water, and air. The recommendations outlined above would reduce or eliminate Federal oversight by repealing Federal laws that constrict the efficient and competitive operation of the surface freight transportation system. It is also essential to preclude conflicting state laws or procedures that could overturn the benefits of Federal deregulation, as has been done in previous legislation affecting the airline industry in 1978 and the trucking industry in 1994.

Administration of Remaining ICC Functions

TIRRA identified a wide range of organizational choices for relocating ICC functions. These included retaining the ICC in its current form, merging the ICC into DOT as an independent agency, merging ICC into DOT but not as an independent agency, eliminating the ICC and transferring all or some of its functions to DOT or other Federal agencies, and combining the ICC with other Federal agencies (e.g., the Federal Maritime Commission). Each of these alternatives was extensively examined in the Department's study.

Given the dramatic reductions in regulatory authority recommended in this report, it is clear that there is no longer any need to maintain the ICC as an independent agency. Further, given that the functions to be retained are quite diverse (e.g., motor carrier leasing, railroad rate oversight), we do not believe that it makes sense to consolidate these functions, either in a separate agency or in a discrete agency within DOT. It may be appropriate to house them in a new rail regulatory unit within the organizational structure of DOT, with labor protection at the Department of Labor.

However, there is no need for such an office to remain completely independent. Most of the remnant regulatory functions are similar to activities currently administered by DOT (or other agencies) without any independent or insulated staff. For those few functions where there is a special need for ''insulated'' decision-making (such as resolution of disputes between passenger and freight railroads), administrative procedures can be readily established.

Careful planning of the transition of functions is important. This includes examination of staffing requirements, workload and workflow, space and other physical resources, and processes for performing specific functions within the new organizational framework. It is critical to the transportation industry, shippers, and the economy that transition plans maintain continuity and integrity for any remaining regulatory functions. The Administration proposes that the transition occur during FY 1996.

Dated: February 22, 1995.

John N. Lieber,

Deputy Assistant Secretary for Transportation Policy.

[FR Doc. 95–4834 Filed 2–24–95; 8:45 am]

BILLING CODE 4910–62–M

federal register

Monday
February 27, 1995

Part XII

Federal Emergency Management Agency

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: March 29, 1995.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, D.C. 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, please see Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the Federal Register on Tuesday, November 29, 1993, 58 FR 62718, and published changes approximately monthly since then.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 58 FR 17020 on March 31, 1993. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices.

Each update contains or may contain three categories: ''Additions;'' ''Corrections/changes;'' and ''Deletions.'' For the purposes of the updates, the three categories mean and include the following:

''Additions'' are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

''Corrections/changes'' are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

''Deletions'' are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Dated:

John P. Carey,

General Counsel.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST

[02/17/95 Update]

Index and property name	PO Box/Rt No.	Street address	City, State/Zip	Telephone
Additions				
CA:				
CA1443 BEST WESTERN IMPERIAL VALLEY INN.		1093 AIRPORT BLVD	IMPERIAL, CA 92251	(619) 355–4500
CA1442 BEST WESTERN CAPISTRANO INN		27174 ORTEGA HWY	SAN JUAN CAPISTRANO, CA 92675.	(714) 493–5661
CA1444 WINDHAM BEL AGE		1020 N. SAN VICENTE BLVD	WEST HOLLYWOOD, CA 90069	(310) 854–1111
IL:				
IL0541 REID'S INN BEST WESTERN		2150 STATE ST	CHESTER, IL 62233	(618) 826–3034
IL0542 COMFORT INN DOWNERS GROVE		3010 FINLEY ROAD	DOWNERS GROVE, IL 60515	(708) 515–1500
KS:				
KS0154 CLUBHOUSE INN	10610	MARTY	OVERLAND PARK, KS 66212–0000.	(913) 648–5555
KS0155 WICHITA AIRPORT HILTION/CONFERENCE CENTER.		2098 AIRPORT ROAD	WICHITA, KS 67209–0000	(316) 945–5272
MD:				
MD0281 FRIENDSHIP INN		107 HISSEY RD	GRASONVILLE, MD 21638	(410) 827–7272
MD0280 HARBOURTOWNE GOLF RESORT & CONFERENCE CENTER.	PO BOX 126	RT. 33 AT MARTINGHAM DR	ST. MICHAELS, MD 21663	(410) 745–9066
MI:				
MI0312 HAMPTON INN—BATTLE CREEK		1150 RIVERSIDE DR	BATTLE CREEK, MI 49017	(616) 979–5577
MI0314 HOLIDAY INN—GATEWAY CENTRE		5353 GATEWAY CENTRE	FLINT, MI 48507	(810) 232–5300
MI0313 ECONO LODGE—MANISTIQUE		E. LAKESHORE DR	MANISTIQUE, MI 49854	(906) 341–6014
MO:				
MO0293 THE HOTEL DE VILLE (FORMALLY PARK INN).		319 W. MILLER	JEFFERSON CITY, MO 65101	(314) 636–5231
NC:				
NC0357 SLEEP INN		102 SLEEPY DRIVE	SPRING LAKE, NC 28390	(910) 436–6700
NY:				
NY0607 COMFORT INN		ONE CANISTEO SQUARE	HORNELL, NY 14843	(607) 324–4300
OK:				
OK0099 MERIDIAN PLAZA HOTEL		2101 S. MERIDIAN AVENUE	OKLAHOMA CITY, OK 73108	(405) 685–4000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST—Continued

[02/17/95 Update]

Index and property name	PO Box/Rt No.	Street address	City, State/Zip	Telephone
PA:				
PA0431 HORSHAM DAYS INN		245 EASTON ROAD	HORSHAM, PA 19044	(215) 674–2500
PA0430 ADAM'S MARK HOTEL		4100 CITY AVENUE	PHILADELPHIA, PA 19131	(215) 581–5000
PR:				
PR0030 BEST WESTERN HOTEL PIERRE	PO BOX 12038	105 AVENIDA DE DIEGO	SAN JUAN, PR 00902	(809) 721–1200
PR0031 HOTEL EXCELSIOR		801 PONCE DE LEON AVE	SAN JUAN, PR 00907	(809) 721–7400
TN:				
TN0267 COMFORT HOTEL		7737 KINGSTON PK	KNOXVILLE, TN 37919	(615) 690–0034
TX:				
TX0628 ADOLPHUS HOTEL		1321 COMMERCE ST	DALLAS, TX 75202	(214) 742–8200
TX0630 HAWTHORNE SUITES HOTEL		7900 BROOKRIVER DRIVE	DALLAS, TX 75247	(214) 688–1010
TX0629 RESIDENCE INN BY MARRIOTT BY THE GALLERIAA.		2500 MCCUE	HOUSTON, TX 77056	(713) 840–9757
UT:				
UT0088 SLEEP INN OGDEN		1155 S. 1700 W	OGDEN, UT 84404	(801) 731–6500
VA:				
VA0601 HOLIDAY INN TYSONS CORNER		1960 CHAIN BRIDGE ROAD	MCLEAN, VA 22102–0000	(703) 893–2100
VA0600 COMFORT INN EXECUTIVE CENTER		7201 WEST BROAD ST	RICHMOND, VA 23294–0000	(804) 672–1108
WA:				
WA0287 RED LION—PASCO		2525 NE 20TH	PASCO, WA 99301	(509) 547–0701
WA0288 RED LION—RICHLAND/HANFORD HOUSE.		802 GEORGE WASHINGTON WAY.	RICHLAND, WA 99352	(509) 946–7611
WA0289 RED LION—SEA TAC		18740 PACIFIC HIGHWAY SOUTH.	SEATTLE, WA 98188	(206) 246–8600
Corrections/changes				
AZ:				
AZ0057 CROWNE PLAZA		100 N. 1ST STREET	PHOENIX, AZ 85004	(602) 257–1525
AZ0004 WYNDHAM METROCENTER		10220 N. METRO PKWY. E	PHOENIX, AZ 85051	(602) 997–5900
CT:				
CT0109 COMF0RT INN		48 WHITEHALL AVE	MYSTIC, CT 06355	(203) 572–8531
CT0243 QUALITY INN WATERBURY		88 UNION ST	WATERBURY, CT 06706	(203) 575–1500
LA:				
LA00009 RADISSON		4728 CONSTITUTION AVE	BATON ROUGE, LA 70808	(504) 925–2244
LA0083 QUALITY INN HOUMA		1400 W. TUNNEL BLVD	HOUMA, LA 70360	(504) 879–4871
MD:				
MD0043 COMFORT INN BALTIMORE WEST		6700 SECURITY BLVD	BALTIMORE, MD 21207	(410) 281–1800
MD0117 ECONO LODGE GAITHERSBURG		18715 N. FREDERICK AVE	GAITHERSBURG, MD 20879	(301) 963–3840
MO:				
MO0252 STUDIO PLUS AT THE AIRPORT		155 CHAPEL RIDGE RD	HAZELWOOD, MO 63042	(314) 731–2707
MO0060 BEST WESTERN WESTPORT PARK		2434 OLD DORSETT	MARYLAND HEIGHTS, MO 63043.	(314) 291–8700
MO0125 INN AT GRAND GLAIZE	PO BOX 969		OSAGE BEACH, MO 65065	(314) 348–4731
MO0172 ST. CLAIR SUPER 8		1010 S. OUTER RD	SAINT CLAIR, MO 63077	(314) 629–8080
MO0129 SEDALIA KNIGHTS COURT		3501 W. BROADWAY	SEDALIA, MO 65301	(816) 826–8400
MO0099 EMBASSY SUITES		901 N. FIRST ST	ST. LOUIS, MO 63102	(314) 241–4200
NC:				
NC0047 ECONO LODGE SUGAR CREEK		1415 TOM HUNTER RD. EXIT 41.	CHARLOTTE, NC 28214	(704) 597–0470
NY:				
NY0157 ECONO LODGE		1339 RT. 64	ELMIRA, NY 14830	(607) 739–2000
NY0371 MELVILLE MARRIOT		1350 OLD WALT WHITMAN RD	MELVILLE, NY 11747	(516) 423–1600
VA:				
VA0492 EXECUTIVE CLUB SUITES		610 BASHFORD LANE	ALEXANDRIA, VA 22314	(703) 739–2582
VA0329 DOUBLETREE CLUB HOTEL—NORFOLK AIRPORT.		880 N MILITARY HIGHWAY	NORFOLK, VA 23502–0000	(804) 461–9192
VA0477 RODEWAY INN		7969 SHORE DRIVE	NORFOLK, VA 23518	(804) 588–3600
Deletions				
None				

[FR Doc. 95–4759 Filed 2–24–95; 8:45 am]

BILLING CODE 6718–26–U

federal register

Monday
February 27, 1995

Part XIII

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

Commerce in Firearms and Ammunition: Handgun Control (Implementation of the Brady Handgun Violence Prevention Act); Federal Firearms License Reform; Final Rule

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF–361; Ref: T.D. ATF–354 and Notice No. 789]

RIN: 1512–AB23

Implementation of Public Law 103–159, Including the Brady Handgun Violence Prevention Act (93F–057P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This final rule implements the provisions of Public Law 103–159, including the Brady Handgun Violence Prevention Act. These regulations implement the law by imposing a waiting period of 5 days before a licensed firearms importer, licensed manufacturer, or licensed dealer may transfer a handgun (other than the return of a handgun to the person from whom it was received) to a nonlicensed individual. Regulations are also prescribed with regard to reporting requirements for multiple handgun sales, labeling of packages containing a firearm, theft of firearms from firearms licensees, and increased license fees for dealers in firearms.

Unless otherwise indicated, the temporary regulations published in the Federal Register on February 14, 1994 (T.D. ATF–354), are made permanent upon the effective date of this final rule.

EFFECTIVE DATE: March 29, 1995.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Legislative Background

On November 30, 1993, Public Law 103–159 (107 Stat. 1536) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44). Title I of Pub. L. 103–159, the ''Brady Handgun Violence Prevention Act'' (hereinafter, ''Brady'' or ''Brady law''), provides for a national waiting period of 5 days before a licensed importer, licensed manufacturer, or licensed dealer may transfer a handgun to a nonlicensed individual (interim provision), and for the establishment of a permanent national instant criminal background check system to be queried by firearms licensees before transferring any firearm to nonlicensed individuals. The law requires that the permanent system be established not later than November 30, 1998. Violations of either the interim or permanent provision are punishable by a fine and/or imprisonment for not more than 1 year.

Titles II and III of Pub. L. 103–159 relate to reporting requirements for multiple handgun sales, labeling of packages containing a firearm, thefts of firearms from licensed firearms dealers, and increased license fees for dealers in firearms.

On September 13, 1994, the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322 (108 Stat. 1796) was enacted. Title XXXII of Pub. L. 103–322 amended the GCA by eliminating the Federal 5-day waiting period requirement imposed by Brady with respect to a licensee's return of a handgun to the person from whom it was received.

Waiting Period (Interim Provision)

The Brady law provides that the waiting period provisions of the law were effective on February 28, 1994, and cease to apply on November 30, 1998. Brady imposes a waiting period of 5 business days (defined in the statute as days on which State offices are open) before a licensee may sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to a nonlicensed individual. As defined in the Brady law, the term ''handgun'' means—

(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

Basically, the waiting period provision makes it unlawful for any licensed firearms importer, manufacturer, or dealer to sell, deliver, or transfer a handgun to a nonlicensed individual (transferee), unless the licensee—

(1) obtains a statement of the transferee's intent to obtain a handgun containing the transferee's name, address, and date of birth appearing on a valid photo identification, a description of the identification document, a statement that the transferee is not a felon, under indictment, or otherwise prohibited from receiving or possessing the handgun under Federal law, and the date the statement is made;

(2) verifies the identity of the transferee by examining the identification document presented;

(3) within 1 day after the transferee furnishes the statement, contacts the chief law enforcement officer (CLEO) of the place of residence of the transferee and advises such officer of the contents of the statement;

(4) within 1 day after the transferee furnishes the statement, transmits a copy of the statement to the CLEO of the place of residence of the transferee; and

(5) waits 5 business days from the date the licensee furnished notice of the contents of the statement to the CLEO before transferring the handgun to the transferee (during which period the licensee has not received information from the CLEO that receipt or possession of the handgun by the transferee would be in violation of law); or receives notice from the CLEO of the place of residence of the transferee that the officer has no information that the transferee's receipt or possession of the handgun would violate the law.

Subsequent to the sale or transfer of the handgun, the law requires a licensee who receives a report from a CLEO containing information that receipt or possession of the handgun by the transferee would violate Federal, State, or local law to communicate within 1 day any information the licensee has concerning the transfer to the CLEO of the place of business of the licensee and to the CLEO of the place of residence of the transferee.

As provided in Brady, the term ''chief law enforcement officer'' means ''the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.'' The law requires that the chief law enforcement officer within 5 business days make a reasonable effort to determine whether the transferee is prohibited by law from receiving or possessing the handgun sought to be purchased. Except for records relating to a proposed handgun sale that would violate the law, CLEOs are required to destroy within 20 days the purchaser's statement, any record containing information derived from the statement, and any record created as a result of the notice referred to in (3) above. Furthermore, these records may only be used to carry out the purposes of the Brady law, and no information in the records may be conveyed to any person for purposes other than complying with the Brady law.

Brady also provides that an individual who is determined to be ineligible to purchase a handgun under the waiting period provision may request that the CLEO who made the determination provide reasons for that determination. The officer must provide such reasons to the individual in writing within 20 business days after receipt of the request.

Alternatives to the Waiting Period

The statute provides the following alternatives to the waiting period provision:

(1) The transferee provides a written statement issued within the last 10 days by the CLEO of the transferee's place of residence that the transferee requires a handgun because of a threat to the life of the transferee or any member of the transferee's household;

(2) The transferee presents to the licensee a permit issued by the State within the past 5 years to possess a handgun and the law of the State requires verification that the transferee is not prohibited by law from possessing the handgun;

(3) Purchases in States which require that, before any licensee transfers a handgun to an individual, an authorized government official has verified that possession of the handgun by the transferee would not violate the law (e.g., a background check);

(4) Purchases of handguns which are subject to the National Firearms Act and which have been approved for transfer under 27 CFR Part 179 (Machine Guns, Destructive Devices, and Certain Other Firearms);

(5) Purchases of handguns for which the Secretary has certified that compliance with the 5-day waiting period procedure is impracticable because the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025 (i.e., 25 officers per 10,000 square miles), the premises of the licensee are remote in relation to the CLEO of the area, and there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

Additional Provisions of Pub. L. 103–159

Titles II and III of Pub. L. 103–159 provide additional amendments to the GCA. These provisions, which became effective on November 30, 1993, are as follows:

(1) *Multiple sales reports.* In addition to furnishing reports of multiple handgun sales to ATF, licensees are required to submit such reports to the ''department of State police or State law enforcement agency of the State or local law enforcement agency of the jurisdiction in which the sale or other disposition took place.''

(2) *Common carriers.* Common or contract carriers are prohibited from requiring or causing any label or other written notice to be placed on the outside of any package, luggage, or other container indicating that such package contains a firearm. In addition, common or contract carriers who deliver firearms in interstate or foreign commerce are required to obtain written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(3) *Theft of firearms.* It is unlawful for any person to steal from the person or premises of a Federal firearms licensee any firearm in the licensee's business inventory which has been shipped or transported in interstate or foreign commerce.

(4) *License fees.* License fees for all dealers in firearms (other than destructive devices), including pawnbrokers, have been increased to $200 for 3 years, except that the fee for renewal of a license is $90 for 3 years.

Temporary Rule and Notice of Proposed Rulemaking

On February 14, 1994, ATF published in the Federal Register a temporary rule (T.D. ATF–354, 59 FR 7110) implementing the provisions of Public L. 103–159, including the Brady Handgun Violence Prevention Act. The temporary rule provided immediate guidance to Federal firearms licensees concerning their obligations under the Brady law.

On February 14, 1994, the Bureau also published a notice of proposed rulemaking cross-referenced to the temporary regulations (Notice No. 789, 59 FR 7115). The comment period for Notice No. 789 closed on May 16, 1994.

Analysis of Comments

ATF received 105 comments in response to Notice No. 789. Comments were submitted by Federal firearms licensees, nonlicensees, industry trade groups and other organizations (e.g., Collateral Loan & Secondhand Dealers Association of California, Handgun Control, Inc., and the National Rifle Association of America), members of Congress, law enforcement officials, one Federal agency, and one State Government.

Forty-five commenters, representing 43 percent of the total comments received, expressed opposition to the Brady law and urged its repeal. To accomplish this, however, legislative action would be necessary. Several other commenters requested changes that would also require legislative action. These include reducing or eliminating the license fees for gunsmiths, eliminating the provision of law with respect to the theft of firearms from a licensee, exempting police officers from the waiting period requirement when purchasing a handgun for other than official use, eliminating the requirement that the licensee forward to the CLEO a copy of the transferee's statement of intent to obtain a handgun, and eliminating the 5-year limitation for permits in States that have a permit-to-purchase system. Other issues addressed in the comments will be discussed in the following paragraphs.

Pawn Transactions—Public Law 103–322

Twenty-five commenters disagree with ATF's interpretation that the Brady law applies to the redemption of a pawned handgun. They argue that the law was not intended to apply to pawn transactions where a handgun is redeemed by the owner.

Subsequent to publication of the temporary regulations, on September 13, 1994, the Violent Crime Control and Law Enforcement Act of 1994 was enacted as Pub. L. 103–322 (108 Stat. 1796). Title XXXII of Pub. L. 103–322 amended the GCA by eliminating the Federal 5-day waiting period requirement imposed by Brady with respect to a licensee's return of a handgun to the person from whom it was received. Consequently, effective September 13, 1994, the Federal waiting period no longer applies to the redemption of a pawned handgun by the person from whom it was received. Accordingly, § 178.102(a) of the final regulations has been amended to include this exception to the requirements of the Brady law.

Background Check Fees

Several commenters, including licensees and nonlicensees, oppose the imposition of fees by law enforcement officials for background records checks. They argue that there is nothing in the Brady law or temporary regulations which allow CLEOs to charge a fee for such checks.

The Brady law is silent with respect to the imposition of fees for State and local officials performing records checks. It neither authorizes nor prohibits CLEOs from imposing such a fee. Consequently, such fees may be imposed pursuant to State or local law. Therefore, the final rule does not address such fees.

Form 5300.35

Some commenters suggested that Form 5300.35 and Form 4473 be combined into one form. This suggestion was not adopted. While the forms contain duplicative information, they serve distinct purposes and are executed at different times. Form

5300.35 is executed at the time the prospective purchaser informs the licensee of an intent to acquire a handgun. Form 4473 is executed when the handgun is delivered. A considerable lapse of time may separate the two events. Consequently, the purchaser's certification on Form 5300.35 that he or she is not within a category of persons prohibited from receiving or possessing firearms must be made again on Form 4473 when the firearm is delivered to the purchaser. During the period between execution of the two forms, the purchaser may have been indicted, convicted of a felony, or otherwise fallen within one of the categories of persons who are prohibited by law from receiving or possessing firearms. In addition, it is impractical to use a combined form as the Form 4473 contains information that may not be provided to the CLEO, including a description of the handgun to be purchased. The Brady law expressly limits the information that may be required on Form 5300.35. Finally, a combination of the two forms would be overly complicated and confusing to licensees and handgun purchasers.

Two commenters requested that the regulations be revised to include as optional information on Form 5300.35 the transferee's race in order to assist law enforcement officials in verifying the transferee's eligibility to possess a handgun. ATF agrees with the commenters that race would be helpful in identifying the transferee. However, ATF believes that the other information on the form, including social security number and date of birth, is adequate for law enforcement officials to conduct a criminal records check. Accordingly, ATF is not amending the regulations and the form to include the transferee's race.

Another modification to Form 5300.35 was requested by the Immigration and Naturalization Service (INS) of the Department of Justice. In order to provide assistance to CLEOs in identifying ineligible applicants for handguns, the INS has suggested that a transferee who is a lawful permanent resident alien of the United States include his or her alien registration number (Alien #A _____) on Form 5300.35 (Item 5g, ''Are you illegally in the United States?''). The registration number will enable INS to conduct computer checks. Without this information, it would be impossible for INS to grant the assistance requested by CLEOs. In light of INS's request, ATF is amending § 178.130(a)(2) to include the alien registration number on Form 5300.35 as optional information.

Some commenters suggested that the regulations prescribe a maximum time period between the completion of Form 5300.35 and delivery of the handgun. The Brady law is silent on this issue. It requires licensees to execute Form 5300.35 after the most recent proposal of transfer by the transferee and before transferring the handgun. The law would not prohibit a licensee from transferring a handgun even though there is a long lapse of time between execution of the form and delivery of the firearm. However, ATF is encouraging licensees to have the form executed as close in time to the delivery of the handgun as possible, so that any records check performed will be recent.

Another commenter requested that § 178.130(c), which requires licensees to retain all executed original Forms 5300.35 even when a transfer does not occur, be eliminated. One commenter also recommended that the final regulations clarify how long licensees must retain these forms.

ATF is not amending § 178.130(c). The retention of executed Forms 5300.35 is necessary to ensure compliance with the Brady law which requires that the form be completed at the time the buyer expresses an intent to acquire a handgun from a licensee.

With respect to retention of Form 5300.35, § 178.129(b) provides that licensees shall retain each Form 5300.35 for a period of not less than 5 years after notice of the intent to obtain a handgun was forwarded to the chief law enforcement officer.

Recordkeeping Requirements

One commenter requested an amendment of § 178.131(a)(3), concerning recordkeeping requirements for handgun transactions in States that have a permit/license-to-purchase background check system. This section provides that the licensee shall retain a copy of the purchaser's permit or license and attach it to the firearms transaction record, Form 4473, executed upon delivery of the handgun. The commenter contends that this requirement places an unnecessary and expensive burden on licensees, particularly for those licensees who cannot afford, or do not have access to, a photocopier.

Rather than making a copy of the purchaser's permit or license, the commenter suggests that the licensee make a record of the information contained on the permit. ATF believes that recording this information on Form 4473 sufficiently demonstrates that a handgun transfer has been made under the State permit system. Accordingly, this final rule amends § 178.131(a)(3) to require licensees to either retain a copy of the purchaser's permit or license and attach it to the Form 4473 or record certain minimal information contained on such permit or license on the Form 4473, including any identifying number, the date of issuance and the expiration date (if provided).

The same commenter requested an amendment of § 178.131(a)(4). This section requires licensees in alternative States with ''instant check'' systems to retain with the Form 4473 a statement showing the date of verification, any identifying number, and the name, location, and title of the authorized government official who did the background check. According to the commenter, ''[i]n virtually all instances, the person actually checking the status of the transferee will not be an 'authorized government official' personally known to the licensee who will conduct the appropriate records check.''

Since the agency responsible for determining the status of the purchaser will have verifiable information that the background check was completed, the commenter has suggested that the regulations be amended to require the name of the agency responsible for conducting the records check rather than the name of the Government official who made the check.

In response, ATF is revising § 178.131(a)(4) to require licensees in alternative States with ''instant check'' systems to retain with the Form 4473 a statement indicating the date of verification and any identifying number assigned to the transaction by the agency responsible for conducting the verification of eligibility.

Common and Contract Carriers

Section 922(f)(2) of the GCA and its implementing regulation in § 178.31(d) impose a new requirement on common or contract carriers to obtain a written receipt upon delivery of a package or other container in which there is a firearm. Two commenters raised concerns regarding the application of § 178.31(d) which they believe need to be addressed in the final regulations.

One commenter, a trade association of the moving industry, noted that some customers who are relocating do not reveal to the mover that a firearm is included in the household goods being shipped. The firearm may, for example, be in a dresser or other piece of furniture. Since the mover has no knowledge that there is a firearm included in the shipment, the commenter contends that the carrier should not be held accountable for

failing to obtain proof of delivery of the firearm from the recipient.

Pursuant to section 924 of the GCA, whoever ''knowingly'' violates the provisions of section 922(f) shall be subject to certain penalties, including a fine, imprisonment, or both. If the carrier has no knowledge that a firearm is being transported in the shipment, no violation would occur. For clarification, ATF is amending § 178.31(d) in the final regulations to add the requisite knowledge element.

The second commenter, a trade and service organization of the larger U.S. airlines, also expressed some concerns regarding the application of § 178.31(d). First, the commenter asked whether the regulation requires an airline to obtain a written receipt from a passenger when baggage, containing a declared firearm that accompanies the passenger, is delivered at the destination airport. ATF interprets section 922(f) as not requiring carriers to obtain a written acknowledgement of receipt upon return of a firearm to a passenger who places a firearm in the carrier's custody for the duration of the trip. ATF is amending § 178.31(d) in the final regulations to clarify this point.

The commenter also inquired as to whether an electronic signature satisfies the receipt requirement of § 178.31(d). According to the commenter, small cargo package services utilize electronic notebooks that enable a consignee to sign electronically, rather than in ink, for a shipment. Hard copies of the delivery records, including the signature of the recipients, can be printed out. The records are retrievable from the database by the name of the consignee or consignor.

ATF finds that an electronic signature is a ''written acknowledgement of receipt'' which would satisfy the requirements of § 178.31(d), provided the signature is that of the individual who received the package. However, ATF believes it is unnecessary to amend the regulations to specifically address this particular type of receipt.

Finally, the commenter requested a clarification of § 178.31 with respect to the handling of firearms shipped on commercial air carriers on behalf of governmental entities, specifically, military personnel. In the case of firearms shipped as cargo on behalf of military personnel, § 925(a)(1) of the GCA provides that the provisions of the Act do not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of governmental entities. Thus, the provisions of § 178.31 are not applicable to firearms being shipped or transported on behalf of governmental entities, including the Armed Forces.

Since there are existing regulations which implement the provisions of § 925(a)(1), i.e., § 178.141, ATF has determined that amendment of § 178.31 is unnecessary.

Chief Law Enforcement Officers

Two commenters suggested that the final regulations provide guidance for law enforcement officers with respect to their responsibilities and duties in implementing the provisions of Brady. This includes a clarification of who is a CLEO and who may designate a CLEO; a clarification that CLEOs have no authority to impose a ''temporary hold'' on the transfer of a handgun to a transferee who is not prohibited by law from purchasing a handgun; guidance to CLEOs regarding what constitutes ''reasonable effort'' when conducting background checks on purchasers; and guidance regarding the destruction of Brady related records by law enforcement officers.

ATF has not included the commenters' suggestions in the final rule, since the regulations address the responsibilities of Federal firearms licensees. ATF has given actual notice to CLEOs of their responsibilities under the Brady law.

Finally, the temporary regulations, § 178.102(a)(3), provide that the notice licensees are required to give CLEOs shall be actual notice and shall be given in a manner acceptable to the CLEO. For clarification, ATF is amending § 178.102(a)(3) to provide that licensees in jurisdictions where CLEOs have specified hand-delivery as the only means of delivering notice will satisfy their legal obligation under the Brady law if they provide notice to the CLEO by certified mail (return receipt requested) or by any other method of mailing which will provide a written receipt. This section has been redesignated as § 178.102(b).

Identification of Transferee

The temporary regulations, § 178.102(a)(1)(ii), require licensees to verify the identity of the transferee by examining the identification document presented. The term ''identification document'' is defined in Brady and the regulations as ''a document containing the name, residence address, date of birth, and photograph of the holder and which was made or issued by or under the authority of the United States Government, a State, political subdivision of a State . . .'' A question was raised in the comments with respect to acceptable identification documents in the case of military personnel.

In the case of military personnel, the purchaser's military identification card and official orders showing that his permanent duty station is within the State where the licensed premises is located will suffice for purposes of the identification requirement of Brady.

ATF was also asked if a licensee could accept an identification document from a transferee who has an incorrect address. A transferee who presents a driver's license with an address that is not a current residence would not present a proper ''identification document'' as that term is defined in the law and the regulations. However, if the individual presents a combination of documents, all issued by a governmental entity, containing all the information required by Brady, the combination of documents would satisfy the identification requirements of the law.

ATF believes the preceding discussion sufficiently clarifies the application of § 178.102(a)(1)(ii), and an amendment of the regulations is unnecessary. This section has been redesignated as § 178.102(a)(2) in the final regulations.

Miscellaneous

One commenter suggested that the final regulations specify that the waiting period provisions of Brady do not apply to licensed collectors of curios and relics. ATF is not adopting this suggestion, since Brady applies to certain handgun transactions by licensed collectors. The law and regulations make it clear that the waiting period provisions of Brady apply to transfers of handguns by licensed IMPORTERS, licensed MANUFACTURERS, and licensed DEALERS to individuals who are not licensed under section 923. Thus, it is apparent that transfers of handguns BY licensed collectors are not subject to the provisions of Brady. As for transfers of handguns by licensed importers, licensed manufacturers, and licensed dealers TO licensed collectors, such transfers are subject to Brady unless the collector is purchasing a handgun designated as a curio or relic. A collector's license authorizes the licensee to engage only in transactions in firearms designated as curios or relics and would not enable the licensed collector to avoid the requirements of the GCA, including the Brady law, for firearms other than curios or relics.

One commenter recommended that the final regulations include a provision that requires licensees to obtain a transferee's fingerprints to resolve

appeals involving positive identification. ATF is not adopting this suggestion. The Brady law does not involve licensees in the appeals process. If a CLEO determines that a prospective buyer is ineligible to receive a firearm and the handgun purchase is denied, Brady provides that the individual can request from the CLEO the reason for such determination. Thus, the licensee is no longer involved and the matter will be resolved by the prospective buyer and the CLEO. In situations where the denial is based on inconclusive identification of the transferee, it is incumbent upon the prospective buyer to provide the CLEO with whatever additional identifying information is needed, including fingerprints, to establish positive identification.

Finally, this Treasury decision makes some technical amendments to the temporary regulations. Specifically, the temporary regulations redesignated § 178.150 as § 178.151. Section 178.150 should have been redesignated as § 178.152. In addition, § 178.126a has been amended to clarify that licensees retain a copy of Form 3310.4, consistent with the instructions on the form. Section 178.129 provides that licensees shall retain such copies of Form 3310.4 for a period of not less than 5 years. Lastly, the definition of the term ''chief law enforcement officer'' has been moved from § 178.11 to § 178.102(c).

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action because the economic effects flow directly from the underlying statute and not from this final rule. Accordingly, this final rule is not subject to the analysis required by this Executive order.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1512–0520. The estimated average annual burden associated with the collection of information in this regulation is 2.52 hours per respondent or recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Chief, Information Programs Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 and to the Office of Management and Budget, Attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503.

Disclosure

Copies of the temporary rule, the notice of proposed rulemaking, all written comments, and this final rule will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

27 CFR Part 178 is amended as follows:

Paragraph 1. The authority citation for 27 CFR Part 178 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

§ 178.11 [Amended]

Par. 2. Section 178.11 is amended by removing the definition for ''chief law enforcement officer.''

Par. 3. Section 178.31 is amended by revising paragraph (d) to read as follows:

§ 178.31 Delivery by common or contract carrier.

* * * * *

(d) No common or contract carrier shall knowingly deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm: *Provided*, That this paragraph shall not apply with respect to the return of a firearm to a passenger who places firearms in the carrier's custody for the duration of the trip.

Par. 4. Section 178.102 is revised to read as follows:

§ 178.102 Sales or deliveries of handguns after February 27, 1994, and before November 30, 1998.

(a) *Waiting period.* Except as provided in paragraph (d), a licensed importer, licensed manufacturer, or licensed dealer shall not sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to any individual who is not licensed under this part unless the licensee:

(1) Receives from the transferee a statement of intent to obtain a handgun on Form 5300.35 in accordance with § 178.130;

(2) Verifies the identity of the transferee by examining the identification document presented, and noting on Form 5300.35 the type of identification used;

(3) Within 1 day after the transferee furnishes the statement, provides notice of the contents of the statement on Form 5300.35, in the manner prescribed by paragraph (b) of this section, to the chief law enforcement officer of the place of residence of the transferee;

(4) Within 1 day after the transferee furnishes the statement to the licensee, transmits a copy of Form 5300.35 to the chief law enforcement officer of the place of residence of the transferee; and

(5)(i) Five business days (meaning days on which State offices are open) have elapsed from the date the licensee furnished actual notice of the contents of the statement to the chief law enforcement officer, during which period the licensee has not received information from such officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(ii) The licensee has received notice from the chief law enforcement officer within the 5 business days that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law.

Example 1. A licensee furnishes actual notice of the contents of the statement to the chief law enforcement officer on Tuesday. If State offices are not open on Saturday and Sunday, 5 business days would have elapsed on the following Tuesday. The licensee may deliver the handgun on the next day, Wednesday.

Example 2. A licensee furnishes actual notice of the contents of the statement to the chief law enforcement officer on Saturday. If State offices are not open on Saturday and Sunday, 5 business days would have elapsed

on the following Friday. The licensee may deliver the handgun on the next day, Saturday.

(b) *Form of notice.* The notice required by paragraph (a)(3) of this section shall be actual notice and shall be given in a manner acceptable to such officer. For example, if the chief law enforcement officer will only accept notice in writing and not by telephone, notice shall be given by the licensee to the chief law enforcement officer in writing. In that case, the 5-day waiting period prescribed by paragraph (a)(5)(i) of this section begins at the time such written notice is received by the chief law enforcement officer. If the licensee sends notice to such officer by mail, the licensee shall send the notice by certified mail (return receipt requested) or by any other method of mailing which will provide a written receipt: Provided, That where the chief law enforcement officer will only accept notice by hand delivery, notice may be sent in writing by the licensee to the chief law enforcement officer by certified mail (return receipt requested) or by any other method of mailing which will provide a written receipt.

(c) *Chief law enforcement officer.* The law requires that notice of the contents of the transferee's statement of intent to obtain a handgun and the statement be provided by the licensee to the chief law enforcement officer of the place of residence of the transferee. For purposes of this section, § 178.130, and § 178.131, the ''chief law enforcement officer'' means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual. Where the State or local law enforcement officials have notified the licensee that a particular official has been designated to receive the notice and statement specified in paragraphs (a) (3) and (4) of this section, the licensee shall provide the information to that designated official.

(d) *Alternatives to waiting period.* The provisions of paragraph (a) of this section shall not apply if—

(1) The transferee has presented to the licensee a written statement, issued by the chief law enforcement officer of the transferee's place of residence, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee. The written statement must have been issued by the chief law enforcement officer during the 10-day period ending on the date that the transferee has informed the licensee of the transferee's intention to obtain a handgun. The written statement shall be on a letter bearing the letterhead of the chief law enforcement officer and shall be signed by the officer and dated;

(2) The transferee has presented to the licensee a permit or license that—

(i) Allows the transferee to possess or acquire a handgun;

(ii) Was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(iii) The law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of Federal, State, or local law;

(3) The law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under this part, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

(4) The handgun is subject to the provisions of the National Firearms Act and has been approved for transfer under 27 CFR Part 179; or

(5) On application of the licensee, in accordance with the provisions of § 178.150, the Director has certified that compliance with paragraph (a) of this section is impracticable.

(6) The documents referred to in paragraphs (d)(1) and (2) of this section shall be retained in the records of the licensee in accordance with the provisions of § 178.131.

(e) *Disclosure of information.* (1) Any licensed importer, licensed manufacturer, or licensed dealer who, after the transfer of a handgun to a nonlicensee, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day (meaning a day on which State offices are open) after receipt of the report, communicate any information the licensee has concerning the transfer and the transferee, including a copy of Form 4473 required by § 178.124, to the chief law enforcement officer of the place of business of the licensee and to the chief law enforcement officer of the place of residence of the transferee. The licensee may also provide this information to the local ATF office.

(2) Any licensed importer, licensed manufacturer, or licensed dealer who receives information from a chief law enforcement officer regarding the transfer of a handgun to a nonlicensee, not otherwise available to the public, shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(Approved by the Office of Management and Budget under control number 1512–0520)

Par. 5. Section 178.126a is amended by adding a fifth sentence to the text preceding Example 1 to read as follows:

§ 178.126a Reporting multiple sales or other disposition of pistols and revolvers.

* * * The licensee shall retain one copy of Form 3310.4 and attach it to the firearms transaction record, Form 4473, executed upon delivery of the pistols or revolvers.

* * * * *

Par. 6. Section 178.129(b) and the parenthetical text at the end of the section are revised to read as follows:

§ 178.129 Record retention.

* * * * *

(b) *Firearms transaction record, statement of intent to obtain a handgun, and reports of multiple sales or other disposition of pistols and revolvers.* Licensees shall retain each Form 4473 and Form 4473(LV) for a period of not less than 20 years after the date of sale or disposition. Licensees shall retain each Form 5300.35 for a period of not less than 5 years after notice of the intent to obtain the handgun was forwarded to the chief law enforcement officer. Licensees shall retain each copy of Form 3310.4 for a period of not less than 5 years after the date of sale or other disposition.

* * * * *

(Paragraph (b) approved by the Office of Management and Budget under control numbers 1512–0520 and 1512–0006; all other recordkeeping approved by the Office of Management and Budget under control number 1512–0129.)

Par. 7. Section 178.130 is amended by revising paragraphs (a) and (e) to read as follows:

§ 178.130 Statement of intent to obtain a handgun after February 27, 1994, and before November 30, 1998.

(a)(1) Except as provided in §§ 178.102(d) and 178.131, a licensed importer, licensed manufacturer, or licensed dealer shall not sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) unless the licensee has received from the transferee a statement of intent to obtain a handgun on Form 5300.35 in duplicate. The statement shall contain the transferee's name, address, and date of birth. The transferee must date and execute the sworn statement contained on the form showing that the transferee

is not under indictment for a crime punishable by imprisonment for a term exceeding 1 year; has not been convicted in any court of such a crime; is not a fugitive from justice; is not an unlawful user of or addicted to any controlled substance; has not been adjudicated as a mental defective or been committed to a mental institution; is not an alien who is illegally or unlawfully in the United States; has not been discharged from the Armed Forces under dishonorable conditions; and is not a person who, having been a citizen of the United States, has renounced such citizenship.

(2) In order to facilitate the transfer of a handgun and enable the chief law enforcement officer to verify the identity of the person acquiring the handgun, Form 5300.35 requests certain additional optional information. This information includes the social security number, height, weight, sex, alien registration number, and place of birth of the transferee. Such information may help avoid the possibility of the transferee being misidentified as a felon or other prohibited person.

* * * * *

(e) A licensee may obtain, upon request, an emergency supply of Forms 5300.35 from any regional director (compliance) or local ATF office (compliance).

* * * * *

Par. 8. Section 178.131 is revised to read as follows:

§ 178.131 Handgun transactions not subject to the waiting period.

(a)(1) A licensed importer, licensed manufacturer, or licensed dealer whose sale, delivery, or transfer of a handgun is made pursuant to the alternative provisions of § 178.102(d) and is not subject to the waiting period prescribed by § 178.102(a) shall maintain the records required by this paragraph.

(2) If the transfer is pursuant to a written statement of the chief law enforcement officer in accordance with § 178.102(d)(1), the licensee shall retain such statement and attach it to the firearms transaction record, Form 4473, executed upon delivery of the handgun.

(3) If the transfer is pursuant to a permit or license in accordance with § 178.102(d)(2), the licensee shall either retain a copy of the purchaser's permit or license and attach it to the firearms transaction record, Form 4473, or record on the firearms transaction record, Form 4473, any identifying number, the date of issuance, and the expiration date (if provided) from the permit or license.

(4) If the transfer is pursuant to a verification of eligibility to possess a handgun (e.g., an instant record check) by a government official in accordance with § 178.102(d)(3), the licensee shall attach to the firearms transaction record, Form 4473, executed upon delivery of the handgun, a statement showing the date of verification and any identifying number assigned to the transaction by the agency responsible for conducting the verification of eligibility.

(5) If the transfer is pursuant to a certification by ATF in accordance with §§ 178.102(d)(5) and 178.150, the licensee shall maintain the certification as part of the records required to be kept under this subpart and for the period prescribed for the retention of Form 5300.35 in § 178.129(b).

(b) The requirements of this section shall be in addition to any other recordkeeping requirements contained in this part. (Approved by the Office of Management and Budget under control number 1512–0520)

Par. 9. Section 178.150 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 178.150 Alternative to handgun waiting period in certain geographical locations.

(a) The provisions of § 178.102(d)(5) shall be applicable when the Director has certified that compliance with the waiting period provisions of § 178.102(a) is impracticable because:

* * * * *

Par. 10. In Subpart I, § 178.151, Seizure and forfeiture, is redesignated as § 178.152.

Signed: December 6, 1994.

Daniel R. Black,

Acting Director.

Approved: December 27, 1994.

John P. Simpson,

Deputy Assistant Secretary, Regulatory, Tariff and Trade Enforcement.

[FR Doc. 95–4886 Filed 2–24–95; 8:45 am]

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1, 2 (2 Reserved)	(869–022–00001–2)	$5.00	Jan. 1, 1994
3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.00	[1] Jan. 1, 1994
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1200–End, 6 (6 Reserved)	(869–022–00006–3)	23.00	Jan. 1, 1994
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1910 (§§ 1910.1000 to end)	(869–022–00112–4)	21.00	July 1, 1994
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200–699	(869–022–00117–5)	19.00	July 1, 1994
700–End	(869–022–00118–3)	27.00	July 1, 1994
31 Parts:			
0–199	(869–022–00119–1)	18.00	July 1, 1994
200–End	(869–022–00120–5)	30.00	July 1, 1994
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
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1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–022–00121–3)	31.00	July 1, 1994
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700–799	(869–022–00125–6)	21.00	July 1, 1994
800–End	(869–022–00126–4)	22.00	July 1, 1994
33 Parts:			
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125–199	(869–022–00128–1)	26.00	July 1, 1994
200–End	(869–022–00129–9)	24.00	July 1, 1994
34 Parts:			
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400–End	(869–022–00132–9)	40.00	July 1, 1994
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36 Parts:			
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37	(869–022–00136–1)	20.00	July 1, 1994
38 Parts:			
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18–End	(869–022–00138–8)	29.00	July 1, 1994
39	(869–022–00139–6)	16.00	July 1, 1994
40 Parts:			
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52	(869–022–00141–8)	39.00	July 1, 1994
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60	(869-022-00143-4)	36.00	July 1, 1994
61–80	(869–022–00144–2)	41.00	July 1, 1994
81–85	(869–022–00145–1)	23.00	July 1, 1994
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150–189	(869–022–00148–5)	24.00	July 1, 1994
190–259	(869–022–00149–3)	18.00	July 1, 1994
260–299	(869–022–00150–7)	36.00	July 1, 1994
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41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
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18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
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201–End	(869–022–00159–1)	13.00	July 1, 1994
42 Parts:			
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400–429	(869–022–00161–2)	26.00	Oct. 1, 1994
430–End	(869–022–00162–1)	36.00	Oct. 1, 1994
43 Parts:			
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4000–End	(869–022–00165–5)	14.00	Oct. 1, 1994
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45 Parts:			
1–199	(869–022–00167–1)	22.00	Oct. 1, 1994
200–499	(869–022–00168–0)	15.00	Oct. 1, 1994
500–1199	(869–022–00169–8)	32.00	Oct. 1, 1994
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46 Parts:			
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70–89	(869–022–00173–6)	8.50	Oct. 1, 1994
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200–499	(869–022–00178–7)	21.00	Oct. 1, 1994
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49 Parts:			
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*400–999	(869–022–00197–3)	35.00	Oct. 1, 1994
1000–1199	(869–022–00198–1)	19.00	Oct. 1, 1994
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50 Parts:			
*1–199	(869–022–00200–7)	25.00	Oct. 1, 1994
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.